

TEMPORARY AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
by Supplemental Opinion)

Injury No.: 09-106664

Employee: Catrina Capestro
Employer: Consolidated Home Health
Insurer: Missouri Employers Mutual Insurance

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence and considered the whole record and we find 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 Law, except as modified herein. Pursuant to § 286.090 RSMo¹, we issue this temporary award and decision affirming the July 23, 2010, award and decision of the administrative law judge, as supplement herein. We adopt the findings, conclusions, decision and award of the administrative law judge.

We find credible the employee's testimony that she was on her way to see patients when she fell down the stairs and sustained her injury. As a provider of home health care, traveling to see patients was an integral part of employee's job.

The disposition of this matter turns on the proper application of § 287.020.3(2) (b), which reads:

- (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.

In the instant case, employer/insurer does not dispute that the accident was the prevailing factor in causing employee's injury. Rather, employer/insurer argues that employee's claim should fall under the § 287.020.3(2) (b) because employee's injury did not come from a hazard or risk related to employment. We disagree.

Since the administrative law judge issued his decision, the Missouri Court of Appeals for Southern District provided insight into the application of § 287.020.3(2) (b).

¹ Statutory references are to the Revised Statutes of Missouri (2009).

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The question we must consider is whether Claimant's injury came "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." Section 287.020.3(2)(b). Thus, the application of this subsection of the statute involves a two-step analysis. The first step is to determine whether the hazard or risk is related or unrelated to the employment. Where the activity giving rise to the accident and injury is integral to the performance of a worker's job, the risk of the activity is related to employment. In such a case, there is a clear nexus between the work and the injury. Where the work nexus is clear, there is no need to consider whether the worker would have been equally exposed to the risk in normal non-employment life. Only if the hazard or risk is unrelated to the employment does the second step of the analysis apply. In that event, it is necessary to determine whether the claimant is equally exposed to this hazard or risk in normal, non-employment life.

Pile v. Lake Reg'l Health Sys., 321 S.W.3d 463, 467 (Mo. App. 2010).

In the instant case, the risk involved is the risk of walking on stairs. Employer argues that employee's travel in the stairwell was not related to her employment because employee was not required to go down the stairs; she could have taken the elevator. That there was an alternative way out of the building is of no consequence because the stairwell was a permissible way out of the building.²

Getting out of the building was an integral part of the performance of employee's duties. Using the stairs was a permissible method of getting out of the building. Employee's travel down the stairs was related to employee's employment. Under the rationale of *Pile*, there is no reason to discuss whether employee was equally exposed to the risk of walking down stairs in normal, non-employment life.³ The second prong of § 287.020.3(2) (b) is met; employee's injury did not come from a risk unrelated to employment.

Employee's injury arose out of and in the course of her employment. We affirm the award of the administrative law judge as supplemented herein.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

² What of the traveling worker injured after choosing the elevator as his mode of descent? We imagine employer would argue that the ride in the elevator was not related to his employment because he could have taken the stairs.

³ Employer seemingly believes the *Pile* Court looked favorably upon our comparison of Ms. Pile's work and non-work exposure. In fact, the Court criticized us for engaging in the comparison. "The analysis of the Commission should have ended [after it concluded Pile's work-related accident was the prevailing factor in causing Pile's injury] and there would be no need to discuss section 287.020.3(2) (b)." *Pile v. Lake Reg'l Health Sys.*, 321 S.W.3d 463, 467 (Mo. App. 2010).

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Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Cornelius Lane, issued July 23, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 21st day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary