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MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE

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Claim Denied Because Changing Directions When Walking Not Related to Employment

Overstreet v. TAMKO Building Products, Injury No. 18-009989

On February 12, 2018, the claimant heard pop and felt a tearing in his left knee while walking toward the load station. The claim was denied and the claimant treated on his own undergoing surgery with Dr. Grantham. He was evaluated by Dr. Koprivica at the request of his attorney, who opined that the February 12, 2018 injury was the prevailing factor in the acute internal derangement of the left knee.

At a hearing the claimant testified that where he was walking was the same as always, not wet, not slick and while it was night the area was lighted. In his deposition he stated he was walking downhill or across a decline when his knee popped but essentially answered “I don’t know” when asked if he thought that contributed to the incident.

At the hearing the claimant testified that there was a slope in the area but he did not indicate that the slope contributed to his knee popping. He did note there were cracks in the area he was walking, typical of asphalt, but could not say that he stepped in a crack or that a crack caused his knee accident. The claimant conceded that where he was injured was not dissimilar from numerous other asphalt lots in the area to which he was exposed in his non-employment life. He also agreed that he had been to other lots that were similar to the lot where he was injured in his non-employment life.

The ALJ concluded that the claimant did not meet his burden of proof that he sustained a compensable injury, as he did not show the risk of walking and changing directions was a risk related to his employment, and not one to which he was equally exposed in his non-employment life. The Commission noted that he tried to insert multiple red herrings by talking about wearing steel-toed boots at work but not at home and walking on uneven surfaces and over areas of asphalt more often at work, but he never claimed that any of those factors caused his knee injury. The only thing ever identified as the source of the injury was walking and changing directions. Benefits were therefore denied. The Commission affirmed.

Claim Denied as Twisting and Turning Was Not a Condition of Claimant’s Employment or Necessary for Performance of Job Duties

Durr v. Americare Systems, Inc. Clark's Mountain Nursing Center Americare at Clark's Mountain, Injury No. 15-013660

The claimant worked at the employer as a CNA on the night shift and testified that on March 5, 2015, she injured her left knee while moving back out of a space between the bed and a wall and quickly turned to exit and twisted her left knee when she pivoted on her left foot. She testified that she did not notice anything on the floor and was not holding anything when she turned. As part of her regular duties the claimant testified that she would place fresh water and ice in a container at the bedside of the nursing home residents to whom she was assigned. She testified that she tried to complete this job quickly as the single ice cart was also used by other nursing assistants for residents of other halls in the facility. The claimant's night shift charge nurse testified on behalf of the employer and confirmed that one of the claimant's job duties was to pass out ice to the residents in the rooms. However, she noted that there was no time limit although it was preferred that it be done within the first two hours of the shift. She also testified that she did not see or notice anything unusual about the room such as any item or substance on the floor on the claimant's date of injury. At a hearing the ALJ believed that the claimant's injury was the prevailing factor in causing the injury to the claimant's left knee and awarded benefits.

The Commission disagreed with the ALJ, as they did not believe the claimant's alleged injury arose out of her employment and pointed out that twisting and turning does not appear to be a condition of the claimant's employment or necessary for the performance of her job duties and even if they were, the claimant like every other human being, would have been exposed equally in normal non-employment life to twisting and turning during normal daily activities. Therefore, they did not see a causal connection between the claimant's work duties and the alleged injury. The ALJ's Award was therefore reversed and benefits were denied.

Application of §287.140.4 (post January 1, 2014) Proper When Date of Service and First Notice of Dispute Occurred After Section Became Effective in 2014

Holland v. Meramec Mechanical Inc., Injury No. 12-034177

A Medical Fee Dispute Award was issued by an ALJ on November 24, 2020. The ALJ ruled the Application for Payment of Additional Reimbursement of Medical Fees by the healthcare provider was not timely filed. The provider then filed a timely Application for Review to the Commission.

