

**FINAL AWARD DENYING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
by Separate Opinion)

Injury No.: 06-057985

Employee: Ruth Bailey  
Employer: Phelps County Regional Medical Center  
Insurer: Liberty Mutual Insurance Co.

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, heard oral arguments and considered the entire record. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 21, 2009, by issuing a separate opinion denying compensation in the above-captioned case.

**I. Issue**

The dispositive issue is whether or not employee sustained injury due to an accident arising out of and in the course of employment. The injury occurred January 15, 2006, consequently, the Workers' Compensation Law, as amended in 2005, governs the instant case.

**II. Facts**

The facts were accurately recounted in the award issued by the administrative law judge. Repetition of the facts in the instant award is done so for special emphasis supporting the Commission's conclusions.

The facts which are of special emphasis to the Commission are as follows: on direct examination employee testified and described her injury as occurring in the following manner:

- Q. Okay. If you would, I'd like to ask you to tell the judge here today as detailed account as you can give of the lead-up to the incident and sort of what happened to you, and where you had been and where you were going, that kind of thing.
- A. I was in a patient's room with one of the nurses. I'm not exactly sure what we were doing to the patient, but I had gone in there with her to assist her, or she was to assist me.

We came out of the hall and started to walk back to the nurses' station, and in the meantime as I – while I was in the patient's room I received a call to come to the nurses' station.

And so as we left the nurses' station I was walking down the hallway and my foot just stopped. I had nursing shoes on with a rubber sole. And it was like it caught on something sticky on the floor, or something

Employee: Ruth Bailey

- 2 -

to that affect, and my foot just stopped. And I took another step and my knee just totally gave out. I was close enough to the wall to grab the guardrail or I think I would have fallen. And I was in severe pain for just a few minutes, and it gradually lessened.

Then I – just before I started on up to the nurses' station one of the other nurses came out of another room and asked me what had happened, and I said, well, my knee popped. Because you – you actually could have heard the popping sound. In fact, the other nurse that was with me heard it pop. And I said, I don't know for sure what happened. And I went on up to the nurses' station then and – to see what was going on. (Tr. 12-13)

On cross-examination employee admitted that she gave accurate histories to her treating physicians as to how her injury occurred. (Tr. 28)

On January 20, 2006, employee presented to her family physician, Dr. Sievers, and employee gave the following history to Dr. Sievers:

Ruth presents today with pain in her right knee that began down the hall the other day at work. She was just walking when all of the sudden she felt a pop in her knee, since then its been swollen. (Tr. 165)

Dr. Sievers referred employee to an orthopedist, Dr. Weissfeld. Employee's initial visit was February 16, 2006, and the following history was given:

The patient is a 56 year old female who presents for initial orthopedic consultation regarding right knee pain present since 1/14/06. She is being seen at the request of her PCP, Dr. Karlynn Sievers. Patient states that while walking down a hallway at work at the hospital the right knee "popped out of place." (Tr. 152)

The operative report of Dr. Weissfeld, dated March 8, 2006, contains the following history:

The patient is a 57 year old female with right knee pain that she says has been present only since early this year. She states that walking down a hallway while working at the hospital, her knee "popped out of place." (Tr. 100)

### III. Relevant Statutes

As of the date of this accident § 287.120.1 RSMo, as amended in 2005, provided, in pertinent part, as follows:

Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions

Employee: Ruth Bailey

- 3 -

of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment, . . .

The definitions of both accident and injury were significantly changed in the 2005 legislation. The definitions are set forth in § 287.020.2 RSMo and § 287.020.3 RSMo, and are as follows:

2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable;

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition;

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

In addition to these definitions the legislature also provided the following additional legislation contained in § 287.020.10 which is as follows:

Employee: Ruth Bailey

- 4 -

In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of “accident”, “occupational disease”, arising out of”, and in the course of the employment” to include, but not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W. 3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo. banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo. banc 1999) and all cases citing, interpreting, applying, or following those cases.

