MISSOURI WORKERS' COMPENSATION

CASE LAW UPDATE

April 2014 – June 2014

Retaliatory Discharge Standard Changed To "Contributing Factor"

Templemire v. W & M Welding, Inc., Case No. SC93132 (Mo. App. 2014)

FACTS: The claimant was injured when a fork lift fell and crushed his left foot. He later returned to work with restrictions. Upon returning to work, the claimant was placed on light duty.

According to the claimant, he did not speak with his boss on the morning of his discharge, but instead stated Mr. Twenter, his supervisor, advised him to wash a railing once it had been prepped. While the railing was being prepped for washing, the claimant performed other duties and around 2:00 pm he returned to the wash bay to treat the railing but first stopped to rest his foot. He was then confronted by his boss for not completing his tasks quickly enough and was then terminated.

According to the claimant's boss, he spoke with the claimant on the morning of his discharge and advised that he was to wash the railing immediately and to disregard any other instructions. He then returned two hours later to find the railing unwashed and the claimant taking a break and he then discharged the claimant for insubordination.

Evidence showed that the claimant was yelled at by his boss for his work injury; his boss referred to other injured workers as "whiners;" former employees were belittled as a result of their injuries and did not receive work accommodations; one employee was terminated shortly after filing a claim; the claimant was regarded as a good worker who performed tasks efficiently; and adjuster notes showed that the claimant's boss "went on a [tirade] about [the claimant] 'milking' his injury and that he can sue him for whatever reason that is what he pays his premiums for."

The claimant filed a civil suit against his employer alleging that he was discharged in retaliation for filing a workers' compensation claim. At trial, the jury was instructed that in order to find in favor of the claimant, they must find that his filing of the workers' compensation claim was the "exclusive factor" in the employer's decision to terminate him. The claimant appealed to the Missouri Court of Appeals, stating that the "exclusive factor" standard was erroneous. The Missouri Supreme Court granted transfer.

HOLDING: The Court began by stating that its decisions in the past have upheld the exclusive factor standard as the appropriate standard to be used in jury instructions for retaliatory discharge cases. However, the Court went on to note that nowhere in the Workers' Compensation Statute do the terms "exclusive causal" or "exclusive causation" appear. Ultimately, the Court held that the appropriate standard in retaliatory discharge cases should no longer be whether the filing of a workers' compensation claim was the "exclusive factor" in the discharge of the employee, but

rather, whether the filing of the workers' compensation claim was a "contributing factor" in the claimant's termination.

Editor's note: This represents a marked change in retaliatory discharge cases. Specifically, the "contributory factor" standard imposes a lesser burden on claimants and increases their odds of bringing a successful claim.

To Recover For Acts of Co-Employee Negligence Between 2005 and 2012, Claimant Need Only Show the Co-Employee Owed Him/Her a Duty of Care

Leeper v. Asmus, Case WD76772 (Mo. App. 2014)

FACTS: The claimant filed a civil suit when his co-employee was guiding a large pipe with a drilling rig when the cable became loose and the pipe broke free, crushing the claimant's arm. The claimant alleged that his co-employee breached his personal duty of care owed to him when the defendant failed to perform his job duties in a safe manner. The Trial Court dismissed for failure to state a claim. The plaintiff appealed arguing that his Petition sufficiently plead a cause of action for co-employee negligence.

HOLDING: The Court noted that in the wake of the 2012 Amendment to §287.120.1, in order to state a cause of action, the claimant must show that they were injured as a result of the co-employee's "affirmative negligent act that purposefully and dangerously caused or increased the risk of injury." However, the Court noted that the incident and resulting injury occurred between 2005 and 2012, so the Court was required to apply the previous standard, which was that the claimant must show only that the co-employee owed him a duty of care. The Court went on to specify that under this previous standard, a co-employee violates their personal duty of care when the employer has performed its nondelegable duties, and an otherwise safe workplace is rendered unsafe due solely to the co-employee's negligent act or omission. The Court found that the claimant's amended Petition sufficiently alleged facts to support the existence of a personal duty of care, and therefore reversed and remanded the case for further proceedings.