The provider alleged that the Division erred in applying the section 287.140.4 instead of the version that was effective at the date of injury for the related workers' compensation Claim of May 8, 2012. The provider argued that the applicable statute for the dispute should be the same as what applied to the workers' compensation Claim. The provider also argued that by applying the 2014 version which contained a time limitation for filing a Medical Fee Dispute, the ALJ mistakenly and retroactively applied a substantive law.

The Commission agreed and pointed out that the statute of limitations for filing a claim for workers' compensation benefits is controlled by the date of injury. However, the Medical Fee Dispute claim is not a Claim for workers' compensation. Per the section effective on January 1,

2014, the pertinent dates in the statute of limitations are the date of service and the date of the first notice of dispute of the medical charge received by the healthcare provider. In the case at hand, the date of service and date of notice both occurred after January 21, 2014, when the statute had become effective. Therefore the ALJ's application of the version of §287.140.4 effective on January 1, 2014 was proper and the Award was affirmed.

Claim Denied Because Claimant Found Not Credible and No Evidence of Injury in Medical Records

Hundley v. Con-Agg of MO, LLC & Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 14-094684

On May 7, 2014, the claimant was delivering concrete to an elementary school and after the delivery his truck dropped off the curb and the claimant testified that his seat shot up like a rocket and he hit his head on the roof of the truck. He was seen the day after his injury at Cooper County Memorial Hospital with complaints but there was no mention of any work-related injury, head injury or him hitting his head on the roof of his truck. There was also no mention of the injury when he was seen by his primary care physician. The employer did send the claimant to Dr. Peoples who noted that any work injury was not the cause of his symptoms.

The ALJ did not find the claimant credible and noted there was no report of any injury in the medical records and he did not mention his injury to anyone at the employer. Also, he did not find the claimant's experts credible as Dr. Shah did not see him until four years after the accident and did not review the emergency room records. Therefore, benefits were denied. The Commission affirmed the Decision of the ALJ.

Claim Denied as Claimant Testified Additional Job Duties Caused Symptoms But No Doctor Connected His Condition to Those Additional Job Duties

Mirfasihi v. Honeywell Federal Manufacturing & Technologies, LLC, Case No. WD84136 (Mo. App. 2021)

FACTS: The claimant began working for the employer, Honeywell, in 1984 and spent a majority of his time on a computer. Somewhere between December 2016 and January 2017, he began to experience pain in his left hand. He reported the issue on March 15, 2017. He was directed to treat with Dr. Steelman who believed the claimant's symptoms were related to osteoarthritis, not any work-related activities. Based on this, the employer denied the claim. He then retired from the employer and began working for Argon National Laboratory, where his duties were much the same, though he spent a little less time on the computer. He then filed a Claim for Compensation, asserting a left hand and left thumb repetitive motion injury. He treated on his own and Dr. Maugans performed a left thumb A1 pulley release surgery in January of 2018. The claimant's attorney obtained a report of Dr. Neighbor who concluded that the claimant's job duties were the prevailing factor in causing his condition. Dr. Walker testified on behalf of the employer who did not believe his condition was work related.

At a hearing the ALJ awarded benefits. The employer appealed and the Commission issued a final Award reversing the ALJ's Award and denying benefits. The Commission concluded that the claimant failed to meet his burden that his job duties were the prevailing factor in causing his medical condition because there was no record of the claimant informing the doctors of other work activities that could have caused his trigger finger. Specifically, the claimant testified at the hearing that when he traveled he was required to bring his laptop which he usually put in a brief case that he carried in his left hand and that he also transported his brief case to and from work at Honeywell when he was not traveling. Furthermore he had to badge in and push the door using his left hand which was much heavier than the average door. The Commission noted that despite the claimant's testimony, no expert based their opinion on these job duties when authoring their reports. Also the Commission found Dr. Walker more credible than Dr. Neighbor. The claimant appealed.

