

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

Injury No.: 00-029322

Employee: Leslie Dubose
Employer: City of St. Louis
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: March 7, 2000

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. We have reviewed the evidence, read the briefs of the parties, heard oral argument and considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated April 8, 2005. The award and decision of Administrative Law Judge Karla Ogrodnik Boresi, is attached hereto solely for reference.

I. Preliminary Matters

The stipulations of the parties, issues in dispute and summary of the evidence were accurately recounted in the award issued by the administrative law judge, and will not be repeated by the Commission unless special emphasis necessitates. As astutely stated by the administrative law judge, the facts are basically undisputed and the principal issue to be determined is one of law, i.e., is employee entitled to workers' compensation benefits for injuries sustained in a motor vehicle accident precipitated by an idiopathic occurrence? In other words, due to the fact the precipitating event was an idiopathic occurrence, is the resultant injury deemed to have arisen out of and in the course of employment as prescribed by section 287.120 RSMo?

II. Employee, who sustained injury due to a motor vehicle accident, precipitated by an idiopathic occurrence, is entitled to workers' compensation benefits pursuant to section 287.120 RSMo, because the conditions of employment caused or contributed to cause the accident, resulting in the injury arising out of and in the course of employment.

Consistent with section 287.120.1 RSMo, an employee must show that his or her injury arises out of and in the course of his or her employment as a condition precedent to recovery. *Abel v. Mike Russell's Standard Service*, 924 S.W.2d 502 (Mo. banc 1996). In the instant case it is undisputed that the accident occurred in the course of employment. The dispute centers on whether or not the accident arose out of employment. An accident arises out of the employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Abel, supra*.

There is no dispute that the precipitating cause of the motor vehicle accident was an idiopathic occurrence, i.e., attributable to employee's preexisting seizure disorder. Idiopathic is defined as "peculiar to the individual: innate." *Alexander v. D.L. Sitton Motor Lines*, 851 S.W.2d 525 (Mo. banc 1993).

The proper test of "causal connection," involving an idiopathic occurrence, simply put, is whether the conditions of employment caused or contributed to cause the accident. If the conditions of the workplace contributed to cause the accident, even if the precipitating cause were idiopathic, the causal connection is established. In other words, the accident would not have occurred but for the condition of the workplace. *Alexander, supra*.

The *sine qua non* of recovery under section 287.120.1 and *Alexander, supra*, is a condition of the workplace that bears a causal connection to the employee's injury. The condition of the workplace bears a "causal connection" to the injury only when the condition is unique to the workplace or is a common condition that is exacerbated by the requirements of employment. *Abel, supra*.

As the administrative law judge noted there are no reported cases in Missouri in which the resultant injury was precipitated by an idiopathic occurrence while an employee was driving a motor vehicle. The reported cases involve employees sustaining injuries precipitated by idiopathic falls from level ground or heights.

The Commission notes that the basic rule involving idiopathic occurrences is that the injuries are compensable if the employment places the employee in a position increasing the dangerous effects of the idiopathic occurrence, such as a moving vehicle. *A. Larson, Workers' Compensation Law, Desk Edition section 9.01[1] (2004)*. Awards are made when the employee's idiopathic loss of his or her faculties occurs while he or she was in a moving vehicle. In those instances "it seems obvious that the obligations of their employment had put these employees in a position where the consequences of blacking out were markedly more dangerous than if they had not been so employed." *A. Larson, Workers' Compensation Law, Desk Edition section 9.01[2] (2004)*.

The parties and the administrative law judge thoroughly discuss the two Missouri Supreme Court decisions previously mentioned, *Alexander, supra*, as well as *Abel, supra*. These two cases define and establish the causal connection test when an injury is precipitated by an idiopathic occurrence. The administrative law judge believes there is "tension" between the two cases as to how the causal connection test is satisfied. The Commission does not find "tension" or disagreement between the two cases as to the proper test of "causal connection," i.e., whether the conditions of employment caused or contributed to cause the accident.

As stated in the *Alexander* case, *supra*, it would be a misapplication of the "causal connection" test if focus was solely on the precipitating cause of the accident without fair regard for conditions of the workplace that contributed to cause the accident or exacerbate the injuries. In other words, the accident would not have occurred but for the condition of the workplace.

The administrative law judge found that "but for the fact claimant was in a moving vehicle when he had his seizure, he would not have suffered the injuries to the extent he did on March 7, 2000."

The administrative law judge then states that "if *Alexander* controls, the injuries suffered by Claimant in this case are compensable since his injuries were caused because he was in a moving vehicle. *Abel*, however, reverts to a greater hazard-type inquiry by requiring the condition causally connected to the injury to be 'unique to or exacerbated by the workplace.'"

In addition, the administrative law judge correctly noted that *Alexander* and *Abel* were both decided prior to major changes passed by the legislature in 1993 concerning the definitions of both accident and injury defined by section 287.020 RSMo. These statutory changes are applicable to the case at bar.

The administrative law judge specifically referred to section 287.020.3(2) (d) which states that injury shall be deemed to arise out of and in the course of employment only if 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 and normal non-employment life.

Combining the statutory change referenced above enacted in 1993 with the *Abel* case, the administrative law judge concluded the following:

"Just as *Abel* requires the employee to be exposed to a risk unique to work in order for the injury to arise out of employment, so too does the 1993 version of the statute require an injury to come from a hazard to which workers would not be equally exposed outside of and unrelated to work. As discussed above, the evidence establishes claimant faced the same hazards and risks as any member for the general public driving a typical sedan would have faced on that day, time and place."

The case of *Bennett v. Columbia Health Care*, 80 S.W.3d 524 (Mo. App. W.D. 2002), discusses the ramifications of the 1993 statutory enactment, and the hazards or risks employees face outside of their respective employments. The cases and injuries referenced did not involve motor vehicle accidents, rather, they concerned employees while walking, and the court stated as follows:

“The respective claimants faced these hazards, in addition to the risks inherent in the activity of walking. The claimant’s were also required to face those hazards as a result of their employment. Implicit in that observation would seem to be a view that the claimants could have avoided those additional hazards outside of their respective employments.”

In the instant case, employee could have avoided patrolling the premises of Lambert Airport in a motor vehicle, if he were outside of his employment.

Also, the Commission notes the Supreme Court case of *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo. banc 1999), which also addressed the 1993 statutory amendments to section 287.020. In discussing the meaning of section 287.020.3(2) (d), both *Alexander, supra*, and *Abel, supra*, are cited, for their earlier propositions, and are not overruled. At page 854 the Supreme Court states:

“Among such hazards or risks are ‘idiopathic’ conditions, those ‘peculiar to the individual: innate.’ *Alexander*, 851 S.W.2d at 527 n. 3. Common conditions exacerbated by employment requirements are not idiopathic. ... Yet, injuries on the job, resulting from an idiopathic condition peculiar to the employee, are not covered. *Abel*, 924 S.W.2d at 504.”

It appears to the Commission that the proper test of causal connection remains whether or not the conditions of employment caused or contributed to cause the accident, as the Commission feels both *Alexander* and *Abel* enunciated and are in agreement. Paraphrasing *Larson*, it seems obvious to the Commission that the obligation of the employee’s employment had placed him in a position where the consequences of his blacking out precipitated by an idiopathic occurrence were markedly more dangerous than if he had not been so employed. Consequently, the Commission is of the opinion that the condition of his employment, in particular, operating a motor vehicle, caused or contributed to cause the resultant injuries, and thus, a causal connection was established between the conditions of employment and the accident. Logic and common sense dictates that in all likelihood employee would have not suffered the significant injuries he sustained had he not been driving a motor vehicle in behalf of his employer. Therefore, we conclude that employee sustained an injury due to an accident arising out of and in the course of his employment and reverse the finding of the administrative law judge denying benefits.

III. Medical Causation

There is no dispute that preexisting the accident employee suffered from both seizure disorder and major depressive disorder.

Subsequent to the accident employee contends that the following medical conditions principally resulted: (1) aggravation of his preexisting major depressive disorder; (2) aggravation of his seizure disorder; and (3) development of dementia due to head trauma. Employee also contends there were physical injuries to the cervical spine area.

Employer denies that employee has developed dementia due to the accident; employer contends the employee’s physical injuries resultant from the accident were temporal in nature and resolved; and employer contends that employee’s present inability to be gainfully employed, if any, is due to the natural progression of his chronic neurological condition/seizure disorder/depression unrelated and independent to the accident.

The Commission has reviewed the treating records as well as all expert medical opinion reports and expert testimony submitted into evidence. The Commission has also considered the testimony of the employee and his spouse.

Weighing this evidence the Commission finds that the employee sustained a blunt head trauma and traumatic brain injury due to the motor vehicle accident. The Commission finds the medical opinions of Dr. Stillings and Dr.

Lichtenfeld the most persuasive and convincing as to this medical causation issue.

Due to this head trauma, Dr. Stillings, opined that employee had two psychiatric diagnoses: (1) major depressive disorder, chronic, with psychotic features, severe; and (2) dementia due to head trauma. Dr. Stillings was of the opinion these conditions had an organic cause and they were treatment resistant.

With regard to the major depressive disorder Dr. Stillings was of the opinion that this condition was substantially caused by the motor vehicle accident of March 7, 2000, even though it was also partially preexisting. Dr. Stillings testified the employee presently had psychotic features with his depression and that these were accelerated by the work accident.

Concerning the diagnosis of dementia, Dr. Stillings testified that employee did not have dementia prior to the motor vehicle accident, and the dementia was substantially caused by that accident.

Dr. Schultz, a board certified psychiatrist of the same ilk of Dr. Stillings, disagreed but we find the opinions of Dr. Stillings more persuasive based on a complete review of the treating medical records and expert opinion testimony.

Dr. Stillings testified to the following:

Answer: Now he clearly has profound mental status deficiencies indicative of traumatic brain injury which again shows that there is a real insult to the brain, Mr. Dubose's brain.

Question: An insult caused by what?

Answer: Caused by blunt trauma. And I would say there's a component of respiratory insufficiency too because they had to intubate him.

(Tr. 231).

Dr. Stillings explained the chain of events as follows: employee had a seizure causing erratic driving; the motor vehicle accident then occurred; employee sustained blunt head trauma due to the motor vehicle accident; and his residuals were the sequela.

Dr. Stillings was also of the opinion that employee's preexisting seizure disorder was aggravated due to the head trauma occurring in the same accident. He further testified as follows:

"Let me try to put this concisely. Of course Mr. Dubose's case is a little bit complicated. There is no indication – he saw several neurologists before the MVA. There's no question that he had a seizure disorder. And there's no question he had grand mal seizures and partial complex seizures. There's no question he was occupationally functional. There's no question that he didn't – he did not have dementia prior to the MVA. Now, when you have these kind of neuropsychological test results after a head injury, there's no question he sustained a head injury in the MVA."

(Tr. 224).

Dr. Lichtenfeld evaluated employee and concluded, among other things, that employee sustained the following conditions due to the motor vehicle accident occurring March 7, 2000: (1) left homonymous hemianopsia; (2) traumatic brain injuries; and (3) exacerbation of partial complex seizures with secondary generalization. Dr. Lichtenfeld also felt that the findings on the MRI scan of March 9, 2000, were most likely traumatic, relating back to the employee's motor vehicle accident.

Consequently, the Commission finds that the motor vehicle accident occurring March 7, 2000, caused a traumatic brain injury resulting in a worsening of employee's preexisting seizure disorder, and was the substantial cause of his dementia.

IV. Medical Treatment/Medical Expenses/Future Medical Care and Treatment

As to the issue of past medical care, employee submitted into evidence medical bills and treatment employee received since the date of accident up to and including the date of the hearing. The medical bills totaled \$88,543.79. Due to the Commission's prior finding that the injury was due to an accident arising out of and in the course of employment, and a further finding that medical causation was established as discussed above, all of these bills are related to the accident occurring March 7, 2000, and are the liability and responsibility of the employer.

As to future medical care and treatment the consensus of medical opinion is that employee will benefit from additional psychiatric treatment for the major depressive disorder primarily to prevent deterioration of this condition to a more severe psychotic state and also as a preventative approach to reduce any effort to commit suicide. Employee testified that he is still under active medical care and treatment. The evidence leads to the ultimate conclusion that employee's need for future medical care and treatment is necessary to cure and relieve him from the effects of the injury occurring March 7, 2000. Accordingly, the employer is liable and responsible to provide employee with future medical care and treatment deemed reasonable and necessary to cure and relieve employee from the effects of this injury, principally psychiatric and seizure related disorders, along with physical symptoms of the cervical spine and residuals related to this injury.

V. Temporary Total Disability and Temporary Partial Disability Benefits

The evidence is undisputed that employee was temporarily totally disabled commencing March 8, 2000, through and including May 15, 2000; accordingly, employee is entitled to 9 and 6/7 weeks of temporary total disability benefits at the compensation rate of \$387.67/\$303.01, resulting in the employer being obligated to pay employee temporary total disability benefits in the total amount of \$3,821.32.

As to the issue of temporary partial disability, the undisputed evidence is that employee was employed at four hours per day commencing May 16, 2000, through and inclusive June 6, 2000; resulting in a temporary partial disability obligation of 3 and 1/7 weeks, at a rate of \$193.835 or a total amount of \$609.20 which employer is ordered to pay employee.