Replacement Crowns Considered Future Medical Not Disfigurement

Johnson v. City of Carthage, Case Nos. SD32936 & SD32958 (Mo. App. 2014)

FACTS: The claimant sustained an injury resulting in the loss of his front tooth. The Commission awarded the claimant past medical expenses, permanent partial disability, future medical care and disfigurement. The employer appealed arguing that the Commission acted without or in excess of its powers by awarding disfigurement, and also argued that the loss of a tooth does not qualify as disfigurement. The claimant appealed arguing that he should have been awarded disfigurement for the instant loss of his tooth and also for every time that the crown needs to be replaced.

HOLDING: In a brief Decision, the Court affirmed the Commission's findings. The Court stated that the Statute provides disfigurement for the loss of a front tooth in an amount sufficient to cover the reasonable costs of artificial replacement teeth. Additionally, the Court stated that disfigurement is a separate and distinct benefit which may be awarded in addition to the other benefits. The Court also stated that while the claimant will need several replacement crowns in the future, the claimant is only entitled to an Award compensating him for these future medical expenses and is not entitled to an additional Award of disfigurement for each time the crown is replaced.

Pre-Existing Disability Should Be Evaluated Based on the Potential to Combine With Work Injury in the Future Rather Than Past Issues

Navis v. Premium Standard Farms, Inc. and Travelers Indemnity Co. and the Treasurer of the State of Missouri, Case Nos. WD76756 & WD76766 (Mo. App. 2014)

FACTS: The claimant was diagnosed with Legionnaire's Disease, a type of pneumonia allegedly related to her work exposure. At a hearing, the ALJ found for the claimant, and determined that she was exposed to Legionella bacteria as a result of working for the employer, and that she was permanently and totally disabled against the Second Injury Fund as a result of the work injury and her pre-existing COPD. On appeal, the Commission affirmed the Award but reversed the ALJ's Award of future medical treatment. In its sole point on appeal, the Fund argued that the Commission erred in finding that it was liable for the claimant's PTD benefits because such a finding was against the weight of the evidence, and that the claimant was PTD as a result of the work injury alone. Specifically, the Fund argued that it should not be liable because the claimant's pre-existing condition of COPD did not effect her ability to do her job before she contracted Legionnaire's Disease.

HOLDING: On appeal, the Court affirmed noting that there is sufficient and competent evidence to support the Commission's Decision. The Court stated that the Commission's Decision was supported by testimony of the claimant's expert that it was not unusual for patients to be unaware that they have COPD. Additionally, the Fund misplaced its argument by focusing on the lack of difficulties that the pre-existing condition caused in the past. The Commission noted that the focus should be on the potential that the pre-existing condition may combine with a work-related injury in the future so as to create a greater degree of disability than would have resulted in the absence of the condition.

SIF Has the Ability to Depose Its Own Experts

Lutes v. Honorable Lee B. Schaefer, Case No. ED100381 (Mo. App. 2014)

FACTS: In response to the Claim for Compensation, the Second Injury Fund hired a vocational expert, Mr. Dolan, to determine whether the claimant was totally disabled. Mr. Dolan performed a record review and then produced a report. The Fund sent a copy to the claimant and also sent

the claimant a notice to depose Mr. Dolan. After receipt of the notice, the claimant filed a Motion to Quash the Deposition. Chief Judge Schaefer denied the claimant's Motion to Quash and entered an Order permitting the Fund to depose Mr. Dolan. The claimant filed a Writ of Prohibition or Mandemus in the Circuit Court requesting that Chief Judge Schaefer be prohibited from denying claimant's Motion to Quash the Deposition of Mr. Dolan. The Circuit Court granted the claimant's Petition and ordered Chief Judge Schaefer to Quash. The Fund appealed arguing that the Statute vests an ALJ with the authority to grant the deposition of any witness, including non-physician experts.

HOLDING: The Court noted that if it were to permit claimants the ability to offer their own vocational expert testimony but deny the Fund such an opportunity, the Fund's purpose would be obliterated. Thus, the Court determined that Chief Judge Schaefer did not exceed her authority in granting the Fund's request to depose Mr. Dolan. However, the court did constrain its holding, noting that simply because Mr. Dolan could be deposed, it did not mean that his deposition would be admissible given that only facts admitted into a hearing are those that are reasonably calculated to lead to the discovery of admissible evidence.

Must First Look to Last Injury Alone to Determine Whether SIF or Employer is Responsible for PTD Benefits

Brandenburg v. Treasurer of the State of Missouri, Case No. SD32849 (Mo. App. 2014)

FACTS: The claimant sustained injury to his back and neck. He settled his claim with the employer for 60% disability to the body. The claimant also had several prior injuries and filed a claim against the Fund, asserting that he was permanently and totally disabled. At a hearing, the ALJ determined that the claimant was permanently and totally disabled as a result of his pre-existing injuries and primary injury, and ordered the Fund to pay permanent total disability benefits. The Fund appealed. The Commission affirmed. The Fund again appealed, arguing that the Commission erred because it failed to consider whether the claimant's disabilities from his work injury alone were sufficient to render him permanently and totally disabled.

HOLDING: The Court stated that the Fund's argument was not supported by the record because the Commission's Award explicitly stated that the Fund would not be liable if the last injury alone rendered the claimant permanently and totally disabled. Additionally, the Court held that the Commission correctly followed procedure by first determining the degree of disability from the last injury alone before considering any pre-existing injuries. Therefore, the Commission's finding that the claimant was permanently and totally disabled as a combination of his pre-existing and work injuries was supported by competent and substantial evidence, and accordingly the Court affirmed.

Claimant Has Burden of Proving Jurisdiction

Franco-Lopez v. Martinez, Case No. WD76942 (Mo. App. 2014)

FACTS: The claimant worked for the employer on a contract basis. In November 2007, he went to a local home improvement store in Columbia, Missouri to purchase materials for a roofing project in Lawrence, Kansas. He later drove to Lawrence, Kansas by himself with supplies. While working on the roof in Kansas, the claimant fell off and sustained injury. At a hearing, an ALJ determined that Missouri lacked jurisdiction over the claim. The claimant appealed to the Commission, primarily arguing that jurisdiction existed because a contract was formed in Missouri.

HOLDING: The Commission noted that the claimant failed to provide any receipts or records regarding the alleged purchases in Columbia, Missouri; failed to testify that the employer wanted the materials purchased in Missouri; was unable to provide the date that he drove from Missouri to Kansas; and could not even provide the exact date on which he began working on the Kansas project. In light of the claimant's "cursory, vague, and disjointed" testimony, the Court found it was difficult to determine where the contract was formed. Therefore, it felt that the claimant had failed to meet his burden of proving that the contract was formed in Missouri and affirmed the decision of the Commission.

Claimant Found PTD as a Result of His 2004 Injury Despite the Fact that He Continued to Work and Had a Subsequent 2005 Injury

Sage v. Talbot Industries, Case Nos. SD32901, SD32906, SD32907 (Mo. App. 2014)

FACTS: The claimant sustained an injury in February 2004 to his back while pulling wire. He underwent treatment in October 2005 for an L5-S1 disc herniation, after which the claimant stated he was "doing pretty good, [and] didn't have any problems." The claimant continued to work for employer through December 2005, at which time he was transferred to maintenance to disassemble parts, because the wire-drawing division was being closed. While working in maintenance, the claimant fell and re-injured his back. He worked for the employer for only five more days following the second accident because the wire-drawing division was closing. Following the 2005 injury, the claimant stated he immediately started having the same kind of pain he experienced from his 2004 injury, but magnified. In 2006 the claimant underwent a total disc replacement at the L5-S1 level. Dr. Koprivica, the claimant's expert, stated that the claimant was PTD as a result of his 2004 injury alone, due to his need to lie down throughout the day for pain relief. The ALJ found Dr. Koprivica's testimony to be credible and determinative, and therefore, found the employer responsible for PTD benefits. The employer appealed. The Commission affirmed. The employer again appealed, arguing amongst other things, that the liability to pay the claimant's PTD benefits lies with the Fund because the Commission erred in finding that the claimant was PTD as a result of the 2004 work injury alone, since it did not first determine the degree of disability resulting from the claimant's 2005 injury.