#### IV. Findings of Facts and Conclusions of Law

Due to the extensive changes made to the Workers' Compensation Law by the General Assembly in 2005, the Commission is of the opinion that it is imperative that the basic premise of the Workers' Compensation Law be first considered, prior to reaching conclusions pertinent to the instant case.

Among its many features, the Workers' Compensation Law provides: (1) benefits to employees who sustain personal injury by accident arising out of and in the course of employment; and (2) negligence and fault are largely immaterial. See § 287.120.1 RSMo.

The construction of the phrase “arising out of and in the course of employment” historically has been broken in half, resulting in a two-prong test, with the “arising out of” portion construed to refer to causal origin, and the “course of employment” portion to the time, place and circumstances of the accident in relation to the employment. The substantive provisions of § 287.120.1 were not changed or amended by the 2005 enactment of the General Assembly.

Pursuant to this statute, proof of a compensable injury requires not only establishing that it occurred at a particular place, and at a particular time (the “in the course of” component) the injury must also be causally connected to some risk or hazard of the job (the “arising out of employment” component).

The second prong of the above mentioned two-prong test, whether the injury arose “in the course of” employment, is not in dispute in the instant case. The injury occurred within the period of employment at a place where the employee could reasonably be expected and while engaged in the furtherance of the employer’s business.

The first prong, “arising out of,” the test primarily concerned with causal connection, is the dispositive issue in this case.

Historically, at a minimum, our courts have required a showing that the employee’s injury was caused or due to a risk of employment. Missouri cases have uniformly held that an accident and resultant injury “arise out of” the employment when there is a causal connection between the conditions under which the work was required to be performed and the resulting injury. The injury “arises out of” the employment so long as the injury was a rational consequence of a hazard connected with the employment.

Employee: Ruth Bailey

- 5 -

Generally speaking, all risks causing injury to an employee can be brought within three categories: risks distinctly associated with the employment; risks personal to the employee; and “neutral risks”, i.e., risks having no particular employment or personal character. Harms from the first category are universally compensable; harms from the second are universally non-compensable; and harms from the third result in controversy.

Various lines of interpretation of the phrase “arising out of” have historically risen of which three are the increased risk doctrine, the actual risk doctrine and the positional risk doctrine.

The increased risk doctrine, in summary fashion, requires that the distinctiveness of the employment risk can be contributed by the increased quantity of a risk that is qualitatively not peculiar to the employment.

As to the actual risk doctrine, whether the risk was also common to the public is of no concern, if it were a risk of the employment. The employment subjected employee to the actual risk that caused the injury.

The positional risk doctrine determines that an injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed employee in the position where he was injured.

Consequently, since risks distinctly associated with the employment fall readily within the increased risk doctrine, they are considered to arise out of the employment. As to risks personal to an employee, the origins of harm are personal and cannot possibly be attributable to employment.

However, neutral risks are defined as being neither distinctly employment nor distinctly personal in character. Furthermore, the cause is unknown, unexplainable or happenstance; known, but not associated with employment or the employee personally. In these types of risks, an award of benefits can only be justified by accepting the but, for reasoning of the positional risk doctrine.

As previously mentioned, the legislature, in 2005, redefined the words accident and injury. See §§ 287.020.2 and 287.020.3. In addition the legislature specifically abrogated certain earlier case law interpretations concerning the meaning of accident, arising out of and in the course of employment. See § 287.020.10 RSMo. All three of the cases referred to in the statute that were abrogated have one component in common, i.e., it was difficult, or impossible, to ascertain where or if the employment subjected the employee to some risk or hazard greater than that to which an employee regularly experiences in everyday life. In other words, there was no rational connection between the employment and the injury.