VI. Nature and Extent of Permanent Disability

The Commission concludes and determines that employee is permanently totally disabled. Every medical expert who testified in this matter as well as a vocational rehabilitation expert, reached the same conclusion: employee is not employable in the open labor market. The issue then becomes whether or not the last injury alone caused the employee to be permanently totally disabled, or, rather, is employee's permanent total disability a combination of the disability attributable to the last injury alone when combined with employee's preexisting disabilities.

Dr. Stillings and the vocational expert, Mr. Lalk, concluded that employee was permanently totally disabled based on the last injury alone as according to both experts, the dementia that employee suffers from alone causes him to be totally disabled. Dr. Stillings testified that in his medical opinion, employee did not suffer from dementia prior to the accident; but, afterwards, has dementia, which was attributable to the head injury caused by the accident.

The Commission has previously found and determined that employee's dementia was caused by the head trauma and accident occurring March 7, 2000, and due to the fact that the dementia is medically causally related to this accident, and due to the further fact that the employee's dementia alone causes him to be totally disabled, the employer is found liable for permanent total disability benefits. The permanent total disability benefits begin October 17, 2001, and continue pursuant to the provisions of section 287.200 RSMo.

VII. Second Injury Fund Liability

Due to the fact that the Commission has found the employer to be liable for permanent total disability benefits based solely on the primary injury, the Second Injury Fund has no liability. Section 287.220 RSMo.

VIII. Conclusion

In conclusion, the Commission finds the employee sustained an injury due to an accident arising out of and in the

course of his employment.

Due to the compensable injury, the employee is awarded past due medical expenses in the amount of \$88,543.79. Employee is also awarded future medical care and treatment deemed reasonable and necessary to cure and relieve employee from the effects of his injury. Employer is to provide this medical treatment pursuant to the provisions of section 287.140 RSMo.

Employee is awarded and employer is ordered to pay employee temporary total disability benefits in the amount of \$3,821.32 representing a time frame of 9 and 6/7 weeks (March 8, 2000 through and inclusive May 15, 2000) at employee's compensation rate of \$387.67/\$303.01. Employee is also awarded and employer is ordered to pay employee temporary partial disability benefits in the total amount of \$609.20 representing a time frame of 3 and 1/7 weeks (May 16, 2000 through and inclusive June 6, 2000) at a temporary partial disability rate of \$193.835/\$303.01.

The Commission further finds and awards employee permanent total disability benefits against the employer pursuant to the provisions of section 287.200 RSMo, said payments beginning as of October 17, 2001 and continuing pursuant to the provisions of section 287.200 RSMo.

The Commission concludes that the Second Injury Fund has no liability on account of this injury.

The compensation awarded to the employee shall be subject to a lien in the amount of 25% of all payments ordered in favor of attorney Dean Christianson for necessary legal services rendered the employee.

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

Given at Jefferson City, State of Missouri, this 15th day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Leslie Dubose

Injury No.: 00-029322

Dependents: N/A

Before the
Division of Workers'

Employer: City of St. Louis

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: Self-Insured

Checked by: KOB

Hearing Dates: December 14, 2004 & January 19, 2005

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: March 7, 2000
5. State location where accident occurred or occupational disease was contracted: St. Louis County.
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 carrying out his duties driving on a public road when he had an idiopathic seizure and lost control of his vehicle, which crashed.
 12. Did accident or occupational disease cause death? No.
 13. Part(s) of body injured by accident or occupational disease: N/A
 14. Nature and extent of any permanent disability: N/A
 15. Compensation paid to-date for temporary disability: \$0
 16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Leslie Dubose

Injury No.: 00-029322

17. Value necessary medical aid not furnished by employer/insurer? N/A
 18. Employee's average weekly wages: \$581.50
 19. Weekly compensation rate: \$387.67 / \$303.01
 20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: \$ 0.00
22. Second Injury Fund liability: No

TOTAL: \$ 0.00

23. Future requirements awarded: None.

Said payments to begin 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: Dean Christianson.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Leslie Dubose

Injury No.: 00-029322

Dependents: N/A

Before the
Division of Workers'

Employer: City of St. Louis

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: Self-Insured

Checked by: KOB

PRELIMINARIES

The matter of Leslie Dubose ("Claimant") proceeded to hearing to determine whether Claimant has a compensable Workers' Compensation claim. Attorney Dean Christianson represented Claimant. Attorney R. Kent Schultz represented City of St. Louis ("Employer"). Assistant Attorney General Da-Niel Cunningham represented the Second Injury Fund. The trial commenced on December 14, 2004, and concluded on January 19, 2005.

