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MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE

July 2026 – September 2026

Commission Awards Authorized Treating Physician's Rating After Considering All Evidence

Barnett v. Kawasaki Motors Mfg. Corp USA and Sentry Casualty Company, Case No. WD88459 (Mo. App. WD)

FACTS: On June 21, 2023 the claimant sustained an injury to his right shoulder for which he underwent an authorized shoulder surgery. He was placed at MMI with no restrictions and the physician provided a rating of 7% disability. He filed a claim and then was reexamined by the doctor on January 20, 2025 at which time the doctor determined that he had excellent range of motion and strength. However, the claimant reported continuing complaints. The claimant did report an injury to his left wrist after falling off his bicycle in July of 2024. The doctor noted with respect to his right shoulder his symptoms were mild in nature and if any current complaints are related to a distinct injury or event it would be from the fall off his bike in July 2024. The doctor did not recommend any additional treatment.

At a hearing the ALJ concluded that he had 25% disability to the right shoulder. The claimant did not submit his own disability rating.

The employer appealed and the Commission modified the ALJ's Award by reducing the PPD awarded by the Judge from 25% to 7% of the shoulder. The claimant appealed.

HOLDING: The Court noted that Section 287.190.6 (2) requires PPD to be physician certified, and the Commission is not bound by the medical testimony but may consider all of the evidence, including the testimony of the employee and draw all reasonable inferences from other testimony in arriving at the percentage of disability. The Court went on to note that a rating is a question of fact and they will not substitute their judgement for that of the Commission on issues of fact. However the Commission may not arbitrarily disregard and ignore competent, substantial and undisputed evidence of witnesses who are not shown by the record to have been impeached and

the Commission may not base its findings upon conjecture or its own mere personal opinion unsupported by sufficient competent evidence.

The Court went on to note that the Commission did not require the claimant to present competing medical evidence and instead acknowledged that the claimant could have presented lay evidence sufficient to support the ALJ's Award. The Commission found that the claimant failed to carry his burden of proving the extent of his disability due to the work injury because he produced no credible, persuasive evidence that supported a greater level of disability then assessed by the authorized treating physician and went on to note that it did not limit that evidence to medical evidence. The Court noted the Commission simply did not find anything in the claimant's evidence that supported a disability rating above 7% and was entitled to credit the employer's physician's conclusion following a full exam that any residual immobility and discomfort was the result of the claimant's avoidance of certain activities including stretching and strengthening exercises due to his concern that he would reinjure his shoulder. The Court found there was sufficient competent and sufficient evidence upon which the Commission relied in awarding 7% disability to the shoulder. The Court went on to further note that the Commission owes no deference to the ALJ's credibility determinations or evaluation of evidence. The Commission was entitled to weigh the medical evidence, including the physician's rating more heavily than the claimant's testimony on the extent of his disability and its relation to his work injury. Therefore, the Court concluded the Commission did not exceed its authority by reducing PPD to 7% based on the Commission's assessment of the record as a whole.

Employer Not Responsible for Total Knee Replacement as Needed for Pre-existing Condition

Gilbert v. City of Grandview, MO, Case No. WD88375 (Mo. App. WD)

FACTS: In July of 2016 the claimant sustained an injury to his right knee while chasing a suspect on foot. This required an arthroscopy and a total knee replacement. At a Hearing the Judge awarded 30% disability to the knee. The employer appealed and the Commission reversed the ALJ's decision in large part and awarded 17.5% disability to the right knee and found that the city was not liable for the cost of the claimant's artificial knee replacement.

The claimant did have two prior compensable work-related right knee injuries in 2012 and 2013 and prior to performing surgery with respect to his 2013 injury the doctor did advise that at some point he would need a knee replacement in the next 10 years. Those two prior claims were settled for 15.5% and 10% respectively.

After the 2016 injury and the following arthroscopy the claimant was placed at MMI. The doctor assessed 4% disability and noted that the claimant may need further medical care in the future for his underlying degenerative changes in his knee. The doctor noted this was not the result of his 2016 meniscus tear.

The claimant's attorney obtained a report opining that the claimant's three separate injuries constituted an occupational disease which required additional treatment. The parties went to a Hardship Hearing, and the Judge did not believe that the claimant was entitled to a total knee replacement. The claimant underwent a knee replacement on his own and his physician opined that the total knee replacement was needed as a result of the 2016 injury. At the final hearing the ALJ concluded that the employer was responsible for the past medical expenses and out-of-pocket expenses related to the total knee replacement and awarded future medical. The employer appealed.

HOLDING: The claimant argued that the Commission erred in finding that he did not present "additional significant evidence" to justify modification of the Temporary Award. The Court went through an analysis with respect to the "additional significant evidence" requirement. A case was quoted which held that to modify a Temporary Award the ALJ and the Final Award must find there was additional significant evidence not before the ALJ at the Temporary Hearing. The Court noted that Temporary Awards are just that, temporary. The Court ultimately found that cases announcing and applying an additional significant evidence test should no longer be valid on that point. The Commission's final award cannot be sustained on the basis that the claimant failed to present additional significant evidence to justify departure from the ALJ's Temporary Award. However the Court went on to note that was not the sole basis of the Commission's decision. The Commission's final award held that even if reconsideration of the Temporary Award was warranted, the claimant had failed to prove that his knee replacement was necessary to cure and relieve him from the work injury in July of 2016. Therefore, the Court confirmed the Commission's decision.

Claimant's Death After Found in Hotel Room While Travelling for Work Not Compensable

Charles Hoskins (dec.) v. Missouri State Public Defenders, Injury No. 21-089919

FACTS: The employee had worked for the Public Defender since 1993. On December 13, 2021, he traveled to work to Virginia to meet with an expert witness. He met with the witness on December 13 and was scheduled to return the next day but when he did not appear for that appointment, the witness contacted the employee's supervisor who contacted the hotel and the clerk found him sitting on the couch partially dressed in his dress shirt, boxers and socks. EMS was called and found him snoring but could not wake him up. He also was unconscious with blood on his lips and observed some seizure type activity. He was taken to the hospital, and a CT scan showed an acute subdural hemorrhage. He was transferred to a different hospital and was diagnosed with brain death and pronounced dead on December 15, 2021. The claimant's wife, two children and her sister drove to Virginia and arrived at the hospital before he was pronounced dead and the employee's wife and sister testified they saw a bruise around the employee's right eye but the hospital records did not mention the same.

The medical examiner's report listed the employee's cause of death as blunt force trauma to the head with subdural bleed. There was evidence of blunt force trauma due to bruising around the employee's eye, but the medical examiner did not know when the bruise occurred. Dr. Snyder testified on behalf of the claimant and noted that due to his prior mitral valve replacement in 2018 he was on anticoagulants and he had a large acute subdural hematoma and the head trauma was most likely the result of a four-level trauma. He noted that his internal normalized ratio INR was elevated at 4.1 at the time death.

The employer's expert noted the employee's 4.1 INR and that patients on blood thinners have a four-fold risk of developing subdural hematomas and the elevated INR level increased that risk further. Dr. Silverman noted there was no evidence of any head trauma in the medical records and noted this was typical of a spontaneous subdural hematoma. The ALJ believed that the claimant's wife testified credibly that there was swelling at the employee's right eye and the medical experts testified that a vast majority of subdural hematomas are caused by blunt force trauma to the head and spontaneous subdural hematomas are rare. She also noted it was important to consider the employee's anticoagulation which lowered the threshold for the amount of trauma needed to cause a subdural hematoma. Therefore, she found the employee sustained an accident. She also believed that the injury occurred in the course and scope of the employment as the employee encountered three distinct risk sources that he was not equally exposed to in his non-employment life. The first, he was in an unfamiliar, carpeted hotel room with different furniture than in his home which presented a tripping hazard. Also, he was traveling for work and was alone and when outside of work he traveled with his family who could seek proper medical care if needed. Finally, he wore a suit to work every day and rarely wore one outside of work. Therefore, she found the injury and death compensable.

HOLDING: The employer appealed and the Commission reversed finding that the claimant did not meet her burden of proof or persuasion that an accident occurred. The record did not prove the employee sustained an unexpected traumatic event or unusual strain identifiable by time and place. The claimant argued that a possible bruise on the employee's face was evidence that a traumatic event occurred. However, the record provided no evidence of when such a bruise may have occurred or the source thereof. The Commission did not find the claimant's evidence persuasive that the employee sustained an injury by accident. Although the employee was in the hotel because of work related travel, death benefits are not due under the statute simply because the employee died while working. The ALJ's decision was reversed.

Employer Responsible for Medical Bills After Not Authorizing Treatment After Claimant's Attorney Made Demand for the Same and Found Related to Work Injury

Wills v. Fixture Contracting Co., Inc., Et Al., Case No. ED114391 (Mo. App. ED)

FACTS: The claimant began working for the employer in the fall of 2015 and developed low back pain which he alleged was a result of his job duties. He sought treatment with a chiropractor and underwent an MRI. He then told his shop foreman that his back hurt and he wanted to see a workers' compensation doctor. He was directed to Concentra but left due to the wait and went on his own to an urgent care. He was again advised to go to Concentra if he was interested in treatment. On December 1, 2017, the claimant saw a spinal physician on his own who recommended pain management and physical therapy. On December 22, 2017, the claimant delivered a letter to the employer acknowledging that he left Concentra for an urgent care of his own choosing and reported that his doctors were talking about surgery. The employer contacted the insurer who sent him a letter acknowledging a Report of Injury and asked that he signed authorizations which he returned the next day. The attorney filed a Claim for Compensation on December 27, 2017. The claimant then treated with his own physicians in early 2018. On February 14, 2018, the claimant saw Dr. Levy who recommended surgery and the claimant's attorney forwarded his report to the employer's attorney that same day. He made a demand for the treatment. He also made formal demands for the recommended surgery on February 21, 2018 and February 28, 2018. Then on March 7, 2018, the claimant underwent surgery performed by Dr. Levy. He underwent a second surgery on August 1, 2018. He was returned to work on November 15, 2018, and when he presented to the insured he was advised he was terminated.