HOLDING: The Court noted that the employer sited no case, nor was the Court aware of any case, that supported the employer's position. The Court stated that when multiple claims are involved, the injury is evaluated within each claim and each claim is considered in order of

occurrence. Therefore, the Commission and the ALJ acted properly in determining the disability resulting from the 2004 claim first.

The Commission Determines Credibility of Experts

In **McLeary v. Arvin Meritor**, **Injury No. 05-123810**, the claimant was injured on December 1, 2005 when a large industrial plastic bin crashed into her left side and knocked her into an adjacent bin, causing injury to her back and neck. The claimant's expert, Dr. Musich, and the employer's experts, Dr. Kitchens and Dr. Cantrell, all agreed the claimant had suffered a work-related injury but disagreed as to the amount of disability.

At a hearing, the ALJ found that the claimant lacked credibility and credited the employer's medical experts over the claimant's medical expert. Specifically, the ALJ found that the claimant was not credible because her primary care physician did not consistently note her back and neck complaints.

On appeal, the Commission modified the Award of the ALJ, concluding that the claimant and her expert were more credible than the employer's experts. First, the Commission noted that while the claimant was not a perfect historian, the visits to her primary care physician and the records tended to focus solely her unrelated diabetes. The Commission stated that the primary care physician's occasional silence as to the neck and back when he was seeing the claimant for unrelated illnesses did not cast any material doubt on the claimant's testimony.

Second, the Commission noted that the employer's experts were not entirely credible. Regarding Dr. Kitchens, the Commission found his testimony flawed because his opinion was based on the erroneous assertion that the claimant was struck only in the left side, thus failing to account for trauma to the claimant's right side that occurred when she was knocked into the adjacent bin. Regarding Dr. Cantrell, the Commission noted that his medical opinion of March 7, 2006 pre-dated the claimant's May 30, 2006 cervical MRI and consequently deserved little weight.

Finally, the Commission turned its attention to Dr. Musich's testimony, who diagnosed the claimant with several injuries and found she was PTD as a result of the primary injury. The Commission noted that it need not adopt each expert's opinions and may reject any part of an opinion that it does not find persuasive. The Commission noted that while it found Dr. Musich most persuasive on the issue of causation, it did not agree that the claimant was PTD as a result of the work injury, because she returned to work full duty (including over-time) for over a year following her work injury. Ultimately, the Commission determined that the claimant suffered 50% disability to the body resulting from her work injury.

The Commission Need Not Adopt Every Aspect of an Expert's Testimony

In **Yount v. Circle K, Injury No. 10-026805,** the claimant injured her right ankle. Her expert, Dr. Volarich, assessed 50% PPD of the right ankle, while the employer's expert, Dr. Krause,

assessed 0% PPD, based on his assertion that the claimant had "returned to normal." At a hearing, an ALJ found that the claimant suffered 7.5% PPD of the ankle as a result of the work injury. The claimant appealed.

On Appeal, the Commission modified the nature and extent of PPD in light of the fact that the claimant's medical records suggested she continued to suffer from pain and swelling when she returned to work, and that she presented uncontested and credible testimony that her doctors informed her at the time of her release that her right ankle would never be the same. Therefore, the Commission modified the Award and found that the claimant suffered 25% PPD of the ankle.

Additionally, in an interesting piece of *dicta*, the Commission noted that the parties asked the ALJ to address the issue of whether medical causation is a fact that is deemed admitted if the claimant alleges it in the Claim and the employer files a late answer. The Commission noted that the ALJ disposed of the issue by concluding that medical causation is a question of law and not fact, but the question was not in issue when the claimant filed an application with the Commission. However, the Commission, on its own initiative, stated that should the claimant have alleged medical causation and the employer's answer been untimely, medical causation would in fact be deemed admitted.

