

COURSE AND SCOPE AFTER JOHME

It's not about the coffee!

Johme v. St. John's Mercy Healthcare, 366 S.W.3d 504
May 29, 2012

ALJ - Awarded benefits

LIRC - Reversed

Supreme Court – Affirmed – not compensable

Ms. Johme worked as a billing representative for St. John's Healthcare where she primarily worked an administrative job at a computer. Her desk was 30 steps away from the kitchen where she went to make a pot of coffee. She fell when she turned to walk back to her desk. Significant were the shoes that she was wearing which were described as "sandals with a thick heel and an open back." Basically, Ms. Johme slipped off her shoe and suffered an injury to her ankle.

The court found that the injury would be deemed to arise out of and in the course of employment only if it did not come from a hazard or risk unrelated to her employment to which she would have been equally exposed outside of and unrelated to her employment in her normal unemployment life. What all of these double negatives actually mean is that the source of the injury needs to be a risk that a person is only exposed to when at work. The court focused not on making the coffee or being on break or anything having to do with her work duties, but on the specific action which was turning and twisting her ankle when she fell off of her shoe and if this was related to her work activities in any way. As it was not, the court did not award benefits.

There was a dissent in which Judge Teitelman felt that "the work related task and the injury are inextricably entwined." He seemed to be concerned that office personnel and people in sedentary professions would be barred from compensation while performing many of their work related duties.

Let's pose a couple questions. Does that seem accurate? Are sedentary employees less likely to have a compensable injury?

It's the helmet/stair combo!

Pope v. Gateway to the W. Harley Davidson 404 S.W.3d 315

October 23, 2012

ALJ – Denied

LIRC – Reversed

Eastern District – Affirmed and benefits awarded

Mr. Pope was a motorcycle technician who was responsible for inspecting motorcycles. He was asked to drive several bikes from the lot to the showroom. The company policy was that he was required to wear a helmet when moving any of the motorcycles.

He was finished moving the motorcycles and then had to check in with his supervisor in the service department, which was located three to five stairs down from where he was. He was carrying his helmet and wearing his work boots when he lost footing on the steps and fell. The main issue was course and scope which the Administrative Law Judge did not buy. However, the LIRC reversed and awarded benefits and the Eastern District agreed.

This argument is based on the distinction between whether or not the injury occurred “because he was at work” or “merely while he was at work.” The court said that this analysis required them to consider whether the risk source, walking down steps while wearing work boots and carrying a helmet is a risk that Pope would have been equally exposed to in his non employment life. It is noteworthy that in Pope’s non employment life he rode motorcycles, wore the same boots, and wore a helmet. However, the court found that the record does not contain substantial and competent evidence to support a finding that Pope was equally exposed to the risk of walking down stairs while carrying a work required helmet outside of work.

The court focused on the fact that the claimant was performing work activities, doing what the supervisor asked him to do, and that he was required to wear a motorcycle helmet when doing the job. It also focused on the fact that the location of the stairs between the upper and lower showrooms required the claimant to walk up and down the stairs while carrying his helmet. Also of significance was the fact that they distinguished this case from *Johme* and that there was no evidence to suggest that Pope’s shoes contributed to the fall. The court noted that even if Pope was an avid motorcyclist, they would not presume facts not in evidence, including the possibility that he would have carried a motorcycle helmet while going up and down stairs.

So what does this mean for “stair” cases? What about simply walking up and down steps? What are employers doing to protect themselves from “staircases?”

It's about THAT lot!

Scholastic, Inc. v. Viley, 452 S.W.3d 680

October 28, 2014

ALJ – Denied

LIRC – Reversed

Western District – Affirmed and benefits awarded

Mr. Viley worked in a customer service call center and at the end of his shift left the building, walking across an adjacent parking lot where he slipped on snow and ice injuring his knee. The claim was denied by Scholastic.

The claimant testified that he was walking in the parking lot where he had always parked and that there was an accumulation of snow and ice, adding that the lot was also poorly lit. Personnel from Scholastic testified indicating that Scholastic was leasing the western portion of one of the buildings and that the lease between Scholastic and the landlord indicated that the landlord was obligated to perform maintenance on the lots. However, Scholastic had on several occasions ejected non employees from the parking lot and had routinely contacted the landlord about maintenance. They had also contacted the landlord about displeasure with the snowy and icy conditions. Further, Scholastic's safety committee was required to report any instance of unsafe driving on the parking lots.