HOLDING: The claimant argued that the Commission erred in theorizing that it did not have any expert opinion as to his other activities of carrying his brief case and opening the door that could have caused the trigger finger. The Court disagreed, noting that the record contained nothing about those other activities. The claimant also argued that the Commission erred in concluding he failed to meet his burden that his work duties caused his trigger thumb as they disregarded the opinion of Dr. Walker and failed to consider that his asymptomatic arthritis became symptomatic. The Court pointed out that the Commission did consider whether the claimant's osteoarthritis was caused or aggravated by his work duties and they specifically found that it was not. The final Award denying compensation issued by the Commission was affirmed.

Claimant's Shoulder Arthroplasty Found Not Work Related

Edwards v. Dairy Farmers of America, Inc., Injury No. 17-006238

On January 30, 2017, the claimant sustained an injury to his left shoulder. He initially underwent an MRI and was referred to an orthopedic surgeon. He was seen by Dr. Putnam who opined that the pathology was degenerative regardless of an alleged injury and therefore he did not recommend any additional treatment. The claimant then treated on his own and underwent a total arthroplasty. The claimant did have a preexisting condition and had undergone a prior surgery. However, he stated that once he recovered from that surgery he had no problem with his left shoulder until his work injury.

The employer then had the claimant evaluated by Dr. Lennard who did not believe that the claimant's work injury was the prevailing factor in the onset of the left shoulder arthritis. Dr. Mullins examined the claimant on his behalf and connected the need for the arthroplasty back to the work injury.

At a hearing the ALJ found the opinions of Dr. Lennard and Dr. Putnam more persuasive. Also, he noted that the medical records of Dr. Wester, the claimant's treating physician, were inconsistent with his testimony that he did not have any problems with his shoulder as when he was seen a year prior to the work injury he reported stiffness and pain in his shoulder. Therefore, the ALJ denied the Claim. The Commission affirmed.

Commission Erred in Finding that Claimant Must Prove PTD Resulting From a Combination of the Primary Injury and a Single Qualifying Pre-existing Condition

Lexow v. Boeing Company & Treasurer of Missouri as Custodian of the Second Injury Fund, Case No. ED108853 (Mo. App. 2021)

FACTS: The claimant began worked as an aircraft stimulation technician and developed carpal tunnel syndrome. He settled his claim against the employer. He filed a Claim against the Fund alleging he was PTD as a result of a combination of his various pre-existing conditions and his carpal tunnel. At a hearing the ALJ issued an Award in favor of the claimant finding he was PTD due to a combination of his primary injury and pre-existing injuries. The Fund appealed.

The Commission reversed the ALJ's award and concluded that in order to satisfy the statute a claimant must prove that the PTD resulted from a combination of a primary injury and a single preexisting disability that meets the 50-week threshold and falls into one of the categories for Fund liability.

HOLDING: The Court concluded that the Commission misinterpreted §287.220.3 in finding that the claimant must prove PTD resulting from a combination of the primary injury and a single qualifying pre-existing condition, noting that when the statute refers to pre-existing disability in the singular, it should be interpreted to include the plural form.

The claimant also argued that the Commission erred in failing to consider his 2003 workers' compensation claim involving an occupational disease as a qualifying disability under the statute. The Court agreed, finding that §287.220.3 refers generally to a compensable injury and does not exclude occupational disease claims. Therefore, the Court concluded that the Commission erred in finding that the claimant's bilateral carpal tunnel did not satisfy the requirement of the statute.

The Court therefore remanded to the Commission with instructions to make factual findings as to which of the claimant's pre-existing conditions qualify under one of the four eligibility criteria listed in the statute to determine if the claimant is entitled to PTD benefits.

Both Claimant's Physical Condition as well as Non-medical Considerations Such as Age, Education and Transferable Work Skills Can Be Considered When Analyzing Whether Claimant is PTD

Klecka v. Treasurer of Missouri as Custodian of the Second Injury Fund, Case No. ED108721 (Mo. App. 2021)

FACTS: The claimant sustained an injury to his left shoulder on April 18, 2014 and settled the primary claim with his employer for 35% PPD of the left shoulder and 21.5% PPD of the body as a whole resulting from psychiatric injury, mainly depression. The claimant then pursued a Claim against the Fund following a history of work and non-work-related accidents and injuries.

