

FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-159107

Employee: Theodis Brown  
Employer: Department of Mental Health (Alleged)  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: May 27, 2002 (Alleged)  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 20, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued November 20, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10th day of March 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-159108

Employee: Theodis Brown  
Employer: Department of Mental Health (Alleged)  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: June 6, 2002 (Alleged)  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 20, 2007, and awards no compensation in the above-captioned case.

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LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

---

Secretary

## AWARD

Employee: Theodis Brown

Injury No.: 02-159108

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Department of Mental Health (alleged)

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self-Insured

Hearing Date: September 19, 2007

Checked by:

### 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: June 6, 2002 (alleged)
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? No
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? No
10. Was employer insured by above insurer? Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant alleged that the employer sent a letter to the claimant falsely and intentionally claiming that the claimant was an employee of this employer and that the employment relationship had been previously terminated.
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: None

14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Theodis Brown

Injury No.: 02-159107

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: Not determined
19. Weekly compensation rate: \$40.00
20. Method wages computation: Per statute

#### COMPENSATION PAYABLE

21. Amount of compensation payable:

None

22. Second Injury Fund liability: No

Total:

None

23. Future requirements awarded: None

Said payments to begin immediately 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:

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: Theodis Brown

Injury No.: 02-159108

Dependents: N/A

Employer: Department of Mental Health (alleged)

Additional Party: Second Injury Fund

Insurer: Self-Insured

Before the  
**Division of Workers'**  
**Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by:

On December 12, 2005, the claimant filed an incoherent claim for compensation alleging that he suffered an injury on

May 27, 2002. On the same date, he filed a claim for compensation alleging an injury on June 6, 2002. The claimant's employment with this employer terminated on May 27, 2002, according to the claimant's testimony. He testified that the employer sent him a letter on May 27, 2002, stating that the claimant was an employee of the employer. He testified that the employer sent him a letter on June 6, 2002, stating that the claimant was an employee of the employer. The claimant testified that his employment with this employer was terminated before the letters were written and sent. He testified that he suffered emotional distress from the occurrences. He testified that the claimant filed his claims against the employer before December 12, 2005, but the Division of Workers' Compensation lost his claims. He did not produce any copies of the purported claims nor did he produce any witnesses to corroborate his allegations. He offered into evidence a copy of a letter from the St. Louis County Board of Election Commissioners regarding elections for political committees.

The defense filed a timely answer asserting that the claims were barred by the statute of limitations, because the claims were filed over three years after the alleged injury. This claim is denied, because the claimant did not timely file his claim for compensation. The claimant filed his claim for compensation three and on half years after the alleged occurrence. The statute limiting the time to file workers' compensation claims for compensation is Section 287.430, RSMo 2000:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by Section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the periods of limitation provided in this section. The filing of the report of injury or death three years or more after the date of injury, death, or last payment made under this chapter on account of the injury or death, shall not toll the running of the periods of limitation provided in this section, nor shall such filing reactivate or

revive the period of time in which a claim may be filed. A claim against the second injury fund shall be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a conservator shall be deemed the termination of the legal disability from minority or disability as defined in chapter 475, RSMo. The statute of limitations contained in this section is one of extinction and not of repose.

The claimant testified that he filed the claim before the date stamped on the document, but the Division of Workers' Compensation lost the claim. However, he offered no evidence to prove his allegation. He did not offer a copy of the claim for compensation with a date stamp on it. He did not produce testimony from the file clerk that allegedly received the claim. He did not even state the dated that he allegedly filed the claim. The claimant offered no corroboration beyond his own self-serving testimony.