The parties agreed that on March 7, 2000, Claimant was in a motor vehicle accident. At that time, Claimant was an employee earning an average weekly wage of \$581.50, which corresponds to rates of compensation of \$387.67 for total disability benefits and \$303.01 for permanent partial disability benefits. Employer denied the claim and has not paid any benefits. Venue, notice, and timeliness of the claim are not at issue.

The issues to be determined are:

1. Did Claimant's accident arise out of and in the course of his employment;
2. Is Claimant's medical condition causally related to a work related accident;
3. Is Employer liable for medical benefits, including past medical benefits of \$88,543.79 and future

- medical care;
4. Is Claimant entitled to temporary total disability and/or temporary partial disability benefits;
 5. What is the nature and extent of Claimant's disability; and
 6. What is the liability of the Second Injury Fund?

Claimant seeks permanent total disability benefits as a result of an admittedly idiopathic seizure that occurred when he was in his work vehicle.

SUMMARY OF THE EVIDENCE

Claimant is a 57-year-old man who has been married to his wife, Sarah, for 36 years. Claimant is on several medications, but none adversely affect his ability to understand and answer questions. However, Claimant testified awkwardly, pausing a long time before answering a question, even if the answer was yes or no.

Claimant is a high school graduate with two years of college focusing on law enforcement, but he has no degree. He has no computer or typing skills. Before working for Employer, Claimant was a private investigator and worked for various cities as a police officer. He also worked as a factory assembler, and as a soda delivery person.

In 1994, Claimant was diagnosed with seizure problems. According to Claimant, this condition did not cause him to pass out, but he did experience soreness or weakness in various specific parts of his body like his legs or hips. He does not remember the type of treatment he had, but said that the seizures got worse and more frequent over time. He missed work on several occasions prior to 2000 because of seizures. Claimant also had preexisting depression and anxiety, but he does not remember when these episodes started. He testified he saw several doctors on an outpatient basis.

In 1996, Claimant was hired as a police officer for the City of St. Louis with exclusive jurisdiction at the Lambert International Airport. Claimant spent most of his time on the airport property patrolling by foot, and he always carried a gun and radio. He had vehicle patrol on the average of one day a week, and would leave the property to obtain refreshments, or travel to a different part of the airport. For example, Claimant was taught to make a "strategic" move by traveling east on Natural Bridge, north on Hanley, and west on Highway 70 to enter the airport from the east. This provided him an advantage in performing his duties because it enabled him to better locate traffic violators, assist drivers in need, etc. Claimant had no scheduled breaks, but took breaks when he had time. He had to stay close to the airport property to respond to emergencies in a prompt manner.

On March 7, 2000, Claimant was assigned to vehicle patrol duty and started his shift at approximately 2:45 p.m. He was wearing his uniform, carrying his gun, and had his radio on. Claimant has no recollection of the events that occurred later that evening, but other evidence establishes that around 8:00 p.m., Claimant was involved in an accident where his car crossed the center lane, struck a telephone pole, sideswiped a business and crashed into a parked car. He remembers awakening on the emergency room table, and knows he was hospitalized for several days, but has no memory of the details of his hospitalization or the follow-up treatment. He was able to recount that he had pains in his head, right upper extremity, chin, forehead, and chest.

When Claimant returned to work on May 16, 2000, he was restricted from driving and using a gun, so he worked four-hour days as a radio dispatcher through early June 2000, when he was able to work full-time. In July 2000, he had another seizure. In March 2001, Claimant was transferred to the position of being a supervisor in the custodial department and worked there through October 2001. He was terminated from employment in November 2001. Claimant has had no other employment since his accident, and has not looked for any work.

Claimant testified that since his car accident, he has had several other hospitalizations, including being taken to St. Louis University by ambulance, being taken to the hospital at I-44 and Grand following a seizure, and having tests at St. Louis University. Claimant mentioned seeing several doctors, including Dr. Wilmore, a neurologist, Dr. Skye, a psychiatrist, Dr. Ma, Dr. Gilmore, Dr. Lichtenfield, and Dr. Stillings. Claimant identified Exhibit S, which are all the medical bills he has received, except for bills associated with a recent hospitalization at St. Louis University Hospital following a seizure and fall. He continues to see Dr. Skye for depression and seizure control.

Claimant testified to the following current problems he associates with his car accident. With respect to his head, the tenderness on his forehead is almost resolved, but he has headaches one to two times a month. He has constant neck problems. Claimant's seizures are more severe and frequent, and are followed by a "harsh" feeling that lasts for approximately half an hour. With respect to his depression, he can now feel it coming on, and when he is depressed, he stays in bed. He used to have a photographic memory, but his memory and concentration are now bad. Claimant experiences a white flash in the lower section of his left eye several times a day, and cannot see well up close, but he is not treating for his left eye.

In a typical day, Claimant tries to be active, but his ability to do so is varied. One day he is able to walk five blocks, and the next day, he can only go half a block before he has to stop due to fatigue. He also has episodes where he feels like his head is spinning and he loses his balance, which causes nausea. He tries to work around the house, and is able to do some cooking or the dishes, but his seizures often prevent him from carrying out tasks like painting the porch or cutting the grass. His driving is restricted due to his seizures.

On cross-examination, Employer's attorney established Claimant's preexisting symptoms were more serious than his direct testimony suggested. Employer's attorney highlighted entries from various medical records, including a blackout spell in 1992, complaints of dizziness, headaches, depression and anxiety in 1995, and several seizures requiring hospitalization in 1998 and 1999. On January 30, 2000, Claimant had a seizure and was admitted to Compton Heights Hospital. Claimant saw Dr. Skye on February 4, 2000, and he saw Dr. Golub on March 2, 2000, just prior to the accident. Claimant agreed that the doctors prohibited him from driving for a period of time after the early 2000 seizure and before his accident, although he claimed they told him it was okay to drive once he felt he was accustomed to the medicines.

Claimant has not worked, nor has he performed any activities for which he was compensated since November 2001. He draws, but for no particular reason or financial gain. He has attempted various activities such as painting a deck and some minor computer work, but nothing that would rise to a professional level.

Claimant's wife, Sarah DuBose, testified. She learned Claimant had a seizure problem in 1997 or 1998, when she first observed a seizure. Prior to the date of accident, she claimed the seizures never lasted for more than five minutes, but left Claimant feeling tired or drawn. About that same time, she also learned Claimant had depression. She knows of no head trauma Claimant suffered before his accident. Prior to March 7, 2000, Claimant had good memory and concentration, and used to go to the gym, walk, ride a bicycle, socialize, and interact with family.

Mrs. DuBose testified regarding Claimant's various conditions after the accident. He has clusters of two or three seizures a month, which last longer, up to 25 minutes, and from which Claimant requires a longer time to recover. Claimant has mood swings, is fidgety, and shows depression. He snaps more often, and retires to bed for an entire day. He has had a loss of memory, and shows confusion and disorientation. He no longer does the physical and social activities he used to do prior to the accident.

FINDINGS OF FACT AND RULINGS OF LAW

Having given careful consideration to the entire record and the applicable law^[1] of the State of Missouri, and based on the on the substantial and competent evidence, including the above testimony, I find that Claimant's accidental injuries did not arise out of his employment.

The crucial facts are undisputed: On March 7, 2000, Claimant was fulfilling his regular duties as a police officer stationed at Lambert International Airport by driving a work car in a normal fashion on a public roadway when he had an seizure. The seizure itself was idiopathic and wholly unrelated to work. As a result of the seizure, Claimant lost the ability to control the moving vehicle, which struck a car, telephone pole and building before finally crashing into a parked car. Claimant suffered orthopedic and head injuries during the car accident. But for the fact Claimant was in a moving vehicle when he had his seizure, he would not have suffered the injuries to the extent he did on March 7, 2000.

It is a legal question that determines the outcome of this case: Are the injuries suffered by Claimant in an automobile accident precipitated by an idiopathic event compensable? Under the applicable law of the State of

Missouri, and given the facts of this case, I find that the determinative question must be answered in the negative.

I. Accident and injuries arising out of and in the course of employment.

A claimant must show that his or her injury arises out of and in the course of his or her employment as a condition precedent to recovery. § 287.120.1 RSMo.; *Abel By and Through Abel v. Mike Russell's Standard Service*, 924 S.W.2d 502, 504 (Mo. 1996). An injury arises out of an accident which occurs in the course of employment if the accident "occurs within the period of employment at a place where the employee reasonably may be fulfilling the duties of employment." *Id.* at 503, quoting, *Shinn v. General Binding Corp., Koelling Metals Div.*, 789 S.W.2d 230, 232 (Mo.App. E.D.1990). An accident arises out of employment when there is a causal connection between the conditions under which the work is performed and the accident. *Abel* at 503; *Alexander v. D.L. Sitton Motor Lines*, 851 S.W.2d 525, 527-28 (Mo. 1993); *Kloppenborg v. Queen Size Shoes, Inc.*, 704 S.W.2d 234, 236 (Mo. 1986)(overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220(Mo. 2003)); *Dehoney v. B-W Brake Co.*, 271 S.W.2d 565, 566 (Mo.1954). *Knipp v. Nordyne, Inc.*, 969 S.W.2d 236, 239 (Mo.App. W.D.1998)(overruled on other grounds). Claimant was in the course of his employment at the moment of injury, since he was fulfilling his duties, but there is a question as to whether an idiopathic injury arises out of employment.

