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**MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE**

**October 2025 – December 2025**

**ALJ Could Not Award Permanency Over and Above only Permanency Rating Admitted into Evidence**

**Barnett vs. Kawasaki Motors Manufacturing Corporation, US, Injury No. 23-040406**

**FACTS:** The claimant sustained an injury to his right shoulder. Dr. Mall performed an arthroscopic right shoulder rotator cuff repair with biceps tenodesis. Thereafter, he underwent physical therapy, and he was placed at MMI. The claimant reported continuing complaints, and he was returned to the doctor and he reported an intervening incident when he fell from a bicycle and now had pain over the AC joint which was not part of the original injury. The doctor did not believe the claimant needed any additional treatment and that any current complaints were related to this intervening bike incident. Dr. Mall provided a rating of 7% disability.

The judge noted that the claimant is not required to submit his own disability rating and he is familiar with Dr. Mall's ratings having reviewed his reports in hundreds of cases and thereafter awarded 25% disability to the shoulder. He did note the finder of fact consider all evidence in determining the amount of an employee's PPD and is not obligated to award the same percentages assigned by experts. He noted it was within the province of the fact finder to determine what weight it will accord expert testimony on medical causation. The employer appealed noting that the award was against the weight of the evidence.

**HOLDING:** The Commission noted that the ALJ determined that the claimant had disability 18% higher than the only medical opinion on permanent disability at the Hearing. The Commission noted that the statute states that permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. The Commission further went on to note the courts have held that the employee has the burden of proving not only that an accident occurred and that it resulted in injury but also that a disability resulted and the extent of the disability. The Commission concluded 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 than assessed by Dr. Mall. The ALJ exceeded his authority by substituting his own lay opinion of treatment records and vaguely alluding to his experience with Dr. Mall in other cases to justify and award 3x greater than Dr. Mall's opinion. Therefore, the Commission modified the award of the ALJ and awarded 7% of the shoulder.

## **Medical Provider Met Burden of Proof that Fees Were Reasonable and Employer Required to Pay Additional Monies**

### **S & B Hauling and Construction & Utah Business Insurance Company of America vs. Center for Surgical Specialties P.C., Case No. WD88030 (Mo. App. WD 2025)**

**FACTS:** A claimant sustained a compensable work-related injury, and surgery was authorized with Surgical Specialties who billed the employer/insurer in the amount of \$19,763.00 and the employer/insurer paid \$11,566.52 but refused to pay the remaining balance of \$8,196.48. Surgical Specialties filed an Application for Reimbursement of Additional Medical Fees, and the employer/insurer filed an Answer arguing that the amount already paid to Surgical Specialties represented the usual and customary rate for the medical services provided. The only issue at the Hearing was whether the medical bills submitted by Surgical Specialties were fair and reasonable.

At the time of the Hearing, Surgical Specialties' business manager testified that 99% of the doctor's practice is comprised of workers' compensation referrals. The claimant was referred to Surgical Specialties by a nurse case manager who directed and authorized the surgery. The business manager testified that the bill issued to the employer/insurer reflected the charges and fees that Surgical Specialties routinely billed for that particular surgery performed regardless of who is billed for the procedure.

There was testimony on behalf of the employer/insurer, specifically a doctor with WellRhythms, a company that contracts with workers' compensation insurers to assume legal and financial exposure in exchange for payment based on a percentage of liability assumed. That doctor testified that based on his review of the bill Surgical Specialties should have been paid the \$11,566.52 based on standard billing and reimbursement practices. The ALJ found that Surgical Specialties had the burden of proof regarding reasonableness of its medical charges and the evidence and testimony submitted sustained this burden and awarded the facility the additional charges. The employer/insurer appealed, stating that the charges were unreasonable and unfair.

**HOLDING:** The Commission affirmed and adopted the Award of the ALJ. The Court looked to prior case law and determined that Surgical Specialties sustained its burden of proof and persuasion as the Award of the ALJ and the Commission found that the business manager's testimony was credible and persuasive and they are bound by the Commission's credibility determination. Therefore, the employer/insurer was ordered to pay the outstanding \$8,196.48.

## **Claimant's Claim Against Mo. Dept. of Social Services Barred Based on Sovereign Immunity**

### **Woodrum vs. Missouri Department of Social Services, Case No. SD38940 (Mo. App. SD 2025)**

**FACTS:** The claimant alleged that the Missouri Department of Social Services retaliated against him by constructively terminating his employment soon after he began seeking workers' compensation benefits after a work injury. The Circuit Court granted summary judgment in favor of Social Services on the grounds that the claimant's retaliation claim is barred by sovereign immunity. The claimant appealed contending that the applicable provisions of the Missouri

workers' compensation law expressly waives sovereign immunity for retaliation claims involving the state.

**HOLDING:** The Appellate Court affirmed the Circuit Court's judgment noting that the state has expressed an affirmative intent to preserve its sovereign immunity by way of a separate and controlling statutory provision which is outside of the workers' compensation law.

