Claimant's Fall Downstairs Not Compensable

Meyer v. National Hospice Management Beacon of Hope Hospice, Injury No. 24-001520

FACTS: The claimant worked as a team assistant and on the date of injury, there was a snow and ice storm. He received a text noting that there was going to be a delayed start possibly at 10:00 am but was advised not to leave home until he heard from his supervisor at 9:30 am to confirm. However, the claimant left for work and arrived in the office parking lot at 9:02 am and went into the office at 9:15 am. He realized he forgot his badge and went back to the car at 9:32 am and fell on snowy and icy stairs outside of the building. Afterwards he received a text at 9:47 am which called off the days' work for all employees. The claimant admitted he knew the reasons for the delayed start was due to safety concerns of the employees and the hazardous weather conditions. He testified the parking lot at work does not have designated parking for any of the lessees of the building, and the claimant could park wherever he chose. He also noted there were multiple entrances to the building, but most employees used the entrance closest to their office suites. The office manager testified on behalf of the employer that the reason for the delayed start and ultimate cancellation of in person work was for the safety concerns of the employees due to hazardous weather. She did note the employer does not own, maintain, or control the common areas of the office building and the landlord is responsible for maintenance and snow removal from common areas. She also testified the building manager for the landlord contracts with the company for snow and ice removal on the property. The leased property for the employer only begins after entering the second set of doors on the outside of the office building and the snow and ice covered stairs are beyond any of the employer's leased space. The lease showed that the area the employer leased did not include the outside steps and doors leading into the office building. There was no dispute that the claimant fell on the snow-covered steps in the common area of the building and not in an area leased by the employer.

HOLDING: The ALJ found that the evidence presented did not establish that the risk of falling on snowy and icy stairs was somehow exclusive to the claimant's performance of work within the course and scope of his job as opposed to the risk source of any individual walking on snow- or ice-covered stairs, whether at work or not. The judge went on to note that the evidence showed that the employer did not own, maintain, or control the exterior of the common areas of the building and when they leased spaced and the landlord has the responsibility for maintenance of the steps, including snow and ice removal. Also, the judge did note that although not critical to the decision, the evidence established that the employer directed the claimant to not report to work until 10:00 am, however, the claimant's actions were averse to these directions. The judge concluded that the claimant was not in the course and scope of his employment when he fell on the snowy and icy stairs and the extension of premises doctrine was not applicable to this case and therefore, the case was denied. The employer appealed and the Commission affirmed the decision.

Employer Not Responsible for Claimant's Unauthorized Care as Claimant Did Not Give Employer Opportunity to Control It

Wills v. Fixture Contracting Company, Inc., Injury No. 17-099534

FACTS: The claimant, 41-year-old journeyman carpenter, began working for the employer in the fall of 2015 and his job duties included building cabinets, display fixtures, and countertops. He worked full time and his job required bending at the waist, stooping, lifting from the ground to the work bench, reaching overhead, and bending over to clean up. There was testimony on behalf of the employer showing that the claimant's work was not as heavy or frequent as he testified but the employer's evidence did establish the claimant lifted and bent throughout the workday. He developed low back pain in September of 2017, and he initially treated on his own with a chiropractor. He reported his pain and was directed to Concentra; he was signed in but never seen due to the wait. He then went and treated on his own at SSM Health. He was again advised by the employer that if the injury was work related, he had to follow her instructions. He continued to treat on his own and on December 22, 2017, he brought a letter drafted by his attorney to the employer advising that his doctors were talking about surgery and asked if they would pay for his treatment. The claim was reported to the insurance company and authorizations were forwarded and the attorney returned the same. However, the claimant continued to treat on his own and his attorney directed him to Dr. Levy who recommended surgery. The claimant also signed a notice of doctor's lien on behalf of Attorney Hoffman. The attorney made another demand for treatment on February 8, 2018, and the claimant underwent surgery with Dr. Levy on his own on March 7, 2018. He underwent a second surgery on August 1, 2018. There was no evidence that the claimant requested the employer to offer the second surgery. The claimant did ask for an award for medical bills, which amounted to $248,116.98.

The employer obtained a report from Dr. Bernardi who did not believe that the claimant's condition was related back to his job duties. The claimant's attorney obtained a report of Dr. Volarich who did believe that the claimant's job duties were the prevailing factor in causing his condition and he assessed 40% disability. Dr. DeGrange also testified that the claimant's condition was work related, as did Dr. Levy.

FINDING: The ALJ did believe that the claimant's job duties were the prevailing factor in causing his condition. The judge did not award medical as she determined that the claimant did not make a formal demand for treatment until February 14, 2018, when the claimant's attorney requested the surgery, suggested by Dr. Levy and repeated the same over the next two weeks. The judge noted that the claimant knew the employer was actively collecting medical records but only one week after his last demand and three weeks after the first, the claimant underwent two surgeries with Dr. Levy, thus denying the employer to direct care. The ALJ noted the employer neither failed nor refused to provide treatment before the claimant had surgery. With respect to future medical, the judge noted that the mere possibility that the employee may require treatment in the future is inadequate to establish a right to such treatment. The ALJ found that there was no specific

treatment recommended by the experts and that the claimant is not entitled to future medical treatment benefits because he did not establish there was a "reasonable probability" that future medical treatment will be necessary due to the alleged work-related injury. With respect to TTD, the judge did believe the claimant was entitled to TTD during the time he was unable to work, which was supported by Dr. Volarich's opinion. She also awarded 30% disability referable to the low back. The case was appealed to the Commission, and the Award was affirmed.

Employer/Insurer Responsible for Full Amount of Medical Bills and Should be Paid Directly to Claimant

Chick v. City of Centralia and Treasurer of Missouri as Custodian of the Second Injury Fund, Case No. WD88273 (MO App. 2026)

FACTS: The claimant was an equipment operator for the City from 1995-2016. In February of 2014, he slipped and fell; he was seen by Dr. Runde and referred to an orthopedist. He saw Dr. Young who evaluated the claimant but did not provide treatment. He was sent back to Dr. Runde who suggested a second orthopedic referral but the City refused to authorize additional treatment. He sought treatment on his own with Dr. Mackinnon who performed two surgeries for plexus nerve damage. He also alleged a psychiatric component. He also treated for carpal tunnel syndrome and trigger finger syndrome. He was released from care. Dr. Schlafly provided a ten-pound lifting restriction and the claimant was terminated on April 18, 2026. At a hearing, the ALJ found that the work accident was the prevailing cause of the brachial plexus injury but did not connect the claimant's carpal tunnel syndrome, trigger finger syndrome, or psychiatric conditions back to the work accident. The ALJ did not find the claimant PTD or the employer responsible for past or future medical. The claimant appealed.

The Commission confirmed that the claimant was not PTD but did believe that the employer was responsible for the treatment for the brachial plexus condition. The Commission noted that the claimant's health insurance paid for most of the charges and therefore, it did not require the employer to pay the amount charged for the doctor's treatment to the employee and his attorney but instead ordered the employer/insurer to resolve the charges with the doctor and hospital directly and hold the employee harmless in any collection attempts. The claimant appealed.

HOLDING: The claimant argued that the Commission acted in excess of its powers in directing the City to pay the Award of past medical expenses directly to the medical providers instead of the claimant and the Court agreed. The claimant argued that the Commission's method provided a credit to his employer for payments made by a collateral source, in this instance the claimant's private health insurance despite the fact that Section 287.270 expressly prohibits such a credit. The claimant further pointed out that the Commission's method of reimbursement does not actually reimburse him for the out-of-pocket expenses he incurred, such as deductibles and copays, and therefore, the method of "reimbursement" was inadequate. The Court cited *Farmer-Cummings*, which addressed responsibility of past medical expenses. It noted that the case held that a claimant is not entitled to compensation for health care provider write offs and fee adjustments that

extinguish the claimant's liability as compensation for amounts for which the employe was not liable would amount to a windfall rather than compensation. The Court noted that the case was clear that any benefits from a collateral source that fell withing Section 287.270 were outside the scope of the defense and the case clarified that the employer was required to reimburse the employee for all medical expenses incurred and that the employer should not receive and advantage for failing to timely pay medical bills incurred at the employee's expense.

The Court noted that it was clear that the Commission considered payments made toward the claimant's medical bills by the claimant and his private insurer. However, Section 287.270 forbids the Commission from considering and granting the City a credit against its liability for payments made by the claimant or his private insurance. The Court did note that there is support in case law for an approach in which the Commission directs unpaid medical bills for which the employer is liable directly to the medical provider. However, this was not the case here. Therefore, the Commission erred by directing the City to satisfy its liability for past medical in the amount of $32,526.48 to the claimant's medical providers rather than to the claimant. The issue of attorney's fees on the past medical was remanded to the Commission.

Commission Decided to Strike Employer/Insurer's Brief Due to Bogus Citations

Daniel Justin Gazaway v. Nostrum Pharmaceuticals, LLC, Injury No. 22-074974

FACTS: The claimant was employed at the insured from August 2020 until March 25, 2022. He worked on three different machines which compounded calcium acetate. He alleged health problems due to being exposed to dust particles from the calcium acetate. The claimant did undergo various treatments and obtained medical reports concluding that the claimant's symptoms, which included difficulties breathing, asthma, and sinusitis, were related back to his exposure. The employer did send him to Dr. Bhalla who noted that he really could not comment on causation. The ALJ found that the claimant met his burden in proving that his work was the prevailing factor in causing his condition based on the testimony of two of the claimant's experts. The judge noted there was no evidence that any other factors contributed to the claimant's condition. The ALJ assessed 35% disability, found the employer responsible for $114,439.35 in past medical, and did find the employer was also responsible for future medical treatment and past TTD. The employer appealed and the Commission set a briefing schedule.

HOLDING: In reviewing employer/insurer's brief it noted several citations to non-existent cases, specifically three separate cases. The Commission noted that Missouri Courts have found that filing a brief with bogus citations represents a flagrant violation of duties of candor that all parties owe to a Tribunal. The Commission noted that per its rules the Commission upon its own motion can decline to consider any brief or any portion of a brief that is not filed within accordance with its rules. In light of the fictious references included in the employer/insurer's brief, the Commission decided to strike the employer/insurer's brief in its entirety on its own motion. The Commission urged all parties whether members of the bar or pro se to be cognizant that they are aware of this

issue and will not permit fraud on the Commission. The Commission did find that the ALJ's Award was supported by competent and substantial evidence and affirmed the same.