The issue became whether or not Scholastic had control over the parking lot, with "control" being defined as "exercising power or influence over, to regulate or govern, or to have a controlling interest." The court found that the lease granting Scholastic exclusive use of the parking lot was sufficient to establish control for purposes of the extended premises provision.

Scholastic also argued that the injury was not in the course and scope of employment as the claimant was equally exposed to such risks outside of work. They compared this case to *Dorris v. Stoddard County*, 436 S.W.3d 586, when the claimant tripped on a crack in the street while walking back to her office after completing a work-related task. The court rejected the premise that the claimant was equally exposed to cracks in the sidewalk stating that there was a hazard of slipping on that particular sidewalk. That same argument was applied here in stating that the claimant did not have an equal exposure outside of work of falling on ice on that particular sidewalk.

Is every crack on every sidewalk or any ice on any parking lot going to lead to a compensable injury? If the landlord was actually responsible for repairs, how can it be that the employer was found to have control over the parking lot?

What the heck is frozen dirt clod?

Young v. Boone Elec. Coop., 462 S.W.3d 783

April 14, 2015

ALJ – Awarded benefits

LIRC – Awarded benefits

Western District – Affirmed

Mr. Young had two injuries. The first injury on January 4, 2008 was when he injured his knee while walking back to his work truck when he stepped on a “frozen dirt clod” resulting in his knee to buckle and pop and caused him to fall. The second injury on October 2, 2009, occurred when he was pulling himself into a work truck which was 27 inches off the ground. He used handles to pull himself up and felt a pop in his right shoulder. The court followed the *Duever v. All Outdoors, Inc.*, 371 S.W.3d 863 (Mo.App. E.D. 2012) and concluding that the claimant’s injury was compensable when he fell on an icy parking lot. The court put much significance in the fact that he was walking on a frozen dirt clod which he was required to be due to work and that he was not equally exposed to falling on this type of material outside of work. The employer tried to argue that the claimant was exposed to this because he lived on a farm; however, the court found that his injuries still arose out of his employment because “there was nothing in the record to support a conclusion that he was equally exposed to the hazard of slipping on frozen dirt clods at this particular work site in this non employment life.

In the injury involving pulling himself into the truck, the court focused on the fact that there was indeed an accident and an unusual strain because he had to step into an unavoidably high step to get into the truck, requiring him to use handles to lift his entire body up. The employer tried to argue that this accident was not a specific event in that it was just a precursor to usual work. The court rejected this and found there was a specific event and an accident which occurred when he grabbed the truck handles to pull himself up.

What if he had the exact same truck at home? Would this have been the same outcome with him working on a farm and possibly walking on frozen dirt clods didn’t matter?

Don't say "precipitating!"

Malam v. State of Missouri, Dept. of Corrections

June 24, 2015

ALJ – Not compensable

LIRC – Not compensable

Southern District – Not compensable

Mr. Malam took part in a “takedown” of an inmate when he was escorting a prisoner. He became to feel short of breath and then began spitting up blood. He lost consciousness for approximately a week, was intubated, and suffered from severe pulmonary contusions. He recovered with no permanent partial disability, but was asking for medical bills to be paid in the amount of \$138,000.

Different physicians gave various opinions. One doctor noted that the claimant did not sustain any trauma and that there was minimal exertion involved when he was subduing the inmate; however, there was evidence that the claimant fell to the ground during the takedown so there was a conflict as to whether this was actually “minimal exertion.” The case really rested on the testimony of Dr. Koprivica who used these words: “Claimant had an underlying hypertensive cardio myopathy identified as far back as 2005. Nevertheless, the prevailing factors precipitating the specific events were the unexpected emotion and physical stresses associated with restraining the offender.” The Commission found that Dr. Koprivica was indicating that the accident was the prevailing factor in precipitating the hypertensive crisis; however, this does not reach the level to prove causation. The court did not like that Dr. Koprivica said the accident was the prevailing factor precipitating his injury. Instead, they wanted him to say that it was the prevailing factor in causing his resulting treatment and disability. They also didn't like the fact that Dr. Koprivica identified extreme exertion, but the claimant testified that it was only minimal exertion. This case also shed some insight on *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511 (Mo.App. W.D. 2011) which outlined that the prevailing factor requirement does not apply when a medical condition is at issue. The court determined that the claimant was first required to establish that his accident was the prevailing factor in causing his hypertensive crisis, which he failed to do.