**Hicks vs. Commercial Metals Company, et al, Case No. WD87598 consolidated with WD87627 (Mo. App. WD 2025)**

**FACTS:** The claimant began working for CMC as a rebar bender operator on January 17, 2017. From the time she started, one of the objectives of management was "no recordables and no lost time". The claimant's interpretation of that objective was "you don't want to get hurt or, if you do, you suck it up and keep going." She sustained an injury on January 15, 2018 and was knocked unconscious. The shop superintendent did not call an ambulance, but took her to the emergency room, and stayed with her. After leaving the ER he took the claimant to the company clinic to be drug-tested. The next day, he picked her up from home and took her back to the company clinic to be evaluated. She was to return to work with restrictions and he drove her to the plant and placed her in a darkened room for her eight-hour shift. Although the safety manager testified that the claimant was given job duties, the claimant testified that she did nothing but sit in a chair or lie on the floor in the room during her entire shift. She was again seen by a doctor and for the next three weeks sat alone in a dark room or took vacation, sick days or PTO. Other than breaks, she was not allowed to have access to her cell phone and the claimant testified that this work-around was created so that her time off would not count in the company records as "lost time and a recordable."

The shop superintendent testified that once Hicks went on full medical leave, she also went on short-term disability. However, the claimant never applied for short-term disability. She was in fact told that she could not receive both benefits. Although the claimant did not know it, the employer initiated FMLA and short-term disability on Hicks' behalf in March of 2018. The claimant continued to receive workers' compensation benefits and she received a termination letter from the employer on August 31, 2018. Before and after her termination, she continued to receive treatment and her nurse case manager presented to her appointments and provided the employer updates. The claimant was released from all work restrictions on September 13, 2018.

There was testimony that a meeting was held with corporate employees to discuss the claimant's employment and it was agreed upon that a letter would be sent to the claimant to reach back out to the employer in order to discuss her employment and she needed to respond immediately. However, the claimant testified that she did not receive any communication from the employer before her actual termination letter. There was testimony that the claimant lived less than two miles from the plant and the shop superintendent had picked her up from her home to take her to work following the accident and no one from the company tried to reach her at her home. The employer claimed that the basis for the claimant's termination was failure to communicate and provide proof of disability.

After the claimant's termination, she remained unemployed for the remainder of 2018 and 2019 and in 2020, she had multiple short-term jobs. There was testimony that her demeanor changed,

she lost confidence and had become withdrawn. The claimant filed a suit alleging employment retaliation.

After a three-day trial, the jury returned a verdict in favor of Hicks and awarded her \$90,000 for back pay and \$300,000 for noneconomic damages. The employer moved for judgment notwithstanding the verdict or a new trial or modification of the judgement, and the trial court overruled all of the motions. CMC again moved for a new trial alleging jury misconduct. The employer's attorney advised that he had learned of the alleged misconduct a few days after the conclusion of the trial but failed to explain why these issues were not addressed in the prior motion for a new trial. It was alleged that the claimant's attorney's father spoke with two jurors outside the courthouse during the trial. The employer had sworn affidavits of two of their employees confirming the same. The claimant's attorney requested video surveillance which contradicted the employees' allegations. At a hearing on a motion for sanctions, the two employees testified that they "misremembered" all of the events but neither came forward until the surveillance surfaced. The trial court sanctioned the employer, finding that they acted in bad faith and committed fraud on the court. The trial court awarded sanctions in the amount of \$312,450 which equated to the full amount of Hicks' hourly attorney's fees for the trial. The employer appealed, arguing that the claimant offered no evidence that her receipt of workers' compensation benefits was a motivating factor in her termination.

**HOLDING:** The Court noted that in order to prevail on her retaliation claim, she needed to prove that she was employed by the employer before the injury, she exercised her rights by filing a claim for workers' compensation, the employer terminated the claimant and there was a causal relationship between the claimant filing her claim and termination. The employer only argued that the claimant did not meet the fourth element, that she proved a causal relationship between her workers' compensation claim and her termination. The Court noted that the claimant proved a causal relationship by showing that her workers' compensation claim was a motivating factor in her discharge and it actually played a role in the discharge or termination and had a determinative influence on the discharge or termination. Essentially, the employer's evidence focused on the claimant's alleged lack of communication about her health status and timing for returning to work, but the claimant presented evidence that the employer was aware of the same as the nurse case manager was sending updates to the employer. After reviewing the evidence in the light most favorable to the claimant, there was sufficient evidence to submit the claimant's retaliatory discharge claim to the jury. Also, the Appellate Court found no abuse of discretion in the amount of sanctions imposed. The court also affirmed the jury's back pay award and non-economic damages award, noting that they could not say the jury's verdict was excessive nor that the trial court abused its discretion.