The ALJ issued an Award in favor of the claimant for PTD benefits. The Fund appealed to the Commission, who found that the claimant only had one pre-existing disability that equaled a minimum of 50 weeks of PPD. The Commission reversed the Award based on its interpretation of §287.220.3, noting the claimant's experts and the ALJ considered the claimant's other injuries and disabilities as well as non-medical considerations such as age, education and transferable work skills. The employer appealed.

HOLDING: The claimant argued that the Commission misinterpreted §287.220.3. The Court agreed and found that it is appropriate to consider both the claimant's physical condition as well as other considerations such as age, education and transferable work skills when analyzing whether the claimant is PTD. The Court reversed the Commission's decision and remanded the case for entry of an Award in favor of the claimant against the Fund for PTD benefits.

All of Claimant's Preexisting Disabilities Being Considered for Fund Liability Have to Meet Criteria in Statute; Also Qualifying Preexisting Conditions Do Not Have to be at MMI Prior to Primary Injury

Treasurer of the State of Missouri as Custodian of the Second Injury Fund v. Parker, Case No. SC98704 (Mo. S. Ct. 2021)

FACTS: The claimant sustained a work-related injury to his right elbow and shoulder in March of 2014. He sustained another work-related injury to his neck in June of 2014. He then underwent surgery on his right arm in August of 2014. In September of 2015 he underwent a cervical discectomy fusion surgery and did not return to work following the surgery. He asked to return to work, but never heard back and attempted to work at another employer, but quit after a few weeks due to pain from the injuries. He filed a Claim against the Fund and proceeded to a hearing for the June 2014 injury. The claimant's attorney obtained a report of Dr. Stuckmeyer who concluded that the claimant was PTD and the ALJ found that the Fund was liable for PTD benefits under §287.220.2. The Fund appealed and the Commission adopted the Award of the ALJ.

HOLDING: The Court found that §287.220.0 applied and under that statute employees must meet two conditions to make a compensable PTD claim, the first being that the employee must have at least one qualifying pre-existing disability. The second is that the employee must show he sustained a subsequent compensable work-related injury that combined with the pre-existing disability, resulting in PTD.

The Fund argued that the first condition can be met only when the pre-existing disability is determined to have reached MMI before the employee suffers a primary injury. The Court pointed out that the statute requires only that an employee has a medically documented pre-existing disability before suffering the primary injury. The Court concluded that an employee who suffers a pre-existing disability before his primary injury can meet the first condition regardless of whether he knew or it had been determined before suffering his primary injury that his pre-existing disability equaled 50 weeks of PPD.

The Fund argued that to meet the second condition only one pre-existing disability can combine with the primary injury to result in PTD. The Court disagreed, noting that while the statute refers to pre-existing disability in the singular, §1.030 instructs that the singular form should be interpreted to include the plural form.

The claimant argued that the second condition can be met by showing the primary injury resulted in PTD when combined with all the employee's disabilities. The Court was not persuaded, noting that the section specifies that the subsequent work-related injury must combine with the pre-existing disability, which must qualify under one of the four eligibility criteria laid out in the statute. Therefore, the Court concluded that the employee satisfies the second condition by showing that the primary injury resulted in PTD when combined with all pre-existing disabilities that qualify under one of the four eligibility criteria listed in the first condition.

The Fund also objected to the admission of Dr. Hess's report which was part of the complete medical record of Dr. Stuckmeyer and argued that the Commission erred in admitting Dr. Hess's report. The Court did not agree as Dr. Hess's report was part of Dr. Stuckmeyer's complete medical report.

The Commission's decision was vacated and the case was remanded to the Commission to evaluate the claimant's Claim for PTD benefits.

Claimant Could Not Pursue Civil Suit Due to Workers' Compensation Exclusivity

Ducoulombier v. Ford Motor Company, Case No. WD83430 (Mo. App. 2021)

FACTS: On February 25, 2016, the claimant's husband was found unresponsive on a work platform at Ford and then taken to the hospital where he was declared brain dead. The claimant's wife filed a petition in civil court alleging negligence by Ford through its first responders.

She also filed a workers' compensation claim with the Division alleging that her husband sustained an injury at work which resulted in his death. Ford filed an Answer and also filed a petition in civil court denying any negligence and raised affirmative defenses including that the civil court lacked statutory authority to proceed with the case because the Division had exclusive jurisdiction. The claimant then filed a voluntary dismissal with prejudice with respect to the workers' compensation claim and the Commission subsequently entered an order dismissing the Claim with prejudice.

In response to Ford's Motion for Summary Judgment the claimant filed a response arguing that the Motion was moot as the workers' compensation claim no longer existed.

Ford responded that workers' compensation law could not be avoided with an election of remedies and that because the claimant dismissed her claim with prejudice, the Commission would never determine that the alleged injury underlying the claim did not arise out of and in the course and scope of employment as a necessary prerequisite for the claimant being able to

proceed with a civil action. Ford therefore contended that the action was barred. The circuit court granted summary judgement in favor of Ford and the claimant appealed.

HOLDING: The claimant contended that the Court erred in determining that the Division had exclusive jurisdiction over a claim, as the allegations contained in her petition were based on principles of negligence, a cause of action available in the circuit court. The Court noted that a plaintiff cannot plead around the Commission's statutory authority and the claimant does not have an undefeatable right to have the claim determined in circuit court just because she chose to file it there in the first instance.

The Court found that since the claimant's petition alleged that her husband became incapacitated while at work and thereafter, suffered additional injury on Ford's premises due to Ford's negligence, the Court found no obvious or clear error in the circuit court's conclusion that the claimant's claim involved the employer/employee relationship and as such, the Commission had exclusive authority to determine whether her husband's injury and death rose out of and in the course and scope of employment. The claimant's point on appeal was denied. The circuit court's judgment was affirmed.

Claimant's Injury Resulting in Death Compensable so Claimant Could Not Pursue Civil Liability Due to Exclusive Remedy

Halsey and Kennedy v. Townsend Tree Service Company, LLC, Case No. SD36658 (Mo. App. 2021)

FACTS: On July 22, 2016, the claimant was asked to collect some caution signs and in the process of doing so, he passed out while working for the employer. The claimant was diagnosed with heat stroke and was hospitalized and died the following day, at which time hypothermia was given as his official cause of death. At the time of his death, the claimant was 23 years old, 6'1 inches in height and weighed approximately 300 pounds.

After the parents filed a wrongful death lawsuit in civil court they filed a Claim for Compensation with the Division in which they conceded that they were not making a new Claim, but merely seeking a factual determination from the Commission about whether a compensable injury occurred. The employer filed a response disputing that obesity was an idiopathic condition and argued that the claimant's death qualified for and was covered by the exclusive remedy of workers' compensation and that the amount of workers' compensation owed had already been paid.

At an evidentiary hearing the ALJ found that the claimant's injury which resulted in death was compensable. The claimant's parents filed an Application for Review with the Commission which ultimately affirmed the ALJ's decision. The parents again appealed.

HOLDING: The parents alleged that a challenge to the Commission's Award claiming its finding that an accident occurred under §287 was erroneous, as it was against the weight of the evidence. The Court was not persuaded.

The Court found that evidence was provided that the claimant's obesity *contributed* to his heat stroke and death, however, the Court noted that there was no evidence in the record indicating that the obesity was the *cause* of his heat stroke and death. The parents therefore failed to meet their burden of proof, and therefore the Commission's Award was affirmed.

Civil Claim Barred as Contractor Found to Be Statutory Employer

State ex rel. Beutler, Inc. v. The Honorable Sandra C. Midkiff, Case No. SC98251 (Mo. S. Ct. 2021)

FACTS: The claimant was injured while operating a dump truck for the employer, R&B Trucking. He received workers' compensation benefits. He then filed a negligence action against Shaw Construction, who subcontracted work to C-Sharp Trucking (who further subcontracted work to R&B Trucking) and Brian Henderson, an employee of Shaw. Shaw and Henderson argued that the common law action was barred by the workers' compensation exclusivity doctrine because Shaw was the claimant's statutory employer and Henderson was his statutory co-employee under §287.040.

The Court did not agree and found that the relationship between R&B Trucking and C-Sharp was a relationship between a for-hire motor carrier operating within a commercial zone...and an owner as defined in §301.020 and operator of a motor vehicle per §287.040.4," thereby negating Shaw's status as claimant's statutory employer. Shaw and Henderson petitioned the Court for a Writ of Mandamus directing the circuit court to vacate its initial judgement, overruling their motion for summary judgement and to enter summary judgement in their favor.

HOLDING: The Court noted that the status of a statutory employer survives any chain of contractors and subcontractors and therefore, because there is an unbroken chain of contractors and subcontractors in this case, Shaw is the claimant's statutory employer. Shaw and Henderson argued that the circuit court focused on the wrong relationship, arguing that the focus should not have been on C-Sharp and R&B but the claimant and Shaw. The Court agreed, noting that C-Sharp qualified as an owner under §301.010 but not as an operator, and as a result, §287.040.4 did not apply to C-Sharp's relationship with the claimant's employer, R&B Trucking. Because the exception in §287.040.4 did not apply to break the chain of subcontractors, Shaw is the claimant's statutory employer. Therefore, Shaw is immune from suit and it follows that Henderson is also immune as the claimant's statutory co-employee because Henderson was an employee of Shaw, the statutory employer.

Employee's Use of Hairdryers Prevailing Factor in Causing Mesothelioma But Claimant Not Entitled to Enhanced Benefits as Employer Not in Business to Have Elected Them

Hayden v. The Cut-Zaven, LTD, Papillon, LTD & Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 14-103077

The employee worked as a hairdresser for 47 years. He worked at multiple salons. He alleged that he used hand-held hair dryers which he believed contained asbestos. He could not remember

the specific hairdryers that contained asbestos and most of those were discontinued as of 1979. He was diagnosed with mesothelioma on June 26, 2014 and died on April 26 2016.

At a hearing the ALJ concluded that the employee did not meet his burden of proof regarding medical causation. The judge noted that he could not specifically recall the types of hairdryers he used. The judge also noted that Dr. Hyers' conclusion that the employee's condition was work-related was simply based on the employee's deposition testimony. The claimant appealed and the Commission affirmed. The claimant again appealed.

The Court of Appeals reversed the Award of the Commission finding that the claimant's use of asbestos containing hair dryers was the prevailing factor in the development of mesothelioma. Therefore, the issue of medical causation was resolved in favor of the claimant, the employee's widow. The Court further found that employee's date of injury was June 26, 2014, the date of his diagnosis. The Court remanded the case to the Commission for determination of all remaining issues.

The claimant argued that employee was entitled enhanced benefits and that traditional PTD benefits as well as death benefits must be calculated at the same enhanced rate. The employer argued that the enhanced benefits that came into effect on January 1, 2014, did not apply to the employee's March 9, 2015 claim because it was out of business as of 2005 and the new benefit was not contemplated or part of its insurer's coverage at the time of the effect from 1979 through 1983. The Commission found that the claimant was not entitled to enhanced benefits because the employer could not have elected them after its 2005 termination, 9 years before the enhanced benefits came into effect.

The employer argued that the employee failed to produce credible evidence of what he earned and therefore, his wage rate must be calculated at the statutory minimum. The Commission found that the employee's testimony as to his wages constituted competent substantial evidence of his average weekly wage and therefore, they calculated his wage rate for PTD benefits and death benefits at the rate of \$403.33. The Commission awarded PTD benefits from June 26, 2014, the date of his diagnosis, to April 26, 2016, the date of his death. The Commission awarded the employee's widow death benefits at the weekly rate of \$403.33 until her death or re-marriage. The Commission also determined that the insurer responsible for benefits was the insurer at the time of the employee's most recent or last exposure.

The claimant produced evidence of medical bills in the amount of \$462,699.24. The employer contended that they should not be liable for the employee's medical bills because they received no notice of his claim until after he incurred the charges and had no opportunity to direct or control his medical treatment. The claimant's attorney argued that the employer's failure to direct or pay for the employee's treatment after notice of his March 4, 2015 claim gave rise to an inference that they would have refused treatment, even if employee had demanded it earlier. The Commission found that the employer was liable for reimbursement for employee's medical bills.

The claimant asserted her entitlement to a \$5,000.00 burial expense, pursuant to §287. The Commission noted that the record includes no documentation of the employee's burial expenses and therefore, denied compensation for the burial expenses.

The claimant argued that the employer was liable for a 15% penalty for his failure to protect his employees from hazardous materials, as required by statute. The employer responded that the application of those statutes requires knowledge on the part of the employer of a hazard in order to protect the employee from it. The Commission agreed, finding no evidence that any named employer knew of the hazard and therefore, claimant's request for a 15% penalty in all compensation was denied.

Expert Credible Despite Providing Alternative Opinions For Party Responsible for PTD

Franklin v. Mitchell Mill Systems USA, Inc. & Treasurer of the State of Missouri as Custodian of the Second Injury Fund, Case No. SD36898 (Mo. App. 2021)

FACTS: The claimant worked heavy labor 50-58 hours a week for the employer, and in 2009 had to seek medical care for his lower back. He had back surgery in July of 2011 and returned to work after 6 weeks. He did not file a workers' compensation claim. He then began experiencing problems with his wrist which led to bilateral carpal tunnel releases in 2012 and 2013 and filed a workers' compensation claim. His sciatica returned and his back condition worsened while he welded from 2013 to 2014. He underwent surgery in October of 2014 but this did not relieve his symptoms and he was unable to return to work.

The claimant filed an occupational disease claim to his lumbar spine with an April 12, 2014 date of injury. He was evaluated by Dr. Koprivica who concluded his lumbar condition was work-related and that the severity of the claimant's disability from the post laminectomy syndrome in isolation caused total disability. Mr. Eldridge, the vocational expert opined that the claimant was unemployable in the open labor market and permanently and totally disabled as a result of his April 12, 2014 injury in isolation.

The ALJ found the claimant to be permanently and totally disabled due to a combination of the April 12, 2014 work injury and his pre-existing disabilities. The employer and the Fund filed an Application for Review with the Commission found that the employer was liable for benefits as the claimant was PTD as a result of the last injury alone. The employer appealed.

HOLDING: The employer argued that the Commission's award was not supported by the facts because Dr. Koprivica and Mr. Eldridge changed their minds and that Dr. Koprivica's opinion was dependent upon Mr. Eldridge's report, which was incomplete and inaccurate because the report stated that the claimant had no prior disabilities. The Court was not persuaded, noting that this characterization was inaccurate as Dr. Koprivica made an alternative opinion in the case of a hypothetical and that Mr. Eldridge in his evaluation stated that while the claimant had pre-existing conditions, it was the restrictions from the injury of April 12, made him totally disabled. The Commission's Award was affirmed.