Lease/Lessor/Lessee

Missouri Dept. of Soc. Services v. Beem
October 15, 2015

ALJ – Awarded benefits
LIRC – Awarded benefits
Western District – Affirmed

Claimant worked for Department of Social Services and was allowed to take a 15 minute break in the morning and afternoon, during which time she was allowed to leave the premises. On her break, she went home to let her dog out, exiting the building and walking across the parking lot where she slipped on snow and ice. The employer argued that it did not arise out of and in the course of employment and that she was on break, and that the extension of premises doctrine did not apply because DSS did not control the parking lot. The court applied the extended premises doctrine taken from the *Scholastic* case which said that an injury arises out of and in the course of employment if it occurred on the premises that is owned or controlled by the employer, and if that portion of the premises was part of the customary or expressly acceptable route or means for employee to get in and out of their place of work. The court also noted the *Viley* case mentioned above. Here, DSS leased the parking lot along with the office building where Ms. Beem worked, with language stating that the lessor agreed to provide 23 parking spaces and that the lessor agreed to direct and pay for removal of snow and ice from the sidewalk and parking area to provide and pay for general lawn care. The lease also provided that DSS had the right to transfer its interest in the lease, including the parking lot, to other government entities without the lessee's approval. The court concluded that this lease provided very limited retention of control to the lessor and granted use of the lot to only DSS without explicitly reserving for itself any particular rights as to the lot. The possibility that the lessor could move the parking spaces within a reasonable distance did not show that DSS did not control the lot.

The equal exposure aspect of this case was a slam dunk and that the focus is not on what the employee was doing at the time of the injury but rather the risks source of the injury. They easily concluded that she was not equally exposed to the risk of walking on this icy parking lot.

What can employers do to protect their liability when negotiating a lease with an employer?

Sit down!

Wright v. Treasurer of Mo., 2015 Mo.App. Lexis 1159
November 10, 2015

ALJ – Compensable
LIRC – Compensable
Easter District – Compensable

Mr. Wright was on break in the lunchroom when he fell because the chair broke underneath him. Mr. Wright settled with the employer, but SIF took up the issue of accident and course and scope in his permanent total disability case. The commission had determined that the claimant was not equally exposed to the risk of this particular chair in his non employment life and that he did not have to prove that he was not working at the time of the incident. Again, the court concluded that the focus was on the particular risk of injury rather than on the employee's particular action at the time of the injury. Whether or not the action the employee is taking is something he may or may not do outside of work is less important than the risk of injury from that action itself. While the personal comfort doctrine was abrogated in 2005, this court noted that had the legislature wanted it to abrogate the personal comfort doctrine to apply only when an employee is performing specific work duties, they would have done so explicitly.

Would it matter if the claimant had broken chairs all over his house?

Why are you falling?

Gleason v. Treasurer of the State of Missouri 45 S.W.3d 494

March 3, 2015

ALJ – Denied

LIRC - Denied

Western District – Overturned and awarded benefits

Mr. Gleason did not know exactly what caused him to fall, but he was inspecting rail cars and was standing on top of one which was approximately 20 to 25 feet off of the ground. He had no memory of the circumstances leading up to the fall or the fall itself.

While the Commission was stuck on the fact that the claimant did not know why he fell, the appellate court did not care about this question. The Commission expressly found that the fall from this height is what caused Gleason's injuries, so the "risk source" is the activity which caused his injuries, which was falling 20 to 25 feet to the ground. They found that being this far off the ground as not a risk he was equally exposed in his non employment life. This differs from previous cases where a person is walking on level ground. The Second Injury Fund tried to argue that the "why" is important to prevent recovery from idiopathic causes. The court rejected this argument and pointed to *Johme*.

What if he was 10 feet off the ground? What if he was 5 feet off the ground? What if he was 2 feet off the ground?