Based on the evidence presented, the claim for compensation is denied, because it is barred for failure to timely file a claim for compensation under Section 287.430, RSMo 2000.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-131153

Employee: Theodis Brown  
Employer: St. Louis County Government (Alleged)  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Voluntarily Dismissed)  
Date of Accident: November 18, 2005 (Alleged)  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 20, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued November 20, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10th day of March 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Theodis Brown

Injury No.: 05-131153

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: St. Louis County Government (alleged)

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund (Voluntarily Dismissed)

Insurer: Self-Insured

Hearing Date: October 16, 2007

Checked by:

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
3. 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
6. Date of accident or onset of occupational disease: November 18, 2005 (alleged)
7. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? No
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
10. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant alleged that he suffered an injury from defending an ordinance violation case initiated against the claimant by the alleged employer and prosecuted by the alleged employer.
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: None
15. Nature and extent of any permanent disability: None

15. Compensation paid to-date for temporary disability: None  
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Theodis Brown

Injury No.: 05-131153

17. Value necessary medical aid not furnished by employer/insurer? None  
19. Employee's average weekly wages: Not determined  
19. Weekly compensation rate: \$40.00  
20. Method wages computation: Per statute

### COMPENSATION PAYABLE

21. Amount of compensation payable:

None

22. Second Injury Fund liability: No

Total:

None

23. Future requirements awarded: None

Said payments to begin immediately 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:

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Theodis Brown

Injury No.: 05-131153

Dependents: N/A

Employer: St. Louis County Government (alleged)

Additional Party: Second Injury Fund (Voluntarily Dismissed)

Insurer: Self-Insured

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by:

On December 12, 2005, the claimant filed an incoherent claim for compensation alleging that he suffered an injury on November 18, 2005. On January 23, 2006, the alleged employer filed an answer denying the claim and denying that the claimant was ever an employee of the alleged employer.

The claimant contends that he suffered stress from defending a zoning ordinance violation case filed by the alleged employer and prosecuted by the alleged employer. The defense contends that the claimant was not an employee of the alleged employer at the time of the occurrence. The claimant testified and offered various documents to establish that he was the St. Ferdinand Township Committeeman for the Libertarian Party on the date of the occurrence, and that in October 1997 he served as a volunteer for the St. Louis County Older Resident Program Operation SAFE inspecting houses and providing recommendations. He also offered a copy of minutes from other litigation with the alleged employer and a copy of Form WC-G-11 (01-06). The defense offered a copy of the claim for compensation filed by the claimant, a copy of the court records from the zoning ordinance enforcement case in St. Louis County, a listing of non-merit and merit system positions in St. Louis County and various web pages from the St. Louis County Board of Election Commissioners.

### **SUMMARY OF EVIDENCE**

The evidence shows that the claimant served as a volunteer for the St. Louis County Older Resident Program Operation SAFE inspecting houses and providing recommendations in October 1997 and that he served as the St. Ferdinand Township Committeeman for the Libertarian Party on the date of the occurrence. See Exhibits B, C, D, E, F, G, H, and 4. Neither of these positions is a merit or non-merit position with the St. Louis County Government. See Exhibit 3.

On the date of the occurrence, the claimant was defendant in a St. Louis County Municipal Court zoning ordinance violation case bearing Case Number 04NM-16524c. See Exhibit 2. The information charged that the claimant violated the county zoning ordinances on November 4, 2004, by allowing an "inoperable yellow fire truck parked on residential property." See Exhibit 2. The claimant requested a trial by jury. On November 18, 2005, the court minutes reflect:

Caused called for pretrial conference, defendant appears pro se. St. Louis County appears by Luke Meiners. Upon oral agreement of parties, cause set for jury trial January 17, 2006, at 9 am. Defendant to notice all motions for hearing on any Tuesday or Thursday at the South Division at 7 pm or any Tuesday or Thursday at Division 46/47 at noon. Defendant's oral motion to disqualify Judge is denied. See Exhibit 2.

### **ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**

The claimant has the burden to establish that he has sustained an injury by accident arising out of and in the course of her employment, and the accident resulted in the alleged injuries. Choate v. Lily Tulip, Inc., 809 S.W.2d 102, 105 (Mo.App. 1991).

