

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

Injury No. 15-047091

Employee: Nathan Ford

Employer: Associated Electric Cooperative Inc.

Insurer: Self-Insured

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

Administrative Law Judge (ALJ) Hannelore D. Fischer issued her decision in employee's case on May 29, 2019 as a "Temporary or Partial Award." However, an appeal to this Commission by employee is proper in this case because the ALJ rendered her decision on the dispositive issue: whether there was a compensable accident. See the Commission's Rule 8 CSR 20-3.040; *Smith v. Ozark Lead Co.*, 741 S.W.2d 802, 807 (Mo. App. 1987) (citing *State ex rel. Faris v. Eversole*, 332 S.W.2d 879, 881 (Mo. 1960)). This Commission has already determined in its October 16, 2019 order that employee's application for review was timely filed on July 2, 2019, which was also the date that the ALJ denied employee's June 14, 2019 request for a final award hearing. The Commission also determined that it had jurisdiction over this matter. Therefore, the ALJ's May 29, 2019 "Temporary or Partial Award" was a partial award that became final on July 2, 2019, when the ALJ denied employee's motion for an additional hearing.

Employee argues in his application for review that he never had the opportunity to respond to the testimony of his coworker, Bobby Rhoads (that employee grabbed Rhoads' shirt first) because Rhoads' deposition was after employee's September 28, 2018 deposition. Employee would like the opportunity to provide evidence regarding whether employee was the aggressor when he grabbed Rhoads' shirt. Employee also asserts that Dr. John Collins' testimony proves that Rhoads struck employee multiple times.

None of employee's briefs present a reasonable argument as to why he was not able to present evidence in rebuttal of Rhoads' February 27, 2019 deposition. Employee could have easily testified and presented this evidence at his April 17, 2019 hearing, but he chose not to do so. Furthermore, employee's argument that Dr. Collins' testimony indicates that Rhoads struck employee multiple times deviates from the essentially uncontested fact that employee was the aggressor in this situation, and that the number

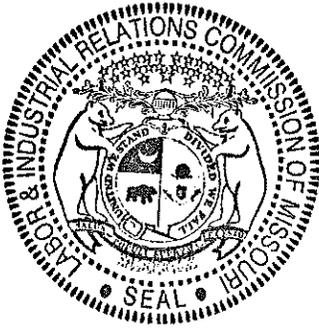
Employee: Nathan Ford

of times Rhoads may have attacked employee is irrelevant under the circumstances surrounding employee's case.

**Conclusion**

We affirm and adopt the award of the ALJ as supplemented herein. The award and decision of Administrative Law Judge Hannelore D. Fischer is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 4th day of June 2020.



LABOR AND INDUSTRIAL RELATIONS COMMISSION

Robert W. Cornejo, Chairman

Reid K. Forrester, Member

Shalonn K. Curls, Member

Attest:

  
Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Nathan S. Ford

Injury No. 15-047091

Dependents: N/A

Employer: Associated Electric Cooperative, Inc.

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: N/A

Insurer: Self-Insured  
TPA Cannon Cochran Management Services

Hearing Date: April 17, 2019

Checked by: HDF/scb

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: alleged June 7, 2015
5. State location where accident occurred or occupational disease was contracted: Randolph 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:  
See award
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Compensation paid to-date for temporary disability: - 0 -
15. Value necessary medical aid paid to date by employer/insurer? - 0 -
16. Value necessary medical aid not furnished by employer/insurer? - 0 -

Employee: Nathan S. Ford

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17. Employee's average weekly wages: N/A
18. Weekly compensation rate: N/A
19. Method wages computation: N/A

**COMPENSATION PAYABLE**

20. Amount of compensation payable: - 0 -

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

Employee: Nathan S. Ford

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

Employee: Nathan S. Ford

Injury No: 15-047091

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Associated Electric Cooperative, Inc.

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

Additional Party: N/A

Insurer: Self-Insured  
TPA Cannon Cochran Management Services

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on April 17, 2019. Memoranda were submitted by May 2, 2019.

The parties stipulated that on or about June 7, 2015, the claimant, Nathan S. Ford, was in the employment of Associated Electric Cooperative, Inc. (AECI). The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was self-insured; the third party administrator is Cannon Cochran Management Services. The employer had timely notice of the injury. A claim for compensation was timely filed. No benefits have been paid to the claimant to date.

The issue to be resolved by hearing is the occurrence of an accident.

A temporary award is sought.

### **FACTS**

The claimant, Nathan Ford, testified by deposition that he was a yard equipment operator for AECI for about a year to 18 months prior to and on June 7, 2015. Mr. Ford worked a 12-hour shift from 7 pm until 7 in the morning and Ryan Wilson was his supervisor. Mr. Ford's assignment for the shift starting on June 7, 2015, was to obtain or reclaim coal from the "29 Pile." Mr. Ford knew that Mr. Rhoad's assignment for the evening was to "run shift." Mr. Ford took an AECI 2015 Ford truck to the area where he was to reclaim coal. Mr. Ford apparently then returned to the truck and drove to where Mr. Rhoads was working. Mr. Ford testified that at that point he saw that Mr. Rhoads had already put his work papers in the truck, in essence claiming that truck for his use during the work shift. Mr. Ford waited for Mr. Rhoads to complete the work he was doing and then offered to let Mr. Rhoads drive the truck with Mr. Ford as the passenger and to drive around the AECI property. According to Mr. Ford, while both men were seated in the truck, Mr. Rhoads told him to get his own truck and cursed while he said it. Mr. Ford said

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that he then cursed at Mr. Rhoads and that Mr. Rhoads cursed at him and that Mr. Rhoads then exited the truck and started beating Mr. Ford. Mr. Ford described the first blow as to the right jaw followed by a blow to the chest, the back of the head and three blows to the face and jaw for a total of six times that Mr. Rhoads hit him. Mr. Ford then described running away from Mr. Rhoads and being hit in the back of the head either before or after he landed face first on the concrete close to the supervisor's office. Soon thereafter, according to Mr. Ford, the supervisor, Mr. Wilson, arrived in his truck. Mr. Ford said that he told Mr. Rhoads that he was going to "call the law" on his cellphone.

Bobby Dean Rhoads testified by deposition that on June 7, 2015, he was working for AECI as a utility operator on the nightshift and that his shift began at 7 pm. Mr. Rhoads was assigned to run the shift in the coal yard. Mr. Rhoads described his job of running or working shift as completely separate from Mr. Ford's job of reclaiming coal. Mr. Rhoads began his shift on June 7, 2015, by putting his work papers and materials into a 2015 AECI Ford truck and then cleaning the "railcar dumper grizzly." Mr. Rhoads said that after he cleaned the "grizzly" he saw Mr. Ford drive up in the 2015 AECI Ford truck into which he (Mr. Rhoads) had earlier put his work materials. Mr. Ford, according to Mr. Rhoads, got into the passenger seat of the truck and Mr. Rhoads got into the driver's seat. Mr. Rhoads then told Mr. Ford to get his own truck, according to Mr. Rhoads, and Mr. Ford became angry about the personnel and management at AECI. Mr. Rhoads said that the previous night while Mr. Rhoads was "running shift" that Mr. Ford rode with him and complained about AECI personnel and management; Mr. Rhoads said that he had not wanted to have Mr. Ford with him complaining again that night and told Mr. Ford that he did not agree with him and that he just wanted to do his job. Mr. Rhoads testified that Mr. Ford got very angry and cursed and that he (Mr. Rhoads) got out of the truck. Mr. Rhoads continued by saying that Mr. Ford also got out of the truck and grabbed him by the collar and started pulling Mr. Rhoads toward him. Mr. Rhoads said that he then hit Mr. Ford in the jaw in self-defense and that Mr. Ford then threw him to the ground. Mr. Ford and Mr. Rhoads then walked toward the supervisor's office and, when they discovered that Mr. Wilson was not there, according to Mr. Rhoads, Mr. Ford then called Mr. Wilson.

Dr. John Collins, DO, testified by deposition that he saw Mr. Ford on June 10, 2015, and that he assessed Mr. Ford as normal and appropriate in all categories of his examination and released him to return to work without restrictions; Dr. Collins did note muscle spasm in the left trapezius area and noted a bruise on the right lower part of the jaw and a bruise at the nape of the neck and found Mr. Ford's neck bones to be out of alignment and performed an osteopathic manipulation and prescribed Naprosyn. Dr. Collins testified that Mr. Ford told him that on June 7, 2015, he was "struck from behind" and that Dr. Collins thought it was on the left side around the shoulder and head Dr. Collins did not note a loss of consciousness. When Dr. Collins next saw Mr. Ford on June 15, 2015, it was for urgent care and Mr. Ford reported having a migraine and blurred vision. A corresponding CT scan of the brain was found to be unremarkable according to Dr. Collins. A corresponding CT scan of the cervical spine reflected no discernible injury to the cervical spine. Dr. Collins saw Mr. Ford in urgent care on June 19, 2015, with complaints of blurred vision, dizziness, personality changes, photophobia, and neck stiffness; however,

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Dr. Collins' examination of Mr. Ford was normal. Dr. Collins saw Mr. Ford again on July 9, 2015, and Mr. Ford reported complaints. Again, Dr. Collins' findings were normal, according to Dr. Collins' testimony. When Mr. Ford saw Dr. Collins with complaints on July 16, 2015, Dr. Collins referred Mr. Ford to a physician in Columbia.

Dr. Collins testified that Mr. Ford's complaints of dizziness or headache could be consistent with Dr. Collins' findings on June 10, 2015, of a contusion in the left occipital area, a contusion in the right submandibular area, condylar compression of the occiput, and a cranial strain.

Dr. Collins testified that when he saw Mr. Ford on October 23, 2018, Mr. Ford denied having blurred vision, double vision, dizziness, fever, loss of consciousness, nausea, phonophobia or photophobia. Mr. Ford also denied neck stiffness, vision loss on the right or left, vertigo, and vomiting. Dr. Collins found Mr. Ford to have a normal psychiatric examination.

### **APPLICABLE LAW**

RSMo 287.120.1 Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident or occupational disease arising out of and in the course of the employee's employment. Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

Missouri is a state that has retained the "aggressor defense." Section 287.120.1 was amended in 1969 to include "unprovoked assaults" within the statutory defense of "accident." The subsection now states that the term "accident" shall "include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person." It logically follows that injuries from provoked assaults are not compensable. *Van Black v Trio Masonry, Inc.*, 986 SW 2<sup>nd</sup>200 (Mo App WD 1999)

### **AWARD**

The testimonies of both Mr. Ford and Mr. Rhoads were provided by excerpts of their deposition testimony in civil cases. The testimonies of both men coincide until and including Mr. Rhoads exit from the truck after harsh words were exchanged. At that point Mr. Rhoads' testimony is that Mr. Ford grabbed him (Mr. Rhoads) by the collar and pulled him (Mr. Rhoads) toward Mr. Ford. Mr. Ford did not deny the accuracy of this testimony. Following Mr. Ford's act of grabbing Mr. Rhoads by the collar the testimonies again coincide with both men saying that

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Mr. Rhoads then struck Mr. Ford. In this case, I find Mr. Ford to have provoked the assault since he first laid hands on Mr. Rhoads. Mr. Ford did not sustain his burden of proof that he sustained an accident on June 7, 2015 and is, thus, denied benefits.

I certify that on 5-29-19,  
I delivered a copy of the foregoing award  
to the parties to the case. A complete  
record of the method of delivery and date  
of service upon each party is retained with  
the executed award in the Division's case file.

By MP

Made by: Hanne D. Fischer  
HANNELORE D. FISCHER  
Administrative Law Judge  
Division of Workers' Compensation

