

TEMPORARY AWARD ALLOWING COMPENSATION
(Reversing Award and Decision of Administrative Law Judge)

Injury No.: 05-002664

Employee: Mary DeLeon

Employer: KCI Shuttle/Axcet HR Solutions

Insurer: Lumbermens Underwriting

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: January 4, 2005

Place and County of Accident: Kansas City, Platte 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. We have reviewed the evidence, read the briefs of the parties and considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated July 18, 2005. The award and decision of Administrative Law Judge R. Carl Mueller, Jr. is attached hereto solely for reference.

I. Stipulated Issues

At the hearing before the administrative law judge the parties stipulated to the following issues: whether or not the employee sustained an injury due to an accident arising out of and in the course of her employment; and, if so, the parties agreed that a temporary award should be issued pursuant to the provisions of the Workers' Compensation Act. Employee was not requesting payment of any alleged past due benefits, but was only seeking future benefits befitting the Workers' Compensation Act, if the accident were found to be compensable.

II. Facts

Employee testified in her own behalf. Employer hired employee December 13, 2004, and her position was that of a customer service representative (CSR) at KCI Airport. As a CSR, employee's responsibilities included selling shuttle tickets, assisting customers, promoting business for KCI Shuttle, and providing information and referral services to the public. Employee was trained to assist anyone who needed help, regardless of whether or not the individual was a current KCI Shuttle customer. Employee considered all travelers at KCI Airport to be potential customers.

KCI Shuttle customer service representatives were stationed at ticket booths in each of the terminals usually near baggage carousels. Employee performed many of her functions outside of the booth, including selling tickets and assisting customers or potential customers. Each traveler/customer who purchased a KCI Shuttle ticket had to exit the terminal and walk to a "median center island" in the street adjacent to the terminal, where shuttles, such as KCI and others, were permitted to provide "curb pick-up service" for its customers.

The pick-up location was within view of employee's booth inside the terminal.

As a CSR for KCI Shuttle, in addition to employee's duty of selling tickets, tending to customers, promoting the KCI Shuttle business, employee was also required to approach potential customers/travelers and inquire if assistance was needed; whether it involved providing shuttle services, giving directions, supplying car rental information, calling a taxi, or other attendant services at the airport. Being discourteous or failing to assist potential customers at KCI Airport, regardless of whether the individual or potential customer was buying a ticket, could result in disciplinary action.

The employer's instructions to act as a resource and referral person were not just a courtesy, it was a sound business practice and was a requisite of the employment. Employee testified that she used her initiative as a resource person to educate potential customers about KCI Shuttle services through initial contact. Employee viewed any individual she came in contact with at KCI Airport as a potential customer and she testified this conduct and practice was consistent with her understanding of what her employer desired her to do in order to fulfill her job duties. In fact there were several occasions when travelers did not purchase a shuttle ticket at her initial contact and offer of assistance; but did seek her assistance and purchase shuttle tickets from her on later flights.

As pertinent to the instant case the KCI Shuttle Employee Handbook contains the following:

VI. B12. Courtesy

Courtesy and your attitude toward the people you come in contact with will influence the image, either positively or negatively, that people have of KCI SHUTTLE. Develop an attitude of helpfulness toward customers, fellow workers, and supervisors. Courtesy is the key to good human relations.

VI. D2. Definitions

Company Property is defined as all facilities, land, building, and automobiles owned, leased, or used by the company. It also includes other work locations, or travel to and from those locations, while in the scope and course of employment.

VI. E. Closing Statement about Conduct

In addition to the conduct listed on the preceding pages, other types of conduct injurious to security, personal safety, employee welfare and the Company's operations and any other activity, conduct or omission which, in the opinion and judgment of management, is not in the best interests of the Company is also prohibited and may result in discipline, including termination.

On January 4, 2005, employee was working as a CSR for KCI Shuttle at KCI Airport. On that day, an ice storm hit Kansas City, causing delays in traffic both on land and air. Employee initially noticed delays in the flights at KCI Airport when she arrived at work at 3:30 p.m. By 4:00 p.m., employee noticed that many flights were cancelled and by 5:00 p.m. all flights had been cancelled and basically the airport was shutdown.

Despite the cancellations employee continued to work outside her booth promoting KCI Shuttle, but selling few tickets due to the lack of any incoming flights.

During this time frame, employee noticed an elderly woman in a wheelchair attempting to use a courtesy telephone located approximately five feet from her booth. Employee approached the elderly lady to offer

assistance. In so doing, employee informed the elderly lady that she was affiliated with KCI Shuttle, and her company could offer her shuttle services if she needed transportation. However, the elderly lady indicated that she was interested in staying at a hotel in close proximity to the airport, since hotels in close proximity provided free shuttles.

At the request of the elderly lady, employee used the courtesy phone, and made arrangements for Super 8 Motel to provide shuttle service for the lady. Employee informed the Super 8 Motel representative that when the shuttle arrived, special assistance would need to be provided since the lady was confined to a wheelchair.

The Super 8 Motel representative requested that employee please arrange for the elderly lady to be at the curbside pickup as their shuttle driver would not be able to enter the airport terminal to provide assistance. Employee indicated that she would watch for the arrival of the Super 8 Motel shuttle and assist the elderly lady to the shuttle's curbside pick-up.

Employee also testified that while she was handling these arrangements on the courtesy phone, she was wearing her company vest, which portrayed her name and her employer's name, KCI Shuttle. Employee testified that several people commented how "sweet" and "nice" her conduct was in assisting the elderly lady.

Approximately two hours later the Super 8 Motel shuttle arrived and employee assisted the elderly lady in the wheelchair to the center island, which was the location of the shuttle's curbside pick-up. Also, this is the same curbside pick-up location for employee's employer, KCI Shuttle, and employee testified that six of her KCI Shuttle passengers were also waiting for her company's shuttle. The injury to the employee occurred at the curbside pick-up, i.e. the median island, when the employee slipped and fell.

The only additional witness was Ms. Cindy Petifurd, who testified in behalf of the employer. Ms. Petifurd is the airport manager for KCI Shuttle. Ms. Petifurd described the job duties and responsibilities of a customer service representative of KCI Shuttle. Basically Ms. Petifurd testified that a CSR provides customer service to travelers, principally selling tickets for shuttle service. The sales occur at booths located near baggage carousels at the airport.

Ms. Petifurd testified that a CSR is responsible for keeping track of arriving flights; when a flight arrives, the CSR is to be either in the assigned booth or near the booth when potential customers approached the baggage carousel area; the CSR is to remain in that area to approach customers and answer questions concerning possible shuttle service; Ms. Petifurd agreed that there were courtesy phones near the booth area for travelers to utilize to obtain rental cars, taxis, economy parking, etc., and Ms. Petifurd agreed that a CSR should assist any of these potential customers in the use of the courtesy phones as well as answering questions and giving directions; although Ms. Petifurd testified that the CSR is to stay in the "booth area" so that if there are any KCI Shuttle customers or if there is a need to sell a ticket a CSR must be available and in the booth to sell the ticket; Ms. Petifurd testified that a CSR is to be courteous and polite to all individuals; but she further testified that she did not want a CSR leaving an assigned "booth area" to assist individuals using competitors' shuttles.

On cross-examination Ms. Petifurd agreed that potential customers should be treated with the utmost respect, as they could be future customers and clients of KCI Shuttle; and as to the events occurring on January 4, 2005, Ms. Petifurd agreed that employee acted appropriately when she offered to sell the elderly lady a ticket with the KCI Shuttle; Ms. Petifurd also agreed that employee acted appropriately when she assisted the elderly lady in obtaining shuttle services with Super 8 Motel; and it was also appropriate for the employee to inform the Super 8 Motel representative that the elderly lady would need assistance when the shuttle arrived. However, Ms. Petifurd testified that employee should not have offered to take the woman in

the wheelchair to the median at the curbside pick-up; she reasoned that the median was outside of the “booth area” although Ms. Petifurd further testified that employee had never been informed that the median area was not part of her “booth area”; and Ms. Petifurd did not and could not define the “booth area.”

III. Legal Conclusions

The administrative law judge, analyzing this case pursuant to the “mutual benefit doctrine”, concluded that the employee did not sustain an injury due to an accident arising out of and in the course of her employment. The Commission disagrees. Section 287.120.1 provides in pertinent part: “every employer ... shall be liable to furnish compensation ... for personal injury ... of employee by accident arising out of and in the course of his employment.”

Simply put, “arising out of” means whether the conditions of employment caused or contributed to cause the accident. “In the course of employment” refers to the time, place and circumstances of the injury.

In awarding benefits in this case, and reversing the decision of the administrative law judge, the Commission does not necessarily pigeonhole this case as one governed by the principles of the “mutual benefit doctrine,” as developed below.