At a Hearing, the ALJ believed that the claimant's work activity was the prevailing factor in causing his medical condition and disability. The ALJ noted the claimant did not formally demand treatment until February 14, 2018, and it was not reasonable to expect the employer to properly evaluate the claim in three weeks. The ALJ also cited the lien letter as evidence that the claimant had no intention of accepting authorized care from the employer and in light of the fact that the claimant chose to direct his own medical treatment, the employer was not responsible for the same. The ALJ did award TTD benefits and 30% PPD referable to the lumbar spine. The Commission affirmed the ALJ's Award and the claimant appealed.

HOLDING: The claimant argued that the Commission erred in denying his request for past medical expenses because the Commission acted without or in excess of its authority. The claimant argued that the Commission misapplied the law by finding that the employer did not refuse or fail to provide medical treatment because it was evaluating the claim and by improperly relying on the Dr. Levy lien agreement to find claimant had no intention of accepting authorized care. The Commission agreed but only reversed its Final Award as to the claimant's past medical expenses after his February 14, 2018 demand for treatment. The Court cited *Erwin* which noted that when the employer has notice that the employee needs treatment or a demand is made on the employer to furnish medical treatment and the employer refuses or fails to provide the needed treatment, the employer will be held liable for any reasonable and necessary medical treatment procured by the employee. The Court noted that in *Erwin* the Court summarized two options for an employer when it receives a demand for further treatment. First, it can refuse to authorize or otherwise ignore the employee's demand for further treatment and be financially responsible for medical treatment

sought by an employee, later deemed reasonable and medically necessary, or to grant the employee's request and retain control over the course of the employee's treatment. Once the employee has made a demand and that demand has been refused, the claimant is free to choose their own medical provider and is no longer required by law to keep their employer informed of their care.

The employer argued on appeal that it was not reasonable to expect the employer to properly evaluate the claim in three weeks and being "unable to respond" in that time frame did not mean the employer refused medical treatment. The Court disagreed. The Court noted that the plain language of §287.140 and cases interpreting it do not provide employers a time frame in which to evaluate a claim. The Court concluded the employer was liable for the full cost of that treatment.

The Court went on to further note as part of its determination that the employer did not refuse treatment, the Commission found the lien agreement was incontrovertible evidence establishing claimant had no intention of accepting authorized care. The Commission stated by agreeing to the lien agreement terms, the claimant made a definitive choice to be treated by Dr. Levy and forgo employer's authorized treatment. The Court disagreed. The Court noted the Commission's inference that the claimant would have rejected treatment is speculative and improper and there was nothing in the record showing the employer attempted to provide treatment after the February 14, 2018 demand for treatment.

Claimant Not Entitled to Workers' Compensation as Elected Remedy in Civil Court When Received Settlement

Estrada (dec.) v. Thunder Framing & Construction, Inc. and Burkhart Construction, Inc., Injury No. 15-102640

FACTS: On November 21, 2015, the employee and a coworker constructed a makeshift wooden box while at a jobsite constructing a nursing care facility. The employee's coworker then lifted the box with the employee in it into the air using a forklift and the box shifted or broke apart and the employee fell sustaining multiple injuries resulting in his death. The employee was hired by Mundo Hernandez Construction in Texas. Mundo was a subcontractor of Thunder Framing & Construction, Inc. and Thunder was a subcontractor of Burkhart. Burkhart was a subcontractor of ARCO Construction Company. Mundo did not procure workers' compensation insurance, and the employee was performing work at ARCO's jobsite on the date of the accident which resulted in his death. A Claim for Compensation was filed on November 28, 2017. A civil suit was also filed, and settlements were reached against ARCO, Burkhart and Thunder and they agreed to pay the claimant money in exchange for dismissing the wrongful death civil suit against them. The total recovery was $350,000.00 for a net of $203,746.70.

HOLDING: The first issue was which insurance policy provides primary coverage for the claim. It was determined that Burkhart Construction and Carolina Casualty were liable for the death benefits as that entity was the statutory employer.

The second issue was whether the claimant is barred from collecting under workers' compensation when she collected settlement payments in the wrongful death civil suit pursuant to the doctrine of election of remedies.

Under Missouri workers' compensation in exchange for providing mandatory workers' compensation coverage employers and their employees are granted immunity from civil lawsuits arising out of workplace injuries. The definition of "employer" extends to the statutory employer. The Commission noted that the claimant as dependent of the employee pursued both remedies by filing a civil lawsuit against a group of employers when Mundo failed to obtain the proper workers' compensation coverage and also by filing a workers' compensation claim. The claimant accepted total recovery of $350,000.00 in settlement payments to resolve the civil lawsuit. She then continued to pursue workers' compensation against the same parties she had previously collected a settlement from. By accepting a settlement, bringing the civil suit to finality the claimant elected her remedy against those parties. Therefore, she was not entitled to receive any benefits through her workers' compensation claim as the claimant's Claim for Compensation was extinguished when she pursued a civil action to finality as she elected a civil remedy in lieu of pursuing benefits under Chapter 287.