If the Claimant Settles a Third Party Claim Before the Workers' Compensation Claim the Dollar-For-Dollar Credit Applies to Future Benefits Not Past Unpaid Benefits

In **Huff v. Jones Financial Companies, LLP, Injury No. 06-080670,** the claimant was injured in a car accident. She suffered a brachial plexus injury that affected the thoracic nerve resulting in chronic severe pain. While the employer/insurer initially authorized medical treatment, they stopped after her first few medical visits, causing her to incur $238,471.93 in unpaid unauthorized medical bills. The majority of these unpaid unauthorized medical bills were used for pain treatments that could not improve the claimant's ability to function, and only attempted to relieve her pain symptoms.

The claimant had a third party civil suit, which she settled prior to settling her workers' compensation claim, for $580,000.00. By the conclusion of her civil suit, the claimant had incurred $235,479.33 in attorney's fees and expenses. Therefore, the claimant personally recouped $344,520.67. It was determined that the claimant was 32% responsible for her third party injury. At the time of the settlement, the employer-insurer had paid medical and TTD to the claimant in the amount of $23,200.19. Therefore, pursuant to *Ruediger*, the employer-insurer was entitled to a subrogation interest of $7,992.91. The claimant then pursued a workers' compensation claim against the employer and insurer.

At a hearing, the ALJ determined the claimant was permanently and totally disabled. The employer/insurer argued that it should not have to reimburse the claimant for the unpaid unauthorized medical expenses because they were not necessary to "cure and relieve" the effects of the injury. In response, the ALJ noted that while these medical visits would not improve the claimant's ability to function and therefore, did not cure the claimant, they did attempt to relieve

the claimant's pain symptoms. Therefore, the ALJ determined that the employer/insurer were liable for the expenses.

The employer/insurer also argued that because some of the claimant's medical bills were paid by her healthcare provider they should be entitled to a credit. Specifically, the employer/insurer argued that because those healthcare payments were made through its own self-insured medical plan, they should be entitled to a credit. However, the ALJ noted that the claimant was required to pay a premium for her coverage and therefore, the medical plan did not qualify as fully funded. Thus, the ALJ denied the employer/insurer a credit.

Finally, the employer/insurer argued that they were entitled to a dollar-for-dollar credit in light of the fact that the claimant settled her civil suit prior to settling her workers' compensation claim. They alleged that the amount they were entitled to was $228,838.87. This amount was calculated by taking the amount the claimant received in her civil suit, $344,520.67, and subtracting the employer's *Ruediger* subrogation interest, $7,992.91 and then taking 68% of that amount in light of the claimant's comparative fault, pursuant to statute. The ALJ further noted that this $228,838.87 was insufficient to cover the $238,471.93 which was the amount she awarded to the claimant for past unpaid medical expenses, travel expenses, past PTD benefits, and disfigurement. Therefore, the ALJ ordered the employer/insurer to pay an additional $9,633.06 to cover the difference. The claimant appealed arguing that the ALJ improperly allocated the credit to the past unpaid benefits.

On appeal, the Commission agreed with the claimant that the credit was improperly allocated. Specifically, the Commission noted that the $228,838.87 credit did not apply to past medical expenses, but was rather an advance on future medical expenses, and that the employer/insurer owed the claimant an additional $238,471.93 to compensate for past unpaid medical expenses. Once the $228,838.87 was exhausted, the employer would then owe future PTD benefits.

Employer Responsible For PTD Benefits After Claimant Sustained Hand Injury

In **Gonzales v. Butterball, LLC**, **Injury No. 09-059326,** the claimant worked in the evisceration department cleaning and separating gizzards. The claimant was operating machinery used to sort gizzards when the machine became stuck. While there were no guards or safety warning labels on the machine, the employer had an established safety policy that employees were to call their supervisor if gizzards became stuck rather than trying to correct it on their own. Despite being educated on the safety policy, the claimant attempted to fix the machine and sustained injury to his dominant right hand. Following the injury, the claimant attempted to return to work but was unable to perform his duties and was terminated because he was unable to use his right hand. The claimant was subsequently denied by potential employers because of inability to pass employment tests. Evidence showed the claimant left school in 3rd grade; had not obtained a GED; spoke limited English; and all of his past employment involved physical, hand intensive duties.

