

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

Injury No.: 03-144332

Employee: Timothy J. Gant, deceased
Dependents: Lenora Gant, Amelia Gant, Lindsey Gant
Employer: US Foodservice, Inc.
Insurer: Ace American Insurance Company
Date of Accident: December 3, 2003
Place and County of Accident: Lee's Summit, Jackson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 22, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Carl Mueller, issued April 22, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 26th day of November 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Timothy J. Gant (dec) Injury No: 03-144332
Dependents: Lenora Gant, Amelia Gant
Employer: US Foodservice, Inc.
Additional Party: N/A
Insurer: Ace American Insurance, Administered by GAB Robins, Inc.
Hearing Dates: February 20, 2008 and January 29, 2008
Briefs Filed: March 3, 2008 Checked by: RCM/rm

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? Yes
4. Date of accident or onset of occupational disease: December 3, 2003
5. State location where accident occurred or occupational disease was contracted: Lee's Summit, Jackson 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? Yes
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: Employee slipped on ice while making a delivery and fell on his right shoulder.
12. Did accident or occupational disease cause death? No Date of death? December 18, 2003
13. Part(s) of body injured by accident or occupational disease: Neck, Right Shoulder
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? Less than \$500.00
17. Value necessary medical aid not furnished by employer/insurer? \$17,961.04

18. Employee's average weekly wages: Approximately \$855.00
19. Weekly compensation rate: \$570.00
20. Method wages computation: By agreement of the parties
21. Amount of compensation payable: \$0.00
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Timothy J. Gant (dec) Injury No: 03-144332

Dependents: Lenora Gant, Amelia Gant,

Employer: US Foodservice, Inc.

Additional Party: N/A

Insurer: Ace American Insurance, Administered by GAB Robins, Inc.

Hearing Dates: February 20, 2008 and January 29, 2008

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On January 29, 2008, the dependents of employee Timothy J. Gant ("Mr. Gant") and the employer US Foodservice, Inc. appeared for a final hearing. The parties returned on February 20, 2008 to introduce an additional document to the record and to close the record. The Division had jurisdiction to hear this case pursuant to §287.110. Mr. Gant's dependents, Mrs. Lenora Gant, Amelia A. Gant, and Lindsey S. Gant, appeared in person and with counsel, Jerry Kenter, Brienne Niemann, and John Chick. The employer appeared through counsel Joan Klosterman and Bruce Levine and corporate representative Peri Paulton. The Second Injury Fund was not a party to the case. The primary issue the parties requested the Division to determine was whether the accident Mr. Gant sustained on December 3, 2003 caused or was a substantial factor in causing his death on December 18, 2003. For the reasons noted below, I find that Mr. Gant's death was caused by a congenital condition, a ruptured saccular aneurysm, and not by the accident of December 3, 2003.

STIPULATIONS

- The parties stipulated that:

- On December 3, 2003 ("the accident date"), US Foodservice, Inc. ("US Foodservice") was an employer operating subject to Missouri's Workers' Compensation law with its liability fully insured by Ace American Insurance, Co. and administered by GAB Robins, Inc.;
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- Mr. Gant was its employee working subject to the Law in Lee's Summit, Jackson County, Missouri;

- Mr. Gant sustained an accident arising out of and in the course of employment on December 3, 2003;
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- Mr. Gant notified US Foodservice of his accident as required by law, and his dependents filed a Claim for Compensation within the time allowed by law;
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- US Foodservice provided Mr. Gant with medical care in the form of one visit to Occupational Health Services costing less than \$500.00; and
- That Mr. Gant's average weekly wage results in a compensation rate of \$570.00 per week.

ISSUES

The parties requested the Division to determine:

- Whether Mr. Gant's accident on December 3, 2003 caused his death on December 18, 2003?
-
- Whether Mr. Gant's dependents are entitled to \$570.00 in weekly death benefits beginning December 18, 2003?
-
- Whether US Foodservice must reimburse the dependents for burial benefits totaling \$5,000.00?
-
- Whether US Foodservice must reimburse the dependents for medical expenses totaling \$17,961.04?
- And,
-
- Whether Lenora Gant and Timothy J. Gant were married?

FINDINGS OF FACT

Lenora Gant testified on behalf of all dependents. The dependents also presented testimony of Jim Bilski (a co-worker of Mr. Gant's), Norma Lee Speak (Lenora Gant's mother) and Dennis Speaks (Lenora Gant's father). The dependents presented the following exhibits, all of which were admitted into evidence:

- A - Medical Records (Bates Numbered 1 through 214)
- B - Medical Bills and Funeral Expenses (Bates Numbered 1 through 10)
- C - Deposition, Martin A. Kanne, MD, March 11, 2005
- D - Deposition, Russell Michael Fiorella, MD, January 8, 2008
- E - Deposition, Thomas Gill, MD, February 27, 2006

- F - Deposition, Melissa Madden, March 11, 2005
- G - Deposition, Anna Hicks, March 11, 2005
- H - Deposition, James L. Walls, Jr., March 30, 2005
- I - Climatological Data, December 2003
- J - Photos
- K - Certificate of Death, Timothy John Gant, December 18, 2003
- L - Birth Certificates, Ameila Ann Gant, Lindsey Sue Gant
- M - Marriage Certificate, Sept. 28, 1990

Although the employer did not call any witnesses to appear at hearing, it presented the following exhibits; Exhibits 1 and 2 were admitted and Exhibit 3 was not admitted:

- 1 - Deposition, Steven Arkin, MD, January 24, 2008
- 2 - Deposition, Lenora Gant, December 10, 2004
- 3 - Work Schedule Sheet (Not admitted into evidence)

Based on the above exhibits and the testimony, I make the following findings. Mr. Gant was a 40-year old male, working as a driver for US Foodservice when he died on December 18, 2003. He was married to Lenora Gant on October 20, 1990 and the Gants had two children together, Amelia, born on December 17, 1991 and Lindsey, born on July 30, 1993. The Gants lived in Lawson, Missouri. Mr. Gant delivered food for US Foodservice and began this employment in 1989. US Foodservice delivers food to various locations including restaurants and other entities that require regular delivery of food. Mr. Gant was a member of the Teamsters Union. His father-in-law, Dennis Speaks, also is a Teamster and was once a Secretary for the Teamsters Union and helped Mr. Gant gain employment with US Foodservice.

For most of his time with US Foodservice, Mr. Gant drove back and forth between Kansas City and St. Louis to pick up and deliver product. Mr. Gant requested and was switched to a local day-delivery route in 2003 due to personal stress he was under. One of the regular stops on his day-delivery route was the Langsford House, a home for delinquent boys that is located in Lee's Summit, Missouri and is a part of the Missouri Division of Youth Services.

Although the precise date is not clear and is actually somewhat confusing in the medical records, the parties stipulated Mr. Gant sustained an accident on December 3, 2003 while making a delivery to the Langsford House. He slipped on ice outside the home. He called his supervisor Jim Walls from the Langsford House and reported the accident. He did not request medical care at that time. (Exhibit H, Page 11:13-21). Mr. Gant also informed two Langsford House employees – Melissa Madden and Anna Hicks – about the accident.

There is some dispute as to whether anyone witnessed Mr. Gant's accident. Mrs. Gant testified her husband told her a woman saw him fall. Claimants presented no eyewitness to Mr. Gant's fall. Ms. Madden did not witness the accident and Mr. Gant did not indicate to her how he fell or what part of his body he hit in the fall. (Exhibit F, Pages 8 and 11). However, someone provided Mr. Gant's family physician, Doctor Martin Kanne, with information that an "Ann, who works in the kitchen at the Langsford House" witnessed the fall, although Mrs. Gant and her father, Dennis Speaks, both denied being the source of this information to Dr. Kanne. (Exhibit A, Page 46). Anna Hicks, the only cook at the Langsford House on December 3, 2003, appeared by deposition and testified that she "did not see him fall." (Exhibit G, Pages 4:1-8 and 10:14-25). Claimant's counsel suggested at hearing that the "Ann" who was reported to have worked in the kitchen at the Langsford House (and who is referred to in Exhibit A, Page 46) and Anna Hicks who testified in Exhibit G are, in fact, two different people. However, there is absolutely no credible evidence to support this proposition which I wholly reject.

The first time Mr. Gant sought any medical treatment following the accident was on December 9, 2003. He reported to the emergency Room at Liberty Hospital and these records thus contain the first memorialized

and reliable statement from Mr. Gant as to the accident and the parts of his body injured in it. Mr. Gant complained of "pain [in the] back of head/neck," informed the staff at Liberty Hospital that he "fell last Wednesday on [his right] shoulder," and that "he felt a pop in his neck." (Exhibit A, Page 89). In its records, Liberty Hospital diagrammed Mr. Gant's complaints of pain in the back of his neck. (Exhibit A, Pages 88 and 85). Mr. Gant also informed Liberty Hospital that he had similar symptoms previously, "had old muscle relaxers for neck pain" and that he also had a "cold for several days." (Exhibit A, Page 85). They diagnosed Mr. Gant with a cervical neck strain and referred him to the workers' compensation system. (Exhibit A, Page 83).

Before requesting authorized treatment, Mr. Gant sought care on December 9, 2003 at McMullen Chiropractic Center in Liberty, Missouri, where he had been a patient since March 11, 1993. (Exhibit A, Page 212). The Center recorded Mr. Gant voicing complaints of neck pain, migraine headache, increased neck pain, and increased muscle spasm. He returned the next day complaining of neck pain but without a headache. Mr. Gant returned again on December 11, 2003 with reduced headache, reduced neck pain but increased low back pain from injury in his neck. On December 15, 2003 he complained of some neck pain and headache. At his last visit at the Center on December 16, 2003 he complained only of neck pain. (Exhibit A, Page 201).

It is unclear when Mr. Gant first requested that US Foodservice authorize medical treatment. Mr. Gant's supervisor in December 2003, James Walls, reviewed US Foodservice records and testified that Mr. Gant requested treatment on December 16, 2003 and that he therefore sent Mr. Gant to Occupational Medicine Associates ("OMA") the same day. (Exhibit H, Pages 7:17-25 and 11:12). Mr. Gant provided a hand written statement he signed in an intake form at OMA on December 16, 2003. (Exhibit A, Page 129). In it, he wrote that the accident occurred on "December 10, 2003," that he "was deliver [sic], feet slip and fell on my right side," and that the accident affected his "right side and neck." He reported "[right] shoulder / neck pain" and complained of "real bad neck pain." The physician at OMA diagnosed "strain neck and [right] trap[ezius]."

Mr. Gant finished his shift on December 3, 2003 and worked full shifts on December 4, and December 5, 2003. He took off the week of December 8 and returned to work a full shift on December 15 and December 16, 2003. On December 16, 2003 he asked Jim Walls to send him out for treatment. (Exhibit H, Page 12:3-7).

Mr. Gant sought a second opinion the next day, December 17, 2003, with his family physician Dr. Kanne. Dr. Kanne recorded that Mr. Gant had fallen at work a week prior and "landed on his right shoulder and actually twisted his head . . . He still has pain in the right side of his neck and a mild headache. No nausea or vomiting. No focal or neurological changes." (Exhibit A, Page 31). Dr. Kanne diagnosed a right cervical strain with muscle spasm.

None of the providers who rendered treatment to Mr. Gant between the accident and the day before he died - Liberty Hospital, OMA, McMullen Chiropractic Center, or Dr. Kanne - noted evidence of trauma to Mr. Gant's face such as bruising or abrasions.

Mr. Gant took off work on Thursday, December 18, 2003, although he spoke with James Walls that morning. (Exhibit H, Pages 13:16-25, 14:1-9, 27:18-25, and 28:1-5). Around 11:00 a.m. they discussed a delivery Mr. Gant had made a few days before as well as how Mr. Gant was doing that morning. Later that day, Mr. Gant's son from a prior marriage "came home to find [Mr. Gant] snoring in an unusual manner and then noticed respiratory arrest." (Exhibit A, Page 120). Mr. Gant's son called emergency medical services who noted shortly after they arrived that Mr. Gant was having a heart attack. (Exhibit A, Page 112). The emergency medical personnel shocked Mr. Gant seven times with a fibrillator and transported him to Liberty Hospital.

At Liberty Hospital Mr. Gant underwent a CAT scan, which revealed that he had suffered a subarachnoid hemorrhage and ruptured cerebral aneurysm in the Circle of Willis. (Exhibit A, Page 99). Mr. Gant was transported to St. Luke's Hospital by life flight helicopter. There, Mrs. Gant reported to Dr. Stephen Reintjes that Mr. Gant "was in his normal state of health this morning" and Donna Speak reported Mr. Gant had encountered a "sudden, severe onset of terrible headache Monday of this week." (Exhibit A, Page 175). Mrs. Speak confirmed at hearing that her son-in-law discussed on December 15, 2003 a migraine headache he had that day. Dr. Reintjes concurred with the diagnosis of subarachnoid hemorrhage due to ruptured aneurysm. He pronounced Mr. Gant dead at 7:30 p.m. and attributed the cause of death the subarachnoid hemorrhage. (Exhibit A, Page 178).

The Jackson County Medical Examiner, Thomas Gill, MD, performed an autopsy on December 19, 2003. Dr. Gill determined the immediate cause of death to be "ruptured saccular aneurysm of the right middle cerebral artery." (Exhibit K). He further noted that hypertensive heart disease contributed to Mr. Gant's death. Dr. Gill ruled Mr. Gant's death was due to natural causes and not an accident. (Exhibit K and Exhibit E, Page 31:11-22).

The Gants dispute Dr. Gill's findings. Dennis Speak testified that since he personally believed there was a connection between Mr. Gant's fall on December 3, 2003 and death on December 18, 2003 due to a ruptured aneurysm, that he asked their physician, Dr. Kanne, to discuss the matter with Dr. Gill. Mrs. Gant testified also that she sent Dr. Gill's report to Dr. Kanne for review.

On January 20, 2004 Dr. Kanne noted a conversation he had with Mrs. Gant and recorded that he believed "the bleeding resulted from his fall at work and may have come from the saccular aneurysm, although that cannot be proven." (Exhibit A, Page 32).

Dr. Kanne then wrote a letter on January 20, 2004 stating that Mr. Gant had "no previous history of any head or neck injury or complaints of head or neck pain prior to his accident at work. Therefore there is no question in my mind that his death should be ruled accidental." (Exhibit A, Page 42).

Dr. Kanne then called Dr. Gill directly and summarized their conversation in a letter to him dated February 2, 2004. In it, Dr. Kanne wrote that at "no time was [Mr. Gant] diagnosed with high blood pressure. The autopsy report mentioned that hypertension contributed to his death. I believe this was placed on the death certificate in error as he never had hypertension." (Exhibit A, Page 45). He further wrote that in "the 12 years I took care of Tim there were no complaints of headache." Interestingly, Dr. Kanne copied this letter not to Mrs. Gant, but to Dennis Speak.

Dr. Kanne wrote to Dr. Gill again on February 5, 2004 to inform him there was an eyewitness to the fall and to provide the treatment records of OMA from December 16, 2003. He wrote Mr. Speaks a handwritten addendum to this letter stating "Dennis, great work. I think this will do it!" (Exhibit A, Page 43).

Dr. Kanne's treatment records appear to contradict many of his statements in these letters. For example, he noted treating Mr. Gant on August 10, 1995 for "muscle stiffness of neck, scapular area and low back." (Exhibit A, Page 21). He noted Mr. Gant complaining of "insidious onset of left neck pain about 2 weeks ago." (Exhibit A, Page 24). Dr. Kanne diagnosed Mr. Gant with "bilateral cervical strain and muscle spasm" on September 11, 2001. (Exhibit A, Page 24). Mr. Gant voiced similar complaints on July 3, 2002 and August 21, 2003. (Exhibit A, Pages 25, 26).

These statements by Dr. Kanne further fail to take into account treatment Mr. Gant sought at McMullen Chiropractic Center for neck pain March 24, 1998, March 25, 1998, March 27, 1998, May 12, 1999, January 1, 2000, June 13, 2001, October 16, 2001, March 15, 2002, March 16, 2002, August 22, 2003, August 29, 2003, September 15, 2003, and September 17, 2003.

With respect to hypertension, Dr. Kanne's treatment file records Mr. Gant as having blood pressure of 134/82 on December 11, 1998, 110/90 on July 3, 2002, 130/90 on February 10, 2003, 140/90 on February 18, 2003, 132/100 on February 28, 2003, 126/96 on March 12, 2003 (which was down from an earlier reading that day of 140/100), 140/94 on April 1, 2003, 138/80 on July 3, 2003, 140/88 on August 21, 2003, and 140/100 on September 19, 2003, (Exhibit A, Pages 22, 25-29). Dr. Kanne apparently was unaware that providers at Liberty Hospital also recorded Mr. Gant as having elevated blood pressure in 2003 such as 150/103 on January 26, 2003, 144/111 on October 5, 2003. (Exhibit A, Pages 52, 76).

In contrast, Dr. Gill documented in the autopsy objective evidence of hypertension. Specifically, he found evidence of chronic left ventricular hypertrophy. (Exhibit E, Deposition Exhibit 1, Page 5). Dr. Gill further noted his autopsy examination revealed Mr. Gant as having arteriosclerosis in the heart, which was evidence that the "blood vessels are not completely normal." (Exhibit E, Page 55:24 – 56:16).

Dr. Kanne treatment notes confirm that Mr. Gant had hyperlipidemia. (Exhibit C, Page 37:7-18). Dr. Russell Fiorella, the claimant's designated expert, opined that hyperlipidemia is another risk factor beyond hypertension with respect to weakening of aneurysms. (Exhibit D, Pages 50:23-25 and 51:1-13).

Mrs. Gant testified that she believed her husband was in a normal and vigorous state of health and was an unusually active person prior to December 3, 2003. She believed his health changed drastically following December 3, 2003. She identified several dozen undated photographs that she testified captured Mr. Gant's active lifestyle sometime before December 3, 2003, such as results of hunting trips he went on or items he built around their home in Lawson, Missouri.

However, Mrs. Gant was unaware that her husband had been diagnosed with hyperlipidemia years before December 3, 2003 and that Dr. Kanne recommended Mr. Gant have a special diet to treat his hyperlipidemia. Mrs. Gant was unaware the frequency that her husband had treated for neck complaints at McMullen Chiropractic in the year prior to December 3, 2003 or the several times with Dr. Kanne dating back to September 2001. Mrs. Gant described her husband as stoic, reticent to seek medical care, and not one to complain and thus appeared surprised to learn on cross-examination that her husband had sought medical treatment of various kinds fifteen times in the twelve months prior to December 3, 2003. Mrs. Gant confirmed that her husband suffered from anxiety throughout much of 2003 due to a heart attack his father suffered and Mr. Gant's belief he would suffer a heart attack too. She confirmed Mr. Gant reported to Liberty Hospital in March 2003 under the belief he was having a heart attack at the time, which he was not. An echocardiogram performed at the time, though, did confirm "left ventricular hypertrophy." (Exhibit A, Page 58).

Mrs. Gant testified at hearing that her husband called her on December 3, 2003 and told her that he had fallen on ice at work and hit his head. However, this testimony conflicts irreconcilably with Mrs. Gant's sworn deposition testimony that her husband called her and told her only "that he fell and when got up he felt okay. But he called in and told them that he fell." (Exhibit 2, Page 15:14-15). When asked in the deposition "What else did your husband tell you about the fall?" Mrs. Gant testified "just that he fell and fell really hard. But, he said when he got up he felt fine." (Exhibit 2, Page 17:20-21). In her deposition she provided no testimony that her husband related hitting his head on December 3, 2003. She confirmed having no other conversations with her husband about the fall before his death. (Exhibit 18:10-13). When asked about this significant change in her testimony from deposition to hearing, Mrs. Gant conceded on cross-examination that her memory about the conversations she had with her husband concerning his accident were better when her deposition took place on December 10, 2004 than it was at the hearing held more than four years after the accident.

Jim Bilski, a co-worker of Mr. Gant's, testified that he knew Mr. Gant for several years before his death. He thought Mr. Gant looked worse after December 3, 2003 than he did before the accident. He could not say

whether Mr. Gant looked worse because of the accident or because of Mr. Gant's aneurysm, his anxiety, the cold Mr. Gant had at the time or some combination thereof. Whichever, he had absolutely no concerns about Mr. Gant driving on public roads during this time or making his usual deliveries. He also felt no need to recommend that Mr. Gant seek medical treatment and reported no safety concerns to US Foodservice.

Four doctors provided opinions through reports and testimony. The medical examiner, Dr. Gill, performed the autopsy on Mr. Gant on December 19, 2003. Following the autopsy, Dr. Gill recorded in the death certificate the manner of death was "natural." (See Exhibit K). He wrote in his report that cause of death was "ruptured saccular aneurysm of the right middle cerebral artery." Dr. Gill determined upon this physical examination of Mr. Gant that Mr. Gant had an enlarged heart caused by hypertensive heart disease. Had he believed it to be the case, Dr. Gill could have determined that Mr. Gant's death was the result of an "accident" but determined that was not appropriate. (Exhibit E, Page 31:13-22).

Dr. Gill found no "evidence of trauma that [he] could point to" as a cause of death so he determined the cause to be "Natural." (Exhibit E, Page 40:11-13). Dr. Gill specifically looked for evidence of head trauma during the autopsy and found none. (Exhibit E, Page 42:21-25). He also noted the absence of bruising in the head, further indicating lack of trauma to the head. (Exhibit E, Page 31:3-9). Dr. Gill noted his opinion in this regard is supported by the absolute lack of any clinical treatment findings that Mr. Gant sustained any trauma to the front of his head, which Dr. Gill determined did not warrant intensive examination. (Exhibit E, Pages 33:8-19, 34:18-25 and 35:1-7). He looked in the posterior neck dissection "very carefully for trauma" and "couldn't find it." (Exhibit E, Page 42:22-23).

Likewise, Dr. Gill's autopsy revealed "no vertebral artery tears", which would have indicated that the subarachnoid hemorrhage identified the day Mr. Gant died was caused by the accident as opposed to solely related to the ruptured aneurysm. (Exhibit E, Page 53:9-15). Dr. Gill therefore concluded the rupture of Mr. Gant's aneurysm was not caused by the accident. Dr. Gill stated that since he "didn't find in [his] forensic autopsy here any evidence of trauma that [he] could point to [that is] the reason why I choose natural." (Exhibit E, Page 40:11-13).

In addition to being Mr. Gant's family physician and thus generating treatment records, Dr. Martin Kanne testified on March 11, 2005. During the deposition, Dr. Kanne stated he was "aware that my devotion to this family does cloud my judgment somewhat." (Exhibit C, Page 38:7-9). Dr. Kanne testified that Mr. Gant's accident and his death three weeks later because of a ruptured aneurysm are not random because things like that do not happen "to my patients and not to people that mean a lot to me." (Exhibit C, Page 38:13-14). The Gants and Speaks mean a lot to him because over the years he has treated them "they became very close to us." (Exhibit C, Page 8:2).

With respect to causation, Dr. Kanne stated his opinion that the accident and Mr. Gant's death are related based upon his belief that "if there is a temporal relationship, there is almost always a causal relationship." (Exhibit C, Page 17:21-22). He stated the timing of the two events is the "most conclusive" factor in the formation of his opinion. (Exhibit C, Page 17:11-16). Dr. Kanne stated that in other words, the events must be related because there was a "substantial fall and then a person was dead within three weeks." (Exhibit C, Page 46:4-5).

Dr. Kanne's opinion is further predicated on the belief that Mr. Gant "falls and strikes his head." (Exhibit C, Page 13:11-12) and that Mr. Gant would have lived if "he had not fallen on the ice and struck his head." (Exhibit C, Page 19:12-13). Dr. Kanne's understanding is that after the accident Mr. Gant sought medical treatment in "about 24 hours." (Exhibit C, Page 31:14-15).

Dr. Kanne's specialty is "family practice." (Exhibit C, Page 4:10). His opinion is that with respect to the time relationship of head trauma and rupture of an aneurysm the two can be related even "if it's in ten years."

(Exhibit C, Page 7:5-7).

Dr. Russell Fiorella is a pathologist at Truman Medical Center who testified on behalf of the Claimants. (Exhibit D, Page 3:12-14). He agreed with Dr. Gill that the autopsy revealed Mr. Gant had an aneurysm in the “mid portion . . . [of the] Circle of Willis.” (Exhibit D, Page 8:11-12). He testified that “most of the time” the cause of a ruptured aneurysm is “spontaneous . . . most of the time these are going to be spontaneous.” (Exhibit D, Page 13:21 – 14:8). He testified that, in fact, “the majority of them will rupture spontaneously.” (Exhibit D, Page 27:24-25). With respect to the fact that “most aneurysms will rupture spontaneously,” Dr. Fiorella noted several other “aggravating factors” that contribute to an aneurysm weakening and rupturing, those being “atherosclerosis; hyperlipidemia states; hypertensions; diabetes.” (Exhibit D, Pages 50:23 through 52:11). These risk factors increase the risk of spontaneous rupture. (Exhibit D, Pages 58:3 through 59:24).

Dr. Fiorella opined that blunt head trauma can cause “delayed” rupture of an aneurysm for up to “a couple months”. (Exhibit D, Page 15:18). He cautioned, though, that relating a two week delay between trauma and rupture would depend on other factors such as if the patient had “atherosclerosis and lipidemia, and also depends on the – extent of the trauma.” (Exhibit D, Page 16:3-9). In his opinion, the trauma to the head must be “severe.” Dr. Fiorella’s opinions are predicated upon Mr. Gant having sustained a “blow to head” as suggested by claimant’s counsel, Dr. Kanne, and Mrs. Gant. (Exhibit D, Pages 19:9-15, 44:10-13).

However, Dr. Kanne’s treatment records were not made available to Dr. Fiorella for review. (Exhibit D, Page 23:3). The records from Liberty Hospital were not made available to Dr. Fiorella for review. (Exhibit D, Page 29:3-16). The records of St. Luke’s Hospital were not made available to him for review. (Exhibit D, Page 30:2-3). Dr. Fiorella was not aware until his deposition that Mr. Gant had a heart attack the day he died, although that did not prevent Dr. Fiorella from then opining that Mr. Gant’s heart attack also was related to the accident. (Exhibit D, Pages 48:17-18 and 50:14-19). Incredibly, Dr. Fiorella stated that being able to review those records and having more information would not change his causation opinion “no matter what the information was.” (Exhibit D at 21-24).

Dr. Steven Arkin is a board-certified neurologist with Neurological Consultants of Kansas City. Dr. Arkin specializes in “study of the brain and the spinal cord, things like Parkinson’s disease, multiple sclerosis, migraines.” (Exhibit 1, Page 4:3-5). Dr. Arkin regularly treats patients with aneurysms. (Exhibit 1, Pages 4:24 through 5:1).

Dr. Arkin defined a saccular aneurysm as “a developmental defect in the artery wall which causes ballooning generally at branch points of arteries, most usually in the circle of Willis, which is the central area of the brain where all the blood vessels come together.” (Exhibit 1, Page 5:4-9). He confirmed that at any given time 10 to 15 million Americans have aneurysms and that 30,000 of those encounter a rupture. (Exhibit 1, Page 18:15-19). The majority of “ruptures are spontaneous.” (Exhibit 1, Page 18:22). He explained that the majority of aneurysms rupture spontaneously because “the wall of the aneurysm continues to weaken over time, and at some point the physics of this situation allows the aneurysm to actually open up and blood to leak out into the brain.” (Exhibit 1, Page 19:1-4).

Dr. Arkin testified at the request of US Foodservice. Unlike Dr. Fiorella, Dr. Arkin had and reviewed all of the treatment records. He reviewed all of Mr. Gant’s treatment records as found in Exhibit A, as well Dr. Fiorella’s deposition testimony. (Exhibit 1, Pages 6:16 through 7:2). Dr. Arkin noted that none of the treatment records following the accident record Mr. Gant as stating to his physicians that he sustained a direct trauma to the head. (Exhibit 1, Page 10:25).

According to Dr. Arkin, Mr. Gant’s aneurysm was congenital and was further weakened by several risk factors, including atherosclerosis, hypertension, cholesterol and smoking. (Exhibit 1, Pages 12:17 through

13:1). Dr. Arkin noted that echocardiograms Mr. Gant underwent in 2003 further documented the presences of hypertension as found by Dr. Gill and denied by Dr. Kanne. (Exhibit 1, Page 14:8-13).

Dr. Arkin's opinion is that Mr. Gant died because he had a congenital saccular aneurysm that ruptured spontaneously, as the majority of aneurysms rupture, due to continued exposure to the risk factors of atherosclerosis, hypertension, high cholesterol and smoking. (Exhibit 1, Page 20:2-13). He further concluded that the accident on December 3, 2003 was incidental to the rupture of the aneurysm and did not occur because of the fall. This is because the fall resulted only in "neck strain, as documented by several visits to medical personnel prior to [Mr. Gant's] death." (Exhibit 1, Page 21:7-13). He concluded the timing of the two events is unrelated because "there is no indication on anybody's part that there was direct blunt head trauma. There is no suggestion, based on the representations and the changes of [Mr. Gant's] symptoms in visiting with medical personnel on eight occasions prior to his death, that he had sustained subarachnoid hemorrhage prior to December 18." (Exhibit 1, Page 24:6-13).

Dr. Arkin testified that trauma can cause a pre-existing aneurysm to rupture, but only "if the trauma occurs directly at the point where an aneurysm already exists and there is evidence that the trauma was there, either through a fracture or hemorrhage in the soft tissues around that location." (Exhibit 1, Pages 32:25 through 33:4). Based on his review of all of the records, the autopsy report, and the autopsy films, Dr. Arkin concluded that such evidence simply does not exist. (Exhibit 1, Pages 54:16 through 56:2).

RULINGS OF LAW

The major issue in this case is one of medical causation. Four physicians have offered expert medical opinions in the case. All four concur that Timothy Gant died from to a ruptured cerebral aneurysm. Two physicians opined that Mr. Gant's slip and fall accident on December 3, 2003 caused the aneurysm to rupture over two weeks later on December 18, 2003. Two physicians opined Mr. Gant's death on December 18, 2003 is unrelated to the accident.

Given the complex nature of the medical evidence in this case and the differences of opinion between the physicians, I must conclude that medical causation in this matter cannot be determined by common knowledge or experience. "An injury may be of such a nature that expert opinion is essential to show that it was caused by the accident to which it is ascribed. When the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis . . . the proof of causation is not within the realm of lay understanding." Silman v. William Montgomery & Assoc., 891 S.W.2d 173, 175-76 (Mo. App. 1995) (citations omitted).

Accordingly, I find that the medical causation issue can be determined only by reliance on expert medical evidence. Based upon review of the treatment records, the medical reports, and the testimony presented, I find the opinions of Dr. Gill, the medical examiner, and Dr. Arkin, the neurologist, to be credible and, thus, dispositive. As such, I find the Claimants failed to offer credible evidence that Mr. Gant's accident on December 3, 2003 is the cause of the catastrophic rupture of his congenital saccular berry aneurysm and his death on December 18, 2003.

These findings are based on several determinations. First, I find that the saccular berry aneurysm that ruptured was congenital. The reliable expert testimony is that the majority of such aneurysms rupture spontaneously. I find that Mr. Gant's is one such case. I further find that several risk factors existed here that made spontaneous rupture even more likely. The objective evidence is that Mr. Gant suffered from atherosclerosis, hypertension, hyperlipidemia, and that he smoked cigarettes, all of which further weakened the congenital aneurysm and made spontaneous rupture even more likely. I find the opinions of the Dr. Gill,

the Jackson County Medical Examiner, and Dr. Arkin, a neurologist, to be the most persuasive and reliable opinions in this case.

In contrast to Dr. Gill and Dr. Arkin, the opinions of Dr. Kanne and Dr. Fiorella are unpersuasive because they are based on the assumption that Mr. Gant hit his head in the accident and sustained head trauma. This assumption is simply not supported by the evidence and to the extent Dr. Kanne and Dr. Fiorella rely on the assumption, their opinions lack credibility.

Before his death, Mr. Gant himself provided facts regarding the accident to several providers at Liberty Hospital, McMullen Chiropractic Center, OMA, and to Dr. Kanne. These statements contain Mr. Gant's own version of the accident and, as such, constitute the most reliable account of the accident. All of his statements to the providers present strikingly similar versions of the facts Mr. Gant reported first to Liberty Hospital, namely, that he "fell last Wednesday on [right] shoulder." All are further notable for the lack of any report by Mr. Gant that he sustained a blow to the head.

The only evidence in the record before me that Mr. Gant sustained a blow to the head was the testimony of Mrs. Gant. Mrs. Gant did not witness the accident nor did locate and speak to anyone who did. Her testimony on the issue at hearing over four years after the accident directly contradicts the sworn testimony she provided in deposition barely one year after the accident. I find Mrs. Gant's contradictory testimony lacks credibility and is unreliable. While I do not perceive or imply that Mrs. Gant intended any deception, Mrs. Gant herself admitted under cross-examination that her memory of conversations with her husband was better in 2004 than it was at this hearing in 2008.

I find the reliability of Dr. Kanne's opinions is reduced further by his confession that he is "aware that [his] devotion to this family does cloud" his judgment. He is simply too close to the family to provide an unbiased opinion. As Dr. Arkin pointed out, Dr. Kanne's own treatment records contradict the opinions Dr. Kanne expressed, as do the objective autopsy findings.

The reliability of Dr. Fiorella's opinions is diminished because he did not have the medical records for review. For example, while he noted that most aneurysms rupture spontaneously and that other risk factors further increase this possibility, he was unaware that several of those factors were found in this case such as Mr. Gant's hypertension, atherosclerosis, hyperlipidemia, and smoking. Dr. Fiorella's unawareness of the presence of these co-factors, coupled with his mistaken assumption about the accident itself renders his opinions dubious and I find him to be unreliable.

In contrast, I find Dr. Gill to be credible and reliable. Dr. Gill performed the autopsy on Mr. Gant and thus examined the physical evidence more closely than any other physician in this case. He found no evidence of head trauma and no evidence to support the assertion that Mr. Gant's fall on December 3, 2003 caused the congenital aneurysm to rupture over two weeks later. Dr. Gill considered the possibility that Mr. Gant's death was caused by accident but after careful review of the objective evidence simply could not reach that conclusion. He carefully looked for signs of trauma, but found none. The notion suggested in his deposition that his autopsy was flawed because he did not exam under the skin of Mr. Gant's face presents a false choice and is misleading. There is no objective evidence that Mr. Gant sustained a blow to the head in the accident, much less hit or injured his face. There is no mention of any injury to Mr. Gant's face in the records of the four providers who treated Mr. Gant after the accident – Liberty Hospital, McMullen Chiropractic Center, OMA, and Dr. Kanne. Had Mr. Gant injured his face in the accident I find that he would have reported it to a physician and at least one of the four entities that provided treatment to him would have noted as much.

I find likewise that Dr. Arkin is credible and reliable. Unlike Dr. Fiorella, Dr. Arkin had all of Mr. Gant's medical records available for review. Review of the records allowed Dr. Arkin to learn that echocardiograms

performed in March 2003 and December 2003 produced objective evidence that Mr. Gant suffered from hypertension, a risk factor involved with aneurysm ruptures and confirmed objectively in the autopsy. Review of the records allowed Dr. Arkin to learn that Mr. Gant had hyperlipidemia, another risk factor involved with aneurysm ruptures. Further, Dr. Arkin is the only testifying physician in this matter who actually treats patients for saccular berry aneurysms. He is, therefore, in the best position out of all of the doctors to render expert opinions regarding what caused Mr. Gant's saccular berry aneurysm to rupture.

I find that the credible and reliable evidence introduced at hearing supports only one conclusion: the accident on December 3, 2003 caused a cervical right trapezius strain but is incidental to Mr. Gant's unfortunate death two weeks later from a catastrophic aneurysm rupture.

This is not to say that an employee's work activities cannot cause a congenital aneurysm to rupture and cause compensable injury or death. While the reported workers' compensation cases involving a ruptured cerebral aneurysm are scant, those determined to be compensable always involve a catastrophic rupture occurring while the employee was working (See, McDermott v. City of Northwood Police Department, 103 S.W. 3d 134 (Mo.App. 2002), and Jones v. Millennium Management, Injury No. 98-142431) or where the catastrophic rupture caused death with 24 hours of the accident (See, Hoffman v. Mayberry Bros. Const., 904 S.W. 2d 572 (Mo.App.1995), Martin v. City of Independence, 625 S.W. 2d 940 (Mo.App. 1981).

In stark contrast to the cases holding an aneurysm rupture to be compensable, Mr. Gant sustained an accident on December 3, 2003 but the catastrophic rupture did not occur until December 18, 2003. None of the reported cases in which a ruptured aneurysm was found to be work-related involve a delay between the work activity and death of more than twenty four hours. Nor do they involve so many of the collateral risk factors that existed here. Further, while Mr. Gant slipped on Wednesday, December 3, 2003 he finished his work shift that day without incident. He also worked a full day on Thursday, December 4, 2003 and Friday December 5, 2003. He did not feel it necessary to seek any medical attention at all until six days later when, on December 9, 2003, he went to Liberty Hospital stating he had fallen on his right shoulder several days before. He also worked full shifts on December 15, 16, and 17, 2003 further distinguishing this case from the few reported cases finding a ruptured aneurysm to be work-related.

In summary, I find that Mr. Gant's accident and December 3, 2003 and his subsequent death over two weeks later on December 18, 2003 are incidental to each other. The accident of December 3, 2003 did not cause Mr. Gant's death on December 18, 2003; the two events are unrelated. I feel sympathy for the Gant family because of this tragic situation. They lost a person who by all accounts was a fine person, father, and husband. However, because I find the two events are incidental to each other, the objective and credible evidence does not support an award of benefits and the claim is denied. All remaining issues are moot.

Date: _____

Made by: _____

Carl Mueller
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey Buker
Director
Division of Workers' Compensation

Objection to Item 4, Liberty Orthopedics records as not related. Overruled and admitted.

Objection as not certified. Overruled and admitted.

Objection: not relevant. Overruled and admitted.

Objection: irrelevant, not dated, foundation, not specific as to time. Overruled and admitted.

Objection: no witness has identified it; not certified; foundation not laid. Sustained and not admitted.

Lenora Gant had children from a previous marriage who were not dependents of Mr. Gant when he died.

In addition to being Gant's family physician, he is Mrs. Gant's family physician as well family physician for both of her parents, Dennis and Norma Speaks.

Dr. Arkin was obviously unaware that Mrs. Gant would change her deposition testimony at the hearing.