Under the mutual benefit doctrine, an injury suffered by an employee while performing an act for the mutual benefit of the employer and the employee is compensable when some advantage to the employer results from the employee’s conduct. For the doctrine to apply the employee must suffer an injury while engaged in activity for the mutual benefit of the employer and employee even if it is the slightest benefit. *Cruzan v. City of Paris*, 922 S.W.2d 473 (Mo. App. E.D. 1996).

In the case of *Blades v. Commercial Transport, Inc.*, 30 S.W.3d 827 (Mo. banc. 2000), the Supreme Court of Missouri set forth the general guiding principles of the mutual benefit doctrine as follows:

“Each case turns on its own facts under the mutual benefit doctrine. The test is not whether any conceivable benefit to the employer can be articulated no matter how strained, but whether the act that resulted in the injury is of some substantive benefit to the employer. That is not to say the benefit needs to be tangible or great. ... but the benefit cannot be so remote that it deprives the mutual benefit doctrine of meaning.”

Page 831

“However, when an employee’s injury occurs off the employer’s premises, when the employee is not exposed to any special hazard associated with employment, where the employer has not by words or conduct encouraged the employee’s act and has no knowledge of the employee’s act, and where the benefit to the employer is speculative, remote and attenuated, the mutual benefit doctrine is inapplicable.”

Page 831

“The applicability of the doctrine turns on the facts of each case.”

Page 829

However, in the instant case, the Commission is not convinced employee’s conduct was an activity mutually benefiting both her and the employer. It appears a more appropriate analysis, based on the facts, is whether the nature of the employee’s activity engaged in at the time of her injury removed her from the sphere of the

employment relationship. The Commission is of the opinion, though, the accident is compensable under both approaches.

Simply stated, employee is a sales person. Her job duty is to treat every traveler in the airport as a potential customer and to offer a potential customer shuttle service transportation with KCI Shuttle. Not only is employee required to sell shuttle tickets to potential customers, but as part and parcel of the sales persuasion, employee is to provide assistance as requested by any potential customer at the terminal, and the employer requires and encourages her to do so.

On several occasions employee has subsequently sold KCI Shuttle tickets to travelers who did not initially use her services. However, due to her courtesy and polite approach, and her offer to assist a prospective customer, some of these individuals followed up with her on return visits through Kansas City International and purchased KCI Shuttle tickets. Employee was successfully fulfilling her job duties as a resource and referral person and acquiring business in behalf of her employer.

A comparison between the facts in the *Blades* case, *supra*, and the instant case, reveals many dissimilarities: 1) *Blades* was not on the payroll when injured; in the instant case, employee was on the payroll; 2) *Blades*' injury did not occur during his regularly scheduled working hours; in the instant case, employee was injured during her regularly scheduled working hours; 3) in *Blades*, the accident did not happen or occur on property owned or controlled by the employer; in the instant case, although employee was not injured on property owned by the employer, the Commission finds that the injury did occur on property appropriated for business purposes by the employer, used by the employer, and even defined in the employee handbook as property considered to be the premises of the employer; 4) in *Blades*, the employer did not by words or conduct encourage the employee's act and the employer had no knowledge of the employee's act; whereas in the instant case, the Commission finds that the employer has by words, handbook and conduct encouraged the employee's act and if the employer did not have direct knowledge of the act or conduct, the employer could reasonably have anticipated such conduct; and 5) where the benefit in *Blades* was remote and attenuated, the evidence in the instant case clearly reveals that the conduct of employee was not a remote benefit, but in fact, had produced tangible benefits in the past, and it was reasonably probable to produce benefits in the future.

The employee was injured at a curbside shuttle pick-up location, used by her company, as well as shuttles owned by competitors. The Commission finds it somewhat disingenuous when the employer contends that the accident did not occur on its premises. Employer argues that employee was restricted to her "booth area", although there is never a definition of the "booth area" and employee was never given a definition of her "booth area."

The employer's customers were waiting for the employer's shuttle, at the very median island where the accident occurred. If the elderly lady the employee was assisting to the curbside pick-up had purchased a KCI Shuttle ticket, clearly the injury would be deemed to have arisen out of and in the course of the employee's employment. The fact that the injury occurred while the employee was assisting a future or potential customer, does not render the accident noncompensable.

The Commission finds that the employee's conditions of employment caused or contributed to cause the accident; and the injury occurred in the course of the employee's employment because it occurred within the period of employment at a place where the employee reasonably could be found, engaged in the furtherance of the employer's business or, rather, the employee was injured doing an act reasonably incidental to the performance of her duties, of which her employer might reasonably have knowledge or reasonably anticipate.