The ALJ heard testimony from multiple experts and determined that the claimant was

permanently and totally disabled and found the employer responsible for benefits. The ALJ reduced the claimant's PTD payment by 25% as a safety penalty for failure to follow the employer's safety protocol. Specifically, the ALJ noted that the claimant attended safety training regarding the machinery, should have been aware of the safety protocol, and most other employees followed said protocol. The claimant appealed. On appeal, the Commission summarily determined that the ALJ's findings were supported by competent and substantial evidence and affirmed.

Extension of Premises Doctrine Still Alive

In **Viley v. Scholastic, Inc., Injury No. 10-050708,** the claimant slipped and fell on the employer's ice covered parking lot sustaining injury. The employer was leasing the premises and the lease stated that all "common facilities" are subject to the exclusive management of the landlord. Additionally, the lease stated that the landlord agreed to perform some responsibilities regarding the parking lots including snow removal. However, the employer had the power to direct persons to remove their vehicles from the lot and the power to modify the way the landlord cleared the lots. Despite the lot having been plowed for vehicles to pass through, snow and ice remained and rendered it an unsafe condition, upon which the claimant slipped. The ALJ determined that the accident did not arise out of and in the course of employment. The claimant appealed.

On Appeal, the Commission reversed and found that the claimant was injured in the course and scope of his employment. The Commission began by noting that because the landlord granted exclusive use of the parking lot to the employer, those lots were not "common facilities." The Commission then stated that the Extension of Premises Doctrine permits recovery of benefits for injuries sustained by workers going to or coming from work if: A) The injury producing accident occurs on premises which are owned or controlled by the employer; and B) That portion of such premises is a part of the customary, expressly or impliedly approved, permitted, usual and acceptable route or means employed by workers to get to and depart from their places of labor and is being used for such purposes at the time of the injury. In this case, the Commission determined that since the employer directed persons to remove their vehicles from the lot and contacted the landlord to request maintenance for the lots, the employer did control the lot. Also, testimony established that the claimant was walking his customary route when injured. Therefore, the claimant was injured within the course and scope of his employment.

Aggravation of Underlying Disease Means Work Injury Not The Prevailing Factor

In **Scola v. Miller Multi Plex, Injury No. 08-054336,** the claimant was a 52-year old welder and given that his hands were full during work, he would jerk his neck in order to close his welding mask. He was eventually diagnosed with osteoarthritis of the neck, spondylosis, degenerative disc disease and disc expansion. The claimant's expert, Dr. Volarich, opined that the claimant's injuries were an aggravation of underlying cervical spondylosis, and that his work activities were the prevailing factor in his neck condition. In contrast, the employer's expert, Dr. Howard, noted that the claimant had significant degenerative disc disease in the cervical spine and concluded

that the claimant's problems were the result of a degenerative condition and not work-related. The ALJ determined that the claimant failed to prove that his occupational disease was the prevailing factor in causing his disability. The claimant appealed. The Commission summarily affirmed.

Shoulder Injury Compensable Despite Only One Record Two Weeks After the Injury Noting Shoulder Pain

In **Moseley v. Elite Stucco**, **Injury No. 07-115559,** the claimant sustained injuries to his right shoulder and back due to a fall on November 16, 2007. The claimant testified that he fell on his right shoulder while working from a scaffolding and experienced immediate pain. The employer's expert, Dr. Strege, stated that the claimant's right shoulder problems were not a result of the work accident because his medical records did not note any complaints of right shoulder pain. The claimant's expert, Dr. Paul, found the work injury to be the prevailing factor of the claimant's right shoulder problems. The ALJ determined that the claimant's right shoulder injury was not caused by his work injury, that the claimant sustained a lumbar strain resulting in 10% PPD of the body, and that the claimant was not PTD, and therefore not entitled to any benefits from the Second Injury Fund. Both the employer and the claimant appealed.

On Appeal, the Commission modified the Award of the ALJ. The Commission noted that the claimant had no right shoulder complaints before the work injury and first complained of shoulder pain on December 4, 2007, two weeks after his injury. Specifically, the Commission found that the claimant's right shoulder injury was work-related and that the absence of medical records connecting employment as a source of the injury did not prevent them from finding Dr. Paul's causation opinion more persuasive. Additionally, the Commission modified the Award to find that the claimant was PTD as a result of his pre-existing injuries and current injuries, and therefore, in light of the fact that the claimant was not rendered PTD as a result of the work injury alone, liability against the Second Injury Fund was appropriate.

Under Strict Construction Principal Place of Business Can Only Be One Place

In **Jansen v. Jackson County, Missouri, Injury No. 12-024808,** the claimant worked as a supervisor for the employer and supervisors were sometimes required to respond to after hour emergencies. Therefore, the employer allowed supervisors, including the claimant, to drive employer owned vehicles to and from work. The employer had many offices but the majority of them were located in Kansas City, Missouri. However, the claimant worked at the employer's office in Lees Summit, Missouri, and was injured in a motor vehicle accident while driving from his home to his designated office in Lees Summit. An ALJ determined that the claimant was traveling from his home to his office, and therefore, his injuries were not compensable. The claimant appealed.

On Appeal, the Commission noted that according to the ALJ's reasoning, the employer's principal place of business would be where an injured worker customarily worked. However, the Commission stated that precedent has established that a principal place of business, under the

rules of strict construction, can be only one location, which in this instance was the office in Kansas City, Missouri. Therefore, the claimant was not traveling to his employer's principal place of business when he was injured and is not barred from compensation. Thus, the Commission reversed.

Unexplained Fall Not Compensable

In **Gleason v. Ceva Logistics and the Second Injury Fund, Injury No. 07-072826,** the claimant was on a rail car performing his job duties when he fell and sustained an injury. He did not remember the circumstances leading up to the fall, the fall itself or the three days afterwards, and no witnesses saw the fall. An ALJ denied compensation. The claimant appealed.

On Appeal, the Commission noted that there was simply no evidence on the record to establish why the claimant fell. The Commission then went on to state that the claimant's inability to explain why he fell was fatal to his claim, as they were unable to discern whether or not the hazards or risk were related to employment. Therefore, the claimant failed to meet his burden of establishing that his injury arose out of and in the course of his employment and affirmed the decision of the ALJ.

Claimant Lacked Credibility and Failed to Meet his Burden

In **Frazier v. Sullivan County Sheriff's Office**, **Injury No. 12-064760,** the claimant was assigned the task of converting an old storage room into a new evidence room. Upon taking the stairs to complete this task, the claimant alleged that a radio transmission came across which caused him to turn his head, at which time he missed a step and fell backwards. An ALJ determined that the claimant did not meet his burden of proof. Specifically, the ALJ stated that the claimant was not a credible witness; the vocational expert testified that the claimant never told her that he slipped as a result of listening to a radio transmission; and the Report of Injury, initial medical records, and the Claim for Compensation did not mention a radio transmission. The ALJ determined that the claimant was walking up the stairs and simply fell, and therefore his injury did not arise out of and in the course of his employment. The claimant appealed. The Commission summarily affirmed.

Only Need to Show Future Medical Treatment is Reasonably Required to Cure and Relieve the Effects of the Injury

In **Barnhart v. Eldon Nursing and Rehabilitation Center, Injury No. 11-072406,** the claimant sustained an injury to her lumbar spine when lifting a resident off of a toilet. She underwent extensive treatment and it was noted that pain killers provided little to no relief. The claimant's expert, Dr. Volarich, noted that she continued to experience ongoing difficulties as a result of the injury and would require future medical treatment to cure and relieve the effects of her work injury. At a hearing, the employer argued that based on the treatment of Dr. Norregaard, the treating neurosurgeon, there was no medical proof that a narcotic medicine regimen would be of any value in treating the back pain. An ALJ found the claimant and Dr. Volarich credible and

awarded 20% PPD of the body related to the lumbar spine. Additionally, the ALJ noted that the claimant needed only show that future medical treatment is reasonably required to cure and relieve the effects of the injury, and that the employer would be liable for future prescriptions or pain medications, as well as any future treatments recommended by Dr. Volarich. The employer appealed.

The Commission affirmed, but noted that practically speaking, they did not anticipate that the employer would be required to provide all of the modalities identified Dr. Volarich, although they did believe that the claimant was entitled to any or all of the modalities that she chose to pursue and that any doctor contemporaneously recommends.