The Workers' Compensation Law does not cover an event *entirely idiopathic* in nature. *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852, 854 (Mo.banc 1999). This follows because section 287.020.3(2)(d) states that to be compensable, the injury cannot come from a hazard or risk "unrelated to" employment. *Id.* "Among such hazards are 'idiopathic' conditions, those 'peculiar to the individual: innate.'" *Id.* Stated otherwise, because of the limiting language of section 287.020.3(2)(d), "injuries on the job, resulting from an idiopathic condition peculiar to the employee, are not covered." *Id.*; *DeVilleville v. Hiland Dairy Co.*, 2005 WL 171943, 4 (Mo.App. S.D. 2005). However, where the conditions of the workplace contribute to cause the accident, a causal connection is established, even if the precipitating cause was idiopathic. *Alexander* at 528. Recovery under §287.120.1 follows only where a condition unique to or exacerbated by the workplace exists and contributes to the injury. *Abel* at 504.

In support of their positions, Claimant relies on *Alexander v. D.L. Sitton Motor Lines*, 851 S.W.2d 525 (Mo. 1993) and Employer relies on *Abel By and Through Abelv. Mike Russell's Standard Serv.*, 924 S.W.2d 502 (Mo. 1996). In both cases, the employee suffered an idiopathic dizzy spell and fell. In *Alexander*, the accident arose out of employment because the employee fell from an elevated platform to a hard floor, while in *Abel* the employee was standing on level concrete ground when he fell, so there was no causal connection, and the accident did not arise out of employment. An analysis of these cases and their predecessors is necessary to determine the appropriate method to measure the causal connection between work and the accident when an idiopathic event is involved.

Until 1993, the established law on idiopathic falls was represented by *Collins v. Combustion Engineering Co.*, 490 S.W.2d 394 (Mo.App.1973), which held a fall initially caused by an idiopathic condition is not compensable, except where evidence shows that a hazard or special risk connected with the employment and not common to the general public contributed to the injuries. *Id.*, citing *Howard v. Ford Motor Co.*, 363 S.W.2d 61, 67 (Mo.App.1962). The *Alexander* court, in 1993, overruled *Collins*, finding it misapplied the "causal connection" test by focusing on solely on the initial or precipitating cause of the accident without fair regard for the conditions of the workplace that contribute to cause the accident or exacerbate the injuries. *Alexander* at 528. With this holding, the *Abel* court agrees. *Abel* at 504. But the *Alexander* court went further and rejected the "idiopathic fall/greater hazard" doctrine^[2] of *Collins*, holding that a causal connection is established if the conditions of the workplace contributed to cause the accident, even if the precipitating cause was idiopathic. *Alexander* at 528.^[3] The *Abel* majority,^[4] in 1996, questioned and distinguished *Alexander* in reaching the conclusion that there was nothing about the condition of *Abel's* workplace that was any different from or more dangerous than those conditions a member of the general public could expect to confront in a non-work setting.^[5] *Abel* at 504. The court held, "It is not enough to show that the employee suffered an injury while working. Instead, recovery under section 287.120.1 follows only where a condition unique to or exacerbated by the workplace exists and contributes to cause the injury." *Id.*

Thus, there is tension between *Alexander* and *Abel* as to how the causal connection test is satisfied when an idiopathic event at work causes injuries. Under *Alexander*, the casual connection is established where the conditions of the workplace (i.e., a four-foot high platform) contribute to cause the accident and injuries. There is no inquiry as to whether the risk posed by the workplace is any greater than that faced in a non-work setting. If *Alexander* controls, the injuries suffered by Claimant in this case are compensable since his injuries were caused because he was in a moving vehicle. *Abel*, however, reverts to a greater hazard-type inquiry by requiring the

condition casually connected to the injury be “*unique* to or exacerbated by the workplace” (emphasis added). The court compared the conditions of Abel’s workplace (a level concrete floor) to the conditions confronted by a member of the general public in a non-work setting in finding the accident did not arise out of employment. Applying the *Abel* analysis, Claimant has the burden of establishing that the risk he faced driving his vehicle on March 7, 2000 was greater than that experienced by members of the general public – he must show conditions unique to or exacerbated by the workplace in order to show the requisite causal connection.

