Simon Law Group, P.C.
720 Olive Street, Suite 1720, St. Louis, MO 63101
314-621-2828

MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE
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Claim Not Compensable Because Accident Caused Aggravation of Pre-Existing Condition but not a New Injury

Jones vs. Orbital ATK (f/k/a ATK Alliant Techsystems, Inc.), Injury No. 13-031100

The claimant was walking at work when he stepped in a hole in the plant floor and twisted his right knee. He previously underwent right knee surgery in 1999 for an ACL tear. After his work injury, treatment was authorized with Dr. Samuelson, who noted significant DJD in the knee and findings indicative of chronic ACL deficiency, and the doctor opined that the claimant's current condition was the result of degenerative changes and prior trauma.

Dr. Strong examined the claimant at the request of the employer and opined that the claimant had a severely arthritic knee and would require a total knee replacement. However, Dr. Strong did not relate the need for a total knee replacement back to the work accident, which she opined caused a knee contusion. Dr. Strong opined that the claimant would have needed a knee replacement at some point in time irrespective of the work accident. At his attorney's request, the claimant was examined by Dr. Stuckmeyer, who opined that the claimant's physical exam was suspicious for a medial meniscus tear and recommended surgery.

At a Hearing, the ALJ held that the claimant did sustain an accident at work. However, the ALJ found the opinions of Dr. Samuelson and Dr. Strong more persuasive than Dr. Stuckmeyer and held that the claimant did not sustain an injury as the result of the accident at work but instead had aggravated his pre-existing knee condition. The ALJ differentiated this claim from the decision in *Tillotson* by noting that the claimant in *Tillotson* had sustained meniscus tear as a result of his accident, but Dr. Strong and Dr. Samuelson credibly opined that the claimant sustained only an aggravation of his pre-existing condition without a new injury. Therefore, the ALJ found that the claimant had not sustained a compensable injury as a result of his work accident and denied any benefits. On Appeal, the Commission affirmed the ALJ's decision and Award.

Claimant Not Injured in Course and Scope of Employment After Falling in Parking Lot Because Equally Exposed to Hazard or Risk of Tripping on Parking Island Outside of Work in Normal Non-Employment Life

Nugent vs. State of Missouri, Missouri State University, Injury No. 17-011083

On the date of injury, the claimant drove to a business center where she went to the Post Office on a personal errand. She then decided to visit some work colleagues whose offices were located in the same business center to discuss something work-related. After leaving the Post Office, she drove her car to the other end of the parking lot to be near the door of the Missouri State University offices. As she was walking in the parking lot to go to those offices, she tripped on a parking island and sustained an injury to her wrist.

At a Hearing, the claimant testified that she lost her balance as she turned to head towards the building. She was not carrying anything work-related at the time. When asked whether there was anything defective in the area, she answered, "No! I missed a small curb that was clearly marked." Testimony also established that the claimant regularly used parking lots at Wal-Mart, an Urgent Care Clinic, a U.S. Bank, and two churches, and she also used the parking lot where she fell for non-work-related reasons such as using the Post Office. Testimony established that these parking lots also had parking islands that were in similar or worse condition than the parking lot where the claimant fell.

The ALJ found that the claimant was not injured in the course and scope of her employment because the hazard or risk of injury was the parking island in the parking lot where she fell, which was a parking lot that she used outside of work in her normal non-employment life, and she was also routinely exposed to similar parking islands in similar parking lots in her normal non-employment life. Therefore, the ALJ held that the employee was at least equally exposed, if not more exposed, to parking lots with similar parking islands outside of and unrelated to her employment in her normal non-employment life. The ALJ also found that there was no particular defect to the parking island which caused an increased hazard or risk of injury greater than that in the parking lots she was exposed to outside of work. Therefore, this injury was found to be not compensable. On Appeal, the Commission affirmed the ALJ's decision and Award.

Editor's Note: Neither the ALJ's opinion nor the Commission opinion discussed whether the parking lot was owned or controlled by the employer.