Claimant PTD as Result of 3 Elbow Surgeries and Employer Liable for Medical Treatment Despite Claimant Initially Treated On Own

Ritchie v. Silgan Containers Manufacturing Corp and Travelers Casualty Ins. of America,
Case No. WD84123 (Mo. App. 2021)

FACTS: The claimant worked for the employer from 2009 to 2017 as a fork truck driver and developed pain in her left elbow. She then had a non-work related wrist fracture and while treating for that condition also began treating for her left elbow pain. She had two surgeries and used STD and FLMA. She returned to work and thereafter the doctor recommended another EMG and the following day the claimant provided written notice to the employer. She underwent a third surgery and the doctor gave her restrictions which the employer could not accommodate.

Dr. Neighbor evaluated the claimant and diagnosed complex regional pain syndrome, lateral epicondylitis and cubital tunnel syndrome and opined that her job duties were the prevailing factor causing the diagnoses.

She was then evaluated by Dr. Zarr who assessed 25% PPD to her left elbow and at first said he wasn't certain what the prevailing factor is for her nerve but later opined that the claimant's work was not the prevailing factor in causing her left elbow pain. Mr. Dreiling testified on behalf of the claimant and opined she was PTD disabled. The employer obtained a report of Dr. Cordray who opined that she could compete in the open labor market.

The ALJ concluded she was PTD, she provided timely notice of the injury to the employer and that her claim was not barred by the statute of limitations. The Commission affirmed the ALJ's decision but changed the effective date for PTD benefits to May 2, 2019, the date of her MMI. The employer appealed.

HOLDING: The Court affirmed the decision of the Commission's award. It opined that Dr. Neighbor's opinion that the injury was the prevailing factor was sufficient and competent evidence to support the Award.

The employer argued that the Commission erred by finding that the claim was not barred for lack of timely written notice because Dr. Smith made a causal connection between the claimant's work and her job duties noting that Dr. Smith mentioned her job duties and difficulty doing her job in his reports thereby establishing a work-related diagnosis. The Court disagreed, noting that the Commission could reasonably find that Dr. Smith never opined that she sustained a work related or occupational disease or injury arising from her repeated elbow use and therefore, his statements did not trigger her duty to provide written notice to the employer.

The employer also argued that the Commission erred in finding that they were liable for past medical expenses. The Court disagreed noting that evidence supported the Commission's finding that the two surgeries performed by Dr. Smith and the third surgery that followed were necessitated by her repetitive motions and operating the forklift and therefore, because all three surgeries flowed from the occupational disease, the employer was liable for any medical expenses incurred by the claimant.

Mere Mention in Award that Claimant Was Married Insufficient to Establish Dependency at the Time of the Injury

Matthews v. Treasurer of Missouri as Custodian of the Second Injury Fund, Case No. ED109168 (Mo. App. 2021)

FACTS: The claimant sustained a work-related injury on March 1, 2003 and settled with his employer and then pursued a claim against the Fund for PTD. Following a hearing, the ALJ awarded the claimant PTD benefits. The Fund appealed to the Commission, which affirmed the Award. Because no party appealed the Award, it became final. Pursuant to the Award, the Fund paid the claimant PTD benefits until his death, which was not related to his injury. The claimant's wife then filed with the Commission a Motion for Substitution of Parties, in which she sought to receive the claimant's PTD benefits as his surviving dependent, asserting that she was the claimant's spouse at the time of the injury. The Commission dismissed the Motion for lack of jurisdiction, claiming that it had no statutory authority to continue the benefits because the ALJ's Award did not contain a finding that she was the claimant's dependent on the date of his injury. The claimant's alleged spouse appealed.

HOLDING: She argued that the Commission erred in dismissing her motion because she presented evidence that she was the claimant's dependent on the date of his injury, which entitled her to continuation of his PTD benefits. The Court disagreed, noting that if the final Award does not make findings establishing the dependance, the Commission does not have the authority to later disturb the finality of the Award by modifying it to make dependency findings that were not included in the final Award. The Court stated that the mere mention in the Award that the claimant was married was insufficient to establish dependency at the time of the injury, as it did not identify the appellant as the spouse and therefore, did not establish she was his dependent on that date. The Commission's decision was affirmed.