In the instant case, the Commission finds and concludes that employee’s injury occurred in the following manner: while walking down a hallway at work at the hospital, employee’s right knee “popped out of place.” This finding is based on the consistent

Employee: Ruth Bailey

- 6 -

histories, contained in the treating medical records of Dr. Sievers and Dr. Weissfeld, given these physicians by employee, contemporaneous with the event. The Commission finds that employee's self-serving testimony at trial more than three years after the injury, which is unsupported and uncorroborated, is not as credible or reliable as in her own words, the accurate histories she gave to her treating physicians at or near the time of the event. The Commission does not find credible or reliable employee's trial testimony that her foot stopped or stuck to the floor immediately prior to injuring her right knee. The Commission finds the most credible version of what transpired is that employee was walking down a hallway at work and her right knee simply "popped out of place."

The burden rests upon the employee to show some direct causal connection between the injury and the employment. An award of compensation may be issued if the injury were a rational consequence of some hazard connected with the employment. However, the employment must in some way expose the employee to an unusual risk or injury from such agency which is not shared by the general public. The injury must have been a rational consequence of that hazard to which the employee has been exposed and which exists because of and as a part of the employment. It is not sufficient that the employment may simply have furnished an occasion for an injury from some unconnected source.

The Missouri Supreme Court (Supreme Court) has recently addressed the above mentioned statutory changes in 2005 in the case of *Miller v. Missouri Highway and Transportation*, 287 S.W.3d 671 (Mo. banc 2009). The facts are extremely similar to the instant case. The employee, Miller, was working at a construction site, and in the course of his employment, he was walking toward his truck which contained repair material, when he felt a pop in his knee. The Supreme Court held as follows at page 674 of its opinion:

The meaning of these provisions is unambiguous. An injury will not be deemed to arise out of employment if it merely happened to occur while working but work was not a prevailing factor and the risk involved – here, walking – is one to which the worker would have been exposed equally in normal non-employment life. The injury here did not occur because Mr. Miller fell due to some condition of his employment. He does not allege that his injuries were worsened due to some condition of his employment or due to being in an unsafe location due to his employment. He was walking on an even road surface when his knee happened to pop. Nothing about work caused it to do so. The injury arose during the course of employment, but did not arise out of employment. Under sections 287.020.2, .3 and .10 as currently in force, that is insufficient.

In the instant case, due to fact that the injury sustained was due to employee's right knee happening to pop, the Commission cannot establish a causal connection between the conditions under which the employee was performing her work, and her resultant injury. There is a lack of evidence that anything concerning her employment caused her right knee to pop and be injured. As stated by the Supreme Court, an injury will not be

Employee: Ruth Bailey

deemed to arise out of employment if it merely happens to occur while working and the work was not a prevailing factor and the risk involved, walking, is one to which the worker would have been exposed equally in normal non-employment life. There must be proof greater than the fact that the conditions and obligations of the employment placed employee in the position where she was injured. An employee must satisfy the concept of causation, i.e., establishing some rational connection between her work and injury sustained. The credible evidence does not support a finding that anything involved at work caused her right knee to pop. Accordingly, the element of proof needed to establish that the injury arose out of her employment is lacking.

V. Conclusion

In conclusion, employee has presented to the Commission a resultant injury due to her feeling her right knee popped out of place while walking down a hallway at work. In so doing, employee has failed to prove that the resultant injury arose out of her employment since there is lack of proof of a rational connection between the accident, the injury and the employment. Employee's claim for benefits is denied since employee has not sustained the burden of proof that her injury was due to an accident arising out of and in the course of her employment. Section 287.120.1 RSMo.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued May 21, 2009, is attached, but her findings and conclusions are not to be construed as being incorporated by this reference.

Given at Jefferson City, State of Missouri, this 7<sup>th</sup> day of January 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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DISSENTING OPINION FILED  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

Employee: Ruth Bailey

### **DISSENTING OPINION**

I must respectfully dissent from the award and decision of the majority of this Commission affirming the award and decision of the administrative law judge. I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

I find credible employee's testimony that her foot suddenly stopped on the hallway floor, and that her knee popped when she took her next step. None of the medical records contradict employee's testimony. The description of the accident employee provided Dr. Poetz matches her trial testimony. The records of the treating physicians are consistent with the accident she described at trial. Dr. Sievers notes support her version of events: "Ruth presents today with pain in her right knee that began down the hall the other day at work. She was just walking when all of the sudden she felt a pop in her knee,..." Dr. Weissfeld's history agrees, as well: "Patient states that while walking down a hallway at work at the hospital the right knee 'popped out of place.'"

The majority places much emphasis on the fact that the treating doctors did not notate that employee's foot stuck the step *before* her knee popped. It is easy for us to review the medical records after the fact and say, "Aha! She did not tell her doctor her foot stuck before her knee popped." But that does not make employee's testimony untruthful. Employee was seeing the doctors to seek treatment for her knee. Not surprisingly, employee was most concerned with describing the popping of her knee, not what happened immediately before the popping. Perhaps if the diagnostic imaging had not immediately revealed the injury, the treating physicians would have had occasion to question employee in more detail about the mechanics of the incident. But such inquiry was not needed in this instance where the damage was plain and the treatment obvious.

Maybe employee reported that her foot stuck and the treating staff simply did not record it. Medical professionals do not record all information they receive from patients, even information they do not deem medically relevant. Should we put the burden on patients to contemporaneously review medical records and demand corrections while undergoing treatment?

The holdings in *Bivins*<sup>1</sup> and *Miller*<sup>2</sup> are inapplicable here. In those cases, the injured workers could not identify any risk associated with employment that gave rise to their injuries. Here, employee clearly and credibly identified that her foot stuck on something sticky on the floor. Employee has established she sustained an accident.

The majority places too great a burden on employees to understand at the time of their medical treatment the intricacies of a new Workers' Compensation Law that we

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<sup>1</sup> *Bivins v. St. John's Reg'l Health*, 272 S.W.3d 446 (Mo. App. 2008).

<sup>2</sup> *Miller v. Mo. Highway & Transp. Comm'n*, 287 S.W.3d 671 (Mo. banc 2009).

Employee: Ruth Bailey

- 2 -

ourselves have not yet mastered. This new Law is curious and complex. The original vision of the Workers' Compensation Law was to create a simple system to provide speedy medical treatment and income replacement to workers injured on the job while providing employers certain liability by relieving them of exposure to civil suits for qualifying injuries. Simple and speedy have left the system. It seems now an employee has to understand medical causation and legal causation as well as police her own medical records, lest her version of events be discounted.

As to the notice issue, I believe employee promptly told Ms. Ricker about her injury and that it occurred at work. I do not believe that she told Ms. Ricker emphatically that the injury occurred outside the workplace while reporting to two physicians on employer's service that the injury occurred at work.

I respectfully dissent from the decision of the majority of the Commission. I believe employee sustained a knee injury by accident that arose out of and in the course of her employment after employee's foot stuck on employer's floor while employee was performing the usual and customary duties of her job. I would award past medical expenses and permanent partial disability in the amounts stipulated by the parties at trial.

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John J. Hickey, Member

## AWARD

Employee: Ruth Bailey Injury No. 06-057985  
Dependents: N/A  
Employer: Phelps County Regional Medical Center  
Additional Party: N/A  
Insurer: Liberty Mutual Insurance Company  
Hearing Date: 1/26/09 & 2/25/09 Checked by: MEH

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? NO
2. Was the injury or occupational disease compensable under Chapter 287? NO
3. Was there an accident or incident of occupational disease under the Law? NO
4. Date of accident or onset of occupational disease: ALLEGED 1/15/06
5. State location where accident occurred or occupational disease was contracted: PHELPS COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? NO
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
CLAIMANT WAS WALKING DOWN HALL AND KNEE POPPED.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
14. Compensation paid to-date for temporary disability: NONE
16. Value necessary medical aid paid to date by employer/insurer? NONE

Employee: Ruth Bailey

Injury No. 06-057985

- 17. Value necessary medical aid not furnished by employer/insurer? NONE
- 18. Employee's average weekly wages: \$396.11
- 19. Weekly compensation rate: \$264.07
- 20. Method wages computation: BY AGREEMENT

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: SEE AWARD

Unpaid medical expenses: NONE

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

- 22. Second Injury Fund liability: Yes    No     Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:  
weekly differential (0) payable by SIF for 0 weeks, beginning N/A  
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

- 23. Future requirements awarded: NONE

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

JAMES LOGAN

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Ruth Bailey Injury No. 06-057985  
Dependents: N/A  
Employer: Phelps County Regional Medical Center  
Additional Party: N/A  
Insurer: Liberty Mutual Insurance Company  
Hearing Date: 1/26/09 & 2/25/09 Checked by: MEH

The parties appeared before the undersigned administrative law judge on January 26, 2009, and February 25, 2009, for a final hearing. The claimant appeared in person represented by James Logan. The employer and insurer appeared represented by Todd Beekley. Memorandums of law were filed by March 18, 2009.

The parties stipulated to the following facts: On or about January 15, 2006, Phelps County Regional Medical Center was an employer operating subject to The Missouri Workers' Compensation Law. The employer's liability was fully insured by Liberty Mutual Insurance Company. On the alleged injury date of January 15, 2006, Ruth Bailey was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. The parties agree that on or about January 15, 2006, the claimant sustained an injury.

This employment occurred in Phelps County, Missouri. The Claim for Compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$396.11, which is sufficient to allow a compensation rate of \$264.07 for temporary total and permanent partial disability compensation. No temporary disability benefits have been paid. The employer and insurer have paid no medical benefits. The attorney fee being sought is 25%. The parties agree that medical bills

have been incurred by the claimant in the amount of \$10,320.15 and this is the amount the employer would owe if the case is found compensable. The parties agree that the claimant has incurred a permanent partial disability to her knee of 30%, and if the case is found compensable, the employer would owe \$12,675.36, based upon this disability.

#### ISSUES:

1. Whether the claimant gave the employer proper notice.
2. Whether the claimant sustained an accident which arose out of the course and scope of employment.
3. Whether the employer is obligated to pay past medical expenses of \$10,320.15.
4. Whether the employer is responsible for permanent disability in the amount of 30% of the knee.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The claimant worked for the employer in the oncology wing of the hospital. She was a PCA, very similar to a certified nurses' assistant. Her duties included assisting patients with personal care, such as, using the bathroom, bathing, and dressing. She also helped them with meals and medications as well as anything else specifically requested by a nurse.

On January 15, 2006, she was in a patient's room when she received a call to report to the nurses' station. She was wearing nurses' shoes. When she came out of the room, she was walking briskly down the hall when her foot suddenly stopped on the floor. She was not carrying anything. She did not trip, slip, or fall. Rather, she described it as her foot "stuck." Claimant heard a pop and her knee gave way. She grabbed the guardrail on the wall and did not fall down. She described experiencing severe pain. Donna McGowan, a nurse, was with her when it occurred. Vicky Allan, another nurse, was coming down the hall and stopped to inquire about what happened.

The floor was tiled with commercial tile. She testified that it was like something on the floor was sticky. While she felt like something had been spilled, she did not examine the floor at the time to determine if there was any substance or anything on the floor.

Claimant proceeded to the nurses' station. Claimant continued working and when she had a break put ice on her knee. The claimant testified that the next day she spoke with her boss, Beverly Ricker. Ms. Ricker was her supervisor on the floor. Claimant testified that she mentioned that her knee twisted over the weekend at work. She did not inform anyone above Ms. Ricker in the chain of command. Initially she did not have swelling. It occurred a few days later. There was no written incident report prepared.

Beverly Ricker testified by deposition. She is the Director of Medical Oncology at Phelps County Regional Medical Center. Ms. Ricker testified that the claimant requested a medical leave of absence and completed a Family Medical Leave Form. When she did so, Ms. Ricker asked her if it was related to an event during her work hours and claimant said that it was not. She said that she asked claimant again if it was work-related right before she went to surgery and she confirmed it was not. Ms. Ricker testified that the claimant told her both times that she had had knee problems for several years and that her condition was caused by taking care of her grandchildren.

Margaret McWilliams, the Director of Occupational Health, testified. She testified that the employer's policy is that all work-related accidents and injuries are to be reported either on paper or online. Claimant signed a new employee orientation packet which included a copy of the paper form. Ms. McWilliams said that this enables the employer to properly investigate the accidents. In this case, the employer was unaware of the injury until they received a letter from the Division of Workers' Compensation in July 2006 informing them that the claim had been

filed. She said that the employer was prejudiced by the lack of notice because they did not have the opportunity to investigate the accident or to monitor medical treatment.

Claimant worked approximately 3 weeks. She kept her knee wrapped. When claimant's pain and swelling did not resolve, she went to her family doctor, Dr. Karlynn Sievers, on January 20, 2006. Claimant gave a history of "pain in her right knee that began down the hall the other day at work. She was just walking when all of a sudden she felt a pop in her knee, since then its been swollen" Dr. Sievers recommended an MRI before referring her to Dr. Steven Weissfeld. The MRI showed a tear of the anterior horn of the lateral meniscus.

Dr. Weissfeld evaluated her on February 16, 2006. His impression was right knee pain, probable tear of the anterior horn of the lateral meniscus, rule out internal derangement, rule out small degenerative tear posterior horn medial meniscus, and primary osteoarthritis. On March 8, 2006, the claimant underwent surgery consisting of diagnostic arthroscopy, partial medial mensicectomy and partial lateral menisectomy, and arthroscopic multi-compartmental synovectomy and debridement of the right knee.

Prior to this injury, claimant has had no problems with her right knee.

In determining the compensability of this claim, there are two main issues to be addressed. First, whether claimant gave sufficient notice of the injury, and second, whether the claimant sustained an accident which arose out of the course and scope of her employment.

1. Whether the claimant gave the employer proper notice.

Section 287.420 RSMo requires written notice of an injury within 30 days of the accident unless the employer was not prejudiced by failure to receive the notice. While the claimant clearly did not give written notice, I find that the employer was not prejudiced.

2. Whether the claimant sustained an accident which arose out of the course and scope of employment.

The facts of this case are very similar to the facts presented in *Bivins v. St. John's Health Center*, 272 S.W.3d 446 (Mo.App. S.D. 2008). In *Bivins*, the claimant testified she was walking down the hall when her foot stuck to the floor causing her to fall. There was no slip or trip. She could not identify any particular object or substance on the floor causing this to occur. In *Bivins*, the court ruled that claimant's fall did not arise out of the course and scope of employment because the claimant's injury was the result of an unexplained fall.

After carefully considering all of the evidence, I find nothing in the facts of this case to distinguish it from the facts in *Bivins*. Although the claimant testified that her shoe stuck to the floor causing her knee to pop, there is no evidence that there was anything on the floor causing this to occur. I find that the claimant has failed to show that her injury did "not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life" as required by Section 287.020 .3(b). Therefore, consistent with statutory and case law, I find that the injury did not arise out of the course and scope of the claimant's employment. The claim is denied.

As a result of this ruling, the remaining issues are moot.

Date: May 21, 2009

Made by: /s/ Margaret Ellis Holden  
 Margaret Ellis Holden  
 Administrative Law Judge  
 Division of Workers' Compensation

A true copy: Attest:

/s/ Naomi Pearson  
 Naomi Pearson  
 Division of Workers' Compensation