Court Reversed Commission Decision and Found Claimant Injured in Course and Scope of Employment Because the Risk or Hazard of Injury Was Slipping on Dirt/Ice on that Hallway Floor, and Claimant Was Injured in a Hallway Owned and Controlled by Employer

Annayeva vs. SAB of the TSD of the City of St. Louis and Treasurer of Missouri Custodian of the Second Injury Fund, Case No. ED107558 (Mo. App. 2019)

FACTS: On January 8, 2013, the claimant, a teacher, sustained an injury when she slipped and fell. She had just entered the school building using a general entrance and was carrying student papers and lesson plans, although she was not "clocked in" at the time. She did not see any defects in the linoleum tile floor, and when filling out an investigation report, she did not

mention any ice, salt, or dirt on the floor that caused her to slip and stated that she "could not determine the cause of the accident." The claimant alleged injuries to numerous body parts as well as a psychological injury.

At a Hearing, the ALJ found the claimant's testimony was not credible and denied her claim due to lack of causation. On appeal, the Commission affirmed the ALJ's Award, but based on the grounds that the claimant was not injured in the course and scope of her employment. The Commission found that nothing about the claimant's work caused her to fall, and the hallway was "normal" where she fell. When specifically asked by her attorney, the claimant testified that the floor was dirty and moist, but the Commission did not find her testimony credible and noted that none of the medical records noted any hazardous conditions on the hallway floor. Therefore, the Commission found that the only risk source was that of walking on an even flat surface, to which the claimant was equally exposed in her normal non-employment life, and she failed to show that her injury arose out of and in the course and scope of employment.

HOLDING: On appeal, the Court of Appeals reversed the Commission's decision. The Court held that when the Commission rejected the claimant's testimony regarding the condition of the floor and found it was not credible, its opinion was based on conjecture and unsupported by sufficient competent evidence in the record, and the Commission's Award did not provide a reasonable or substantial basis for refusing to believe the uncontradicted testimony of claimant. With respect to the medical records, the Court also held that medical records were meant to provide proof of medical history and diagnosis, not proof of a hazard or risk present on the floor where the claimant fell. Therefore, the fact that they did not mention dirt or ice on the floor was not persuasive. The Court held that the claimant was injured in the course and scope of her employment because the risk of her injury was not simply walking on an even surface, it was walking in the employer's hallway which was dirty with dirt and ice, where she walked every workday as a function of her employment. The Court also found that it did not matter that the claimant had not yet clocked in at the time of her injury because the employer owned and controlled the hallway where she fell. Therefore, the Court reversed the Commission's decision and remanded the matter back to the Commission for additional findings with respect to medical causation.

Court Affirms Commission's Decision that Claimant Not Employee of Ginger C, and Ginger C Not a Statutory Employer

Hayes vs. Ginger C, LLC and Treasurer of the State of Missouri Custodian of the Second Injury Fund, Case No. WD82256 (Mo. App. 2019)

FACTS: Ginger C (GC) worked as a rental business and did not perform construction or have any employees. It did hire three contractors, including the claimant, to repair and remodel buildings as needed. On June 26, 2013, the claimant and two other contractors were performing a concrete job and sustained alkali burns from the concrete. GC did not have workers' compensation insurance. The claimant sought PPD benefits from GC and the Fund.

At a Hearing, the ALJ expressly found the claimant was not a credible as a witness, because his

testimony was exaggerated and inconsistent with his deposition testimony and the testimony of the other two contractors and Mr. Asmar, GC's owner. The ALJ found that credible testimony established that GC did not issue W-2's and instead issued 1099's to each contractor, Mr. Asmar was never present at the job sites and did not control or direct the way that the claimant or other contractors performed their work, the claimant owned and used his own tools, he could choose the hours he worked, and he could turn down maintenance calls if he wanted. Therefore, the ALJ found that the claimant was an independent contractor and not an "employee" under workers' compensation. The ALJ also found that GC was not an "employer" under workers' compensation because GC's regular business was apartment rental, not construction, and it did not have any employees. Therefore, the ALJ denied any benefits. On appeal, the Commission affirmed the ALJ's Decision and Award.

HOLDING: On appeal, the claimant argued that he was an employee of GC. The Court noted that the key to determining whether a claimant is an employee or an independent contractor is the amount of control exercised by the alleged employer, and the Commission was correct in determining that GC did not exercise sufficient control over the claimant's work to render him an employee. The claimant also argued that GC was his statutory employer at the time of his injury. The Court noted that the claimant was performing work for GC pursuant to a contract, and he was injured while performing work on GC property. Therefore, GC may be a statutory employer if the work the claimant was performing at the time of his injury was in the usual course of GC's business. The Court noted that the claimant was injured while performing concrete work, and there was no evidence that concrete work was routinely performed by GC on its rental properties. Therefore, there was insufficient evidence to find that GC would have been required to hire permanent employees to perform the concrete work absent the agreement with the claimant, and the claimant did not sustain his burden to establish a statutory employment relationship with GC. The Court affirmed the Commission's decision and Award.

Employer Liable for Shoulder Replacement Despite Pre-Existing Condition Because Surgery Reasonably Required to Cure and Relieve Claimant of Effects of Work Injury

<u>Persley vs. The Parking Spot</u>, Injury No. 14-079573

On September 4, 2014, the claimant fell and sustained an injury to his left shoulder. X-rays and an MRI of the shoulder showed significant pre-existing conditions. When the employer denied treatment, the claimant underwent unauthorized treatment with Dr. Satterlee, who performed a reverse total shoulder replacement on May 6, 2015. Dr. Stuckmeyer examined the claimant at his attorney's request and opined that he had pre-existing asymptomatic rotator cuff pathology as well as an acute injury due to the work accident, and he opined that the procedure performed by Dr. Satterlee was reasonably required to cure and relieve the claimant from the effects of the work injury. Dr. Clymer agreed that the claimant had significant pre-existing conditions in the shoulder and opined the work accident aggravated the pre-existing condition and possibly caused some additional rotator cuff tearing and joint surface damage. Dr. Clymer agreed that the shoulder replacement was the most reasonable approach given the claimant's chronic degenerative problems, but he opined the prevailing factor causing the need for surgery was the claimant's pre-existing condition rather than the work accident.

At a Hearing, the employer argued that it was not responsible for the medical treatment the claimant underwent with Dr. Satterlee because the claimant's pre-existing chronic condition was the prevailing factor in causing the need for a total shoulder arthroplasty, not the work accident. However, the ALJ noted that the prevailing factor was the incorrect standard. Instead, pursuant to the Court's decision in *Tillotson*, an employer is required to provide treatment reasonably required to cure and relieve the effects of the injury. The ALJ opined that the shoulder replacement was reasonably required to cure and relieve the claimant from the work injury, and therefore, the employer was responsible for paying for that treatment. The ALJ ordered the employer to pay unpaid medical bills, provide future medical care, and pay TTD and PPD benefits. On Appeal, the Commission affirmed the ALJ's decision and Award.

Injuries Sustained When Tripped by Authorized Treatment Provider Were Compensable

Schoen vs. Mid-Missouri Mental Health Center and Treasurer of the State of Missouri, Custodian of the Second Injury Fund, Case No. WD82258 (Mo. App. 2019)

FACTS: The claimant initially complained of throat and eye irritation after exposure to Cypermethrin on May 8, 2009. She sought emergency treatment on her own and returned to work immediately without limitations in regards to that exposure. She had continuing complaints and was sent by the employer to Dr. Runde for evaluation on May 22, 2009. While at Dr. Runde's office, a person with a small dog was sitting in the waiting room. The claimant was being escorted to an exam area for pulmonary function tests when Dr. Runde attempted to walk around the dog and accidentally tripped the claimant, causing her to fall. She alleged injuries to her cervical and lumbar spine, left shoulder, and left knee as a result of her fall.

At a hearing, the ALJ found that the injuries the claimant sustained when she fell in Dr. Runde's office were compensable injuries because she sustained them while seeking authorized treatment for the chemical exposure. The Commission reversed the ALJ's decision and Award and held that the injuries the claimant sustained at Dr. Runde's office were not compensable, despite the fact that the claimant was undergoing authorized treatment, because those injuries were not the direct result of any necessary medical treatment for her primary injury, the Cypermethrin exposure.

HELD: On appeal, the Court of Appeals reversed the Commission's decision and found that the injuries the claimant sustained in Dr. Runde's office were compensable. The Court reasoned that the claimant was tripped while following her doctor's directive, and being directed to and from other locations for testing is a part of authorized medical treatment. Since the claimant was injured while undergoing authorized medical treatment, her injuries were a natural and probable consequence flowing from the original injury, and the original injury was the prevailing factor in causing her additional injuries. The Court remanded the matter back to the Commission.