### **Dismissal Set Aside as No Evidence Claimant Received Actual Notice**

#### **Tippit vs. State of Missouri, Second Injury Fund, Case No. ED113466 (Mo. App. ED 2025)**

**FACTS:** The claimant sustained an injury on September 25, 2015 and filed a claim against the employer and the Fund in January of 2016. The claimant and the employer reached a settlement in December of 2016 and his case against the Fund remained open. The claimant's attorney died in December of 2020 and in June of 2021 the claimant hired a new attorney, but the Division records

did not show that he entered his appearance with the Division. The Division sent the claimant a Notice to Show Cause Why the Claim Should not be Dismissed which was set on September 14, 2022. It was sent certified and showed that someone at the claimant's residence received the same. The claimant did not contact the ALJ on the date of the show cause setting and the ALJ dismissed the case. The Order of Dismissal was sent certified and again delivered to an individual at the claimant's residence.

A week later the claimant's attorney filed a second Entry of Appearance on the claimant's behalf on September 27, 2022. Then on May 20, 2023 the claimant filed an Application for Review with the Commission requesting that the Order be set aside as neither he nor his attorney received the Order of Dismissal until May 10, 2023. He also alleged that he never received the notice of show cause setting. The Commission reinstated the claim against the Fund for the sole purpose of remanding the matter to the Division for a Hearing before an ALJ to allow the claimant to present evidence on his allegations that he did not receive the Order of Dismissal or show cause notice.

After the Remand Hearing, the Commission found that the Division sent the September 19, 2022 Order of Dismissal to the claimant via certified mail but the claimant did not file his Application until eight months later which was untimely. Since it was untimely, the Commission did not have any jurisdiction over the case and dismissed the Application for Review. The claimant appealed.

**HOLDING:** The Court found the basis for the Commission's dismissal was that the Division properly mailed the September 19, 2022 Order of Dismissal to the claimant by certified mail but noted that this was not supported by sufficient competent evidence in the record. The court noted that the certified mail tracking number showed that the document was placed in the mail on September 15, 2022 but the ALJ did not sign and enter the order until September 19, 2022 and therefore, the document mailed could not have been the Order of Dismissal as it did not exist at the time. The Court noted that while the ALJ signed and entered the "Dismissal Memorandum" on September 14, 2022 this document merely stated that the ALJ "moved for the issuance of an Order of Dismissal" and on it's face was not the Order of Dismissal. The Court went on to note that there was no testimony at the Hearing that could clarify this inconsistency in the Division records. The Court noted there was no evidence in the record that the claimant received an actual notice of the Order of Dismissal until May 10, 2023. Therefore, the Commission erred in dismissing the Application as it was not supported by sufficient competent evidence. Therefore, the Commission's decision was reversed.

**Kell vs. Walker Recycling Company, LLC, Case No. ED113338 (Mo. App. ED 2025)**

**FACTS:** Kell sustained an injury while working at Walker Recycling. The employer was represented by Attorney Roberts until he withdrew on January 28, 2022 citing another attorney had entered his appearance for the employer. The ALJ granted Attorney Roberts' leave to withdraw. On February 22, 2022, the other attorney entered his appearance on behalf of the employer but misnamed the employer as Walker Recycling, LLC. That same day, the ALJ approved the settlement in which Walker Recycling agreed to pay Kell a lump sum of \$50,079.53. Again, the employer was misnamed as Walker Recycling, LLC. The settlement was signed by Kell and his attorney, Walker Recycling's attorney, and the ALJ.

In November of 2023, Kell filed an amended petition in circuit court requesting that the court correct the clerical mistake in the settlement. Walker Recycling, once again represented by Attorney Roberts, responded it had received the settlement prior to approval, was aware the settlement named “Walker Recycling LLC” and approved its attorney entering into the settlement based on that information. Walker Recycling argued that the circuit court lacked jurisdiction to correct an administrative agency order, or the stipulation.

A bench trial was held and Kell offered a certified copy of the workers’ compensation case as an exhibit. Walker Recycling moved for a directed verdict. The circuit court entered a judgment in favor of Kell and modified the employer’s name in the settlement stipulation to “Walker Recycling Co., LLC”, and entered a judgment against Walker Recycling in the sum of \$50,079.53 plus costs in accordance with the settlement. Walker Recycling filed the motion to set aside the judgment which the court denied and Walker Recycling again appealed.

**HOLDING:** The Court noted that before discussing the merit of Walker Recycling’s appeal, it is pertinent to note that Walker Recycling argues it should not be bound by the settlement to which it agreed because of a clerical error. The court noted its arguments are meritless at best and at worst they allude to fraud and ethical violations and are easily refuted by the record. The court noted that the judgement was supported by substantial evidence. Walker Recycling appears to argue that it noticed the clerical error and authorized its attorney to enter into the settlement because it was against a different entity. The court noted that even if Walker Recycling LLC was a real entity, the Division would not have had the authority to bind it to the terms of settlement because it was not a party to the workers’ compensation case. Walker Recycling was the only employer involved. Aside from the clerical error in Walker Recycling’s name, the settlement contained the same injury, the same injury date and the same claim number to which Walker Recycling had been a party all along. Therefore, the judgment was affirmed.