I find that the *Abel* case embodies the current requirements of Missouri law, and that the *Abel* decision modified and limited the finding of *Alexander* by requiring a finding not only that the work conditions contributed to the accidental injuries, but also that such conditions were unique to work. I further find that there is no evidence that any condition unique to Claimant’s employment contributed to cause his injuries. He was operating a Ford Crown Victoria east-bound on Natural Bridge Road, a public thoroughfare, at twenty miles per hour in a normal fashion (See Exhibit R). The conditions of his work under these circumstances are no more dangerous than the conditions faced by a member of the general public driving eastbound on Natural Bridge or any other public thoroughfare. Had Claimant been engaged in a high-speed pursuit, driving on the tarmac among airplanes, or operating an armored-type vehicle when his seizure occurred, the conditions would be unique to his employment as an airport police officer, but such is not the case. Having failed to show a condition unique to or exacerbated by the workplace that contributed to cause his injury, Claimant has not established his accidental injuries arose out of employment.

It must be noted that while *Abel* and *Alexander* are the guiding cases on this particular issue, they both apply the statutory law prior to the major changes passed by the Legislature in 1993. As explained in *Willeford v. Lester E. Cox Medical Center*, 3 S.W.3d 872, 874 (Mo.App. S.D.1999)(overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220(Mo. 2003)):

As rewritten in 1993, § 287.020 focuses on whether an injury is compensable rather than whether an accident occurred.... See *McCutcheon v. Tri-County Group XV, Inc.*, 920 S.W.2d 627, 630 (Mo.App.1996).... For purposes of chapter 287, the term "injury" is defined as "an injury which has arisen out of and in the course of employment." §287.020.3(1).... Section 287.020.3(2) further declares 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 employment is a substantial factor in causing the injury; and
- (b) It can be seen to have followed as a natural incident of the work; and
- (c) It can be fairly traced to the employment as a proximate cause; and
- (d) 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[.]

Considering the statutory requirements, I find that Claimant’s injury does not arise out of his employment. Because the final factor is dispositive, it is not necessary to analyze the first three factors (§287.020.3(2)(a) to (c)).^[6] Just as *Abel* requires the employee to be exposed to a risk unique to work in order for the injury to arise out of employment, so too does the 1993 version of the statute require an injury to come from a hazard to which workers would not be equally exposed outside of and unrelated to work. As discussed above, the evidence establishes Claimant faced the same hazards and risks as any member for the general public driving a typical sedan would have faced on that day, time and place. Claimant’s injuries do not arise out of his employment.

CONCLUSION

Claimant’s claim for compensation from Employer and the Second Injury Fund is denied.

Date: _____

Made by:

KARLA OGRODNIK BORESI
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

[1] This case is controlled by the law prior to the effective date of the final version of SB 1 & 130.

[2] According to Professor Larson, this greater hazard doctrine, which represents the basic, agreed upon rule, is that the effects of an idiopathic fall are compensable if the employment places the employee in a position increasing the dangerous effects of a fall. These factors include such things as the employee being on a height, being near machinery or sharp corners, or in a moving vehicle. A. Larson, Workers' Compensation Law § 12.11(1996). There are no reported cases in Missouri where the idiopathic event occurred in a moving vehicle.

[3] *Clancy v. Armor Elevator Co.*, 899 S.W.2d 123 (Mo.App. E.D. 1995) and *McCormack v. Stewart Enterprises, Inc.* 916 S.W.2d 219 (Mo.App. W.D. 1995)(overruled on other grounds) both follow *Alexander's* holding that the injuries suffered in an idiopathic fall are compensable if causally related to the work place.

[4] In a strongly worded dissent, Judge Blackmar said the "principal opinion is out of line with the controlling cases".

[5] Although it distinguishes *Abel* on other grounds, the court in *Thomas v. Hollister, Inc.*, 17 S.W.3d 124, 127 (Mo.App. W.D.1999), a parking lot case, uses the same analysis in finding no causal connection, stating, "(t)he risk was no greater than that experienced by members of the general public and the injury has no causal connection with employment."

[6] The injuries for which Claimant seeks compensation do not follow as a natural incident of work, but of the seizure, which is also a substantial factor in and proximate cause of the injuries.