Claimant must establish a causal connection between the accident and the injury. Claimant does not, however, have to establish the elements of her claim on the basis of absolute certainty. It is sufficient if she shows them by reasonable probability. "Probable means founded on reason and experience which inclines the mind to believe but leaves room for doubt." The Commission's awards on disability claims are not solely dependent on medical evidence given by expert witnesses, but its findings are to be judged on the basis of the evidence as a whole. The testimony of the claimant, or other lay witnesses, as fact within the realm of lay understanding can constitute substantial evidence of the nature, cause and extent of the disability, especially when taken in connection with, or where supported by, some medical evidence. The Commission is authorized to base its findings and awards solely on the testimony of the claimant; her testimony alone, if believed, constitutes substantial evidence. Fischer v. Archdiocese of St. Louis, 793 S.W.2d 195, 198, 199 (Mo.App. 1990).

However, there are statutory limitations on compensability:

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 ... the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. An injury arise[s] 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. Section 287.020, RSMo Supp 2005.

This case raised two significant issues. First, was the claimant an employee of the alleged employer and suffer an accident arising out of and in the course of his employment. Second, did the alleged stress that the claimant testified that he suffered qualify as a compensable job related stress injury under Section 287.120, RSMo 2000.

While the claimant alleges that he was an employee of the St. Louis County Government on the date of the alleged occurrence, the evidence compels a finding that he was not an employee of the St. Louis County Government on the date of the occurrence. The claimant may have been a volunteer for the St. Louis County Government in October 1997 in the County Older Resident Program Operation SAFE program, but he failed to prove that he was still involved in that program on the date of the occurrence. The claimant clearly established that he was the St. Ferdinand Township Committeeman for the Libertarian Party on the date of the occurrence. However, he did not prove that this constitutes the status of an employee of the St. Louis County Government. Political committees are created under Section 115.603, RSMo 2000. The purpose of a political committee is “representing and acting for the party in the interim between party conventions.” Section 115.605, RSMo 2000.

The term “employee” is defined in 287.020.1, RSMo 2000, as amended, as “every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. ...”

The claimant, an elected committeeman for the Libertarian Party, proved no employment status with the St. Louis County Government as of the date of the occurrence.

In reviewing the activities of the claimant on the date of the alleged occurrence, the claimant did several activities. First, he was defending a zoning ordinance violation in the St. Louis County Municipal Court. His capacity as a defendant appears to be as an individual not as an employee of any other employer or organization. Second, he agreed to a trial by jury and he unsuccessfully moved to disqualify the Municipal Court Judge. Third, the zoning ordinance violation revolves around allowing an “inoperable yellow fire truck parked on residential property.”

The claimant did not establish any connection between his volunteer work for the St. Louis County Older Resident Program Operation SAFE inspecting houses and providing recommendations in October 1997 with the events of the alleged occurrence on November 18, 2005. Nor did he establish any connection between his role as the St. Ferdinand Township Committeeman for the Libertarian Party with the alleged occurrence on November 18, 2005. The activities on the date of the occurrence on November 18, 2005, are far too remote from the claimant’s employment in October 1997 to meet the test of arising in the course of the claimant’s employment. In fact, the nature of the litigation appears to suggest that the activity revolve around the alleged employer’s prosecution of the claimant for allegedly wrongful use of land. The alleged employer instructed the claimant to be at the location for the purpose of pursuing a legal case against him, not as an employer employee relationship.

Finally, the claimant failed to establish that his mental stress meets the test for compensability under Section 287.120, RSMo 2000, as amended:

8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

The claimant offered no evidence to establish any stress injury existed, that any stress was work-related, and that any stress was extraordinary and unusual. Further, the claimant did not offer any measurement of the alleged stress by objective standards and actual events. The claimant testified about other stressful events in his life including loss of his home by an alleged arsonist.

Based on the evidence presented, the claim for compensation is denied, because the claimant failed to meet his burden to prove that he suffered an injury that arose out of and in the course of employment with this employer.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
*Jeffrey W. Buker*  
*Director*  
*Division of Workers' Compensation*