The activities in which employee was engaged at the time of her injury did not remove her from the sphere of

the employment relationship; there was a nexus between the employment and the activity engaged in when the employee was injured; thus, employee was injured doing an act reasonably incidental to the performance of her duties.

Accordingly, the employee sustained an injury arising out of and in the course of her employment and is entitled to workers' compensation benefits as provided by law. The case is remanded to the Division of Workers' Compensation with the employer being responsible to provide workers' compensation benefits as appropriate pursuant to the provisions of the Workers' Compensation Act due to this compensable accident.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made.

The award and decision of Administrative Law Judge R. Carl Mueller, Jr., issued July 18, 2005, is attached hereto solely for reference.

Given at Jefferson City, State of Missouri, this 27th day of January 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD DENYING COMPENSATION

Employee: Mary Deleon Injury No. 05-002664

Employer: KCI Shuttle/Axcet HR Solutions

Insurer: Lumbermen's Underwriting

Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund

Hearing Date: June 30, 2005 Checked by: RCM/abj

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: January 4, 2005.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Platte County, Missouri.
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: The employee was attempting to flag down a Super 8 shuttle bus when she fell, injuring her right upper extremity, neck, back, and body as a whole.
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: Left upper extremity, neck, back, body as a whole.
14. Nature and extent of any permanent disability: Not addressed (at parties' request)
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? \$2,643.48
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: Not addressed (at parties' request)
19. Weekly compensation rate: Not addressed (at parties' request)
20. Method wages computation: N/A
21. Amount of compensation payable: Not addressed (at parties' request)
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Mary Deleon Injury No. 05-002664
Employer: KCI Shuttle/Axcet HR Solutions
Insurer: Lumbermen's Underwriting
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: June 30, 2005 Checked by: RCM/abj

On June 30, 2005, the employee and employer appeared for a temporary hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Mrs. Mary Deleon, appeared in person and with her attorney, Keith Yarwood. The employer, KCI Shuttle/ Axcet HR Solutions, and its insurer, Lumbermen's Underwriting, appeared through counsel Scott Gordon. In addition, Mr. Steve Donovan appeared as corporate representative. The primary issue the parties requested the Division to determine

was whether Mrs. Deleon's accident arose out of and in the course and scope of employment. For the reasons noted below, I find that Mrs. Deleon's injury which resulted from her commendable actions, is not compensable.

STIPULATIONS

The parties stipulated that:

1. On or about January 4, 2005 ("the injury date"), KCI Shuttle/Axcet HR Solutions ("KCIS") was an employer operating subject to the Missouri Workers' Compensation Law ("MWCL") with its liability fully insured by Lumbermen's Underwriting;
2. Mrs. Mary Deleon was its employee working subject to the MWCL in Kansas City, Platte County, Missouri;
3. Mrs. Deleon notified KCIS of her injury and filed her claim within the time allowed by the MWCL;
4. KCIS provided Mrs. Deleon with medical care costing \$2,643.48; and,
5. KCIS acknowledges that Mrs. Deleon requires medical care, which it will provide if determined that her injury was work related.

ISSUE

The parties requested the Division to determine whether Mrs. Deleon sustained an accident arising out of and in the course of employment.

FINDINGS

Mrs. Deleon testified on her own behalf and presented the following exhibits, which were admitted into evidence without objection:

Exhibit A	–	Medical records
Exhibit B	–	Employee handbook

Although KCIS did not offer any exhibits, it did present the testimony of Cindy Petifurd, the employer's shuttle manager at KCI airport.

Based on the testimony of the witnesses and the above exhibits, I make the following findings. KCIS hired Mrs. Deleon on December 13, 2004, as a customer service representative. KCIS provides shuttle services for travelers from and to Kansas City International Airport ("KCI"). Mrs. Deleon worked at a booth in a terminal at KCI, which was equipped with a cash register and shuttle ticket machine. Mrs. Deleon's job entailed offering the employer's shuttle services to travelers as they passed her booth. Although she could stray from the booth to offer the employer's services she would have to remain at or near the booth in order to issue tickets and make change.

Mrs. Deleon was on duty on January 4, 2005, when a severe ice storm hit the airport. The Employer's

shuttles experienced significant delays as area roadways – and ultimately the airport – were closed. All flights to and from KCI were canceled by 3:20 p.m. Mrs. Deleon noticed an elderly woman confined to a wheelchair in front of a bank of courtesy phones near her booth. Mrs. Deleon observed that other travelers were cutting in front of the elderly traveler, preventing the woman from using the courtesy phones. Mrs. Deleon left her booth to assist the woman. Mrs. Deleon inquired if she needed shuttle services, and the woman advised Mrs. Deleon that she had reservations at the Super 8 motel near the airport and that the hotel had a free shuttle. Therefore, the elderly traveler did not need KCIS's shuttle services. Mrs. Deleon nonetheless wanted to assist the traveler in obtaining the hotel's free shuttle services. Mrs. Deleon used the courtesy phone to call Super 8 herself and arranged with the operator for Super 8's shuttle driver to assist the elderly woman onto the shuttle. Because her own business was slow, Mrs. Deleon remained by or near the elderly traveler and kept a lookout for Super 8's shuttle.

Mrs. Deleon observed the Super 8 shuttle approaching the terminal door and she crossed the street to an island median at which the shuttle was supposed to stop. Mrs. Deleon waved her arms, attempting to flag down the Super 8 shuttle. However, the shuttle passed Mrs. Deleon by, and in her desire to assist the elderly traveler, Mrs. Deleon began running after the shuttle when she fell. Mrs. Deleon's right foot bent up to her head and she felt as though she were going to "hemorrhage." She felt as though her internal organs had been shaken and that she was going into shock. A traveler from California who observed her fall assisted her and the elderly lady. Mrs. Deleon returned to her booth and reported her accident to her supervisor.

Mrs. Deleon's supervisor referred her to the North Kansas City Hospital. Ultimately, she was diagnosed through MRI testing to have suffered a rotator cuff tear of her right shoulder. Although the employer initially provided treatment, ultimately the insurer's claims adjuster concluded that Mrs. Deleon's accident did not arise out of and in the course of employment. Therefore, additional treatment, including the necessary surgery, was canceled. This claim ensued.

Mrs. Deleon noted that she no longer is able to adequately clean her home or carry her grandchildren. Her sleep is limited to no more than three hours per night and she testified that only her faith in God has given her the strength to carry on. In addition to being a credible witness, I find Mrs. Deleon to be an extremely pleasant and sympathy-evoking individual. Mrs. Deleon requested treatment for her back, neck, and upper right extremity.

Mrs. Deleon testified on cross-examination that Veronica Clayton trained her for her job. Mrs. Deleon emphasized that her job is to sell tickets for KCIS and to develop its business by presenting a good image for the employer. She was **not** instructed by the employer to stay only at the booth in furtherance of those goals. Mrs. Deleon admitted that she knew immediately upon talking to the elderly traveler, that she would not be a KCIS customer. However, besides being kind to the traveler, Mrs. Deleon testified that by assisting her obtain a competitor's shuttle to the Super 8 hotel, the elderly traveler might in the future choose to be a KCIS customer. Mrs. Deleon noted that when she was trained, she was told that she could leave the booth area and, further, was not instructed of any limitations on the distance from the booth she could go. Mrs. Deleon noted that there were no customers around her booth and that potential customers only were outside the terminal. Consistent with her good nature, Mrs. Deleon admitted that even had her work shift ended, she probably would have stayed to assist the elderly traveler.

Cindy Petifurd testified on behalf of KCIS. Ms. Petifurd is the shuttle manager for KCIS at the airport. Ms. Petifurd noted that a customer service representative such as Mrs. Deleon often, in addition to selling shuttle tickets to travelers, offers other assistance, such as directing travelers to airplanes and being courteous in and around the booth. Ms. Petifurd noted that in order to further the employer's business, Mrs. Deleon would have had to remain at or near the booth. This was true because customer service representatives do not carry a packet of tickets; they are generated only at the booth. In addition, in order to

make change, Mrs. Deleon would have had to remain near the booth's cash register. Ms. Petifurd noted that KCIS neither instructs nor encourages its employees to assist travelers in obtaining or using the services of competitor shuttles such as the Super 8 shuttle.

Ms. Petifurd admitted that Mrs. Deleon is honest, truthful, and one of the employer's top salespersons. In fact, out of 30 customer service representatives, Mrs. Deleon is one of the top three. She attributes Mrs. Deleon's success to the fact that she speaks very well with customers and does not use a high-pressure approach in selling KCIS's services.

Ms. Petifurd admitted that Mrs. Deleon's job is not only to assist current customers, but also to develop potential customers. In this case, Ms. Petifurd believed that Mrs. Deleon's actions in calling Super 8 and speaking with its operator about the elderly traveler's need for assistance could be considered part of Mrs. Deleon's job duties as it was necessary to initially speak with the woman about whether she needed shuttle services. Ms. Petifurd also admitted that people observing Mrs. Deleon's actions would have a favorable view of KCIS as Mrs. Deleon wore a shirt with the employer's name and logo.

RULINGS

Workers' compensation benefits are intended to cover personal injuries that arise out of and in the course of employment. MO.REV.STAT. §287.120.1 However, an employee's injuries are not compensable unless they are engaged "in or about the premises where their duties are being performed or their services require their presence as part of such service." Blades v. Commercial Transport, Inc., 30 S.W.3d 827 (Mo. 2000). In its decision in the Blades case, Missouri's Supreme Court found that the employee's actions were not compensable even when applying the so-called "mutual benefit doctrine." In Blades the employee injured his shoulder when he slipped on icy steps leading to the Teamsters Union hall in Cape Girardeau. The hall was neither owned nor occupied by the employer. At the time of his accident, the employee was on his way to testify on behalf of his union in an arbitration hearing about a dispute with the employer. The employee was not a direct party to the union dispute; rather, he merely was testifying on behalf of a co-employee who filed the grievance. The court ruled that an injury is not compensable under the MWCL under the mutual benefit doctrine:

However, when an employee's injury occurs off the employer's premises, when the employee is not exposed to any special hazard associated with employment, where the employer has not by words or conduct encouraged the employee's act and has no knowledge of the employee's act, and where the benefit to the employer is speculative, remote, and attenuated, the mutual benefit doctrine is inapplicable.

...

The test is not whether any conceivable benefit to the employer can be articulated no matter how strained, but whether the act that resulted in the injury is of some substantive benefit to the employer. That is not to say the benefit needs to be tangible or great. Bybee v. Ozark Airlines, 706 S.W.2d 570, 572 (Mo.App. 1986). But the benefit cannot be so remote that it deprives the mutual benefit doctrine of meaning. (Emphasis Added)

Blades at 831.

Clearly, Mrs. Deleon is a tremendous employee. Mrs. Deleon has demonstrated not only her concern for others, but her value to KCIS: by its own admission, she is one of its top three customer service representatives. Unfortunately, my understanding of the Supreme Court's decision in Blades results in the

conclusion that her charitable efforts on behalf of the elderly traveler were not in the course and scope of employment.

The Supreme Court noted several factors in finding that the employee in Blades was not injured in the course of employment. First, the injury occurred off the employer's premises. As in Blades, when Mrs. Deleon left the terminal and crossed the street, she was far beyond the boundaries of what conceivably could be considered "the employer's premises". This is true because, to fulfill her job duties, Mrs. Deleon would have to remain at or near the booth to complete ticket sales. Outside the terminal and across the street is not at or near the booth.

Second, there was no special hazard to Mrs. Deleon to which the general public was not subjected. Here, the general public was equally exposed to any hazard incurred by Mrs. Deleon when she attempted to flag down the Super 8 shuttle as she was on a public street outside the terminal where anyone riding a shuttle was required to be.

Third, KCIS - as with the employer in Blades - did not encourage by words or conduct Mrs. Deleon's actions that resulted in her injury. Mrs. Deleon was assisting the elderly woman in the physical act of securing a competitor's shuttle services.

And, fourth, any benefit to KCIS by Mrs. Deleon's actions would be only "speculative, remote, and attenuated." Although other travelers outside the terminal who happened to see her actions and perhaps could even see the employer's name on her shirt, might have a favorable view of those efforts and utilize its services in the future, such reasoning is far too speculative to be persuasive. And, this speculation requires one to assume that an observer would know that KCIS was not affiliated with Super 8's shuttle services for the observer to admire Mrs. Deleon's objectivity in assisting a person utilize a competitor's shuttle. Her actions, while laudable, did not result in "some substantive benefit to the employer," as required by our Supreme Court. If anything, her efforts in assisting a potential customer use a competitor's shuttle could be viewed - not as furthering KCIS's business - but, instead, as harming its business.

Taken together, I find that these components of the Supreme Court's rule requires the finding that her injury did not arise out of and in the course of employment. Any claim she may have would be reserved to the civil courts rather than the workers' compensation system.

Date: _____ Made by: _____

R. Carl Mueller, Jr.
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation