

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

Injury No.: 06-086280

Employee: Ronald A. Harness, Jr., deceased
Dependents: Robin Yvonne Harness, widow; Ronald Arthur Harness, III and Elizabeth Fern Harness, dependent children
Employer: Southern Copyroll, Inc.
Insurer: Firstcomp Insurance Company
Date of Accident: August 8, 2006
Place and County of Accident: Greene 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 February 5, 2008. The award and decision of Associate Administrative Law Judge Robert H. House, issued February 5, 2008, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 24th day of July 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Ronald A. Harness, Jr. (Deceased)

Injury No. 06-086280

Dependents: Robin Yvonne Harness (Spouse)
Ronald Arthur Harness, III (Child)
Elizabeth Fern Harness
(Child)

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

Employer: Southern Copyroll, Inc.

Additional Party N/A

Insurer: Firstcomp Insurance Company

Hearing Date: November 16, 2007

Checked by: RHH/meb

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: August 8, 2006
5. State location where accident occurred or occupational disease was contracted: Greene 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 was involved in a motor vehicle accident.
12. Did accident or occupational disease cause death? Yes Date of death? August 8, 2006
13. Part(s) of body injured by accident or occupational disease: Fatal
14. Nature and extent of any permanent disability: Fatal
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?

17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$520.46
19. Weekly compensation rate: \$346.99
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

The employer and insurer are ordered to pay to Robin Yvonne Harness the entire death benefit of \$346.99 per week which shall include \$50.00 per week for each dependent child payable to Robin Yvonne Harness as the natural guardian of said dependent children to be used as she deems appropriate for their support, maintenance, and education. Ronald Arthur Harness, III, at the time of this award, was over the age of eighteen. There was no evidence presented at the hearing as to whether said dependent child continues to meet the definition of total dependent under Section 287.240(4)(b). If Ronald A. Harness, III, is no longer entitled to such benefits under the law, the \$50.00 share ordered to be paid to Robin Yvonne Harness as the natural guardian of Ronald Arthur Harness, III, shall be paid directly to Robin Yvonne Harness. Death benefits shall be paid from August 9, 2006, and continuing thereafter. Employer and insurer also shall pay the burial expense agreed upon by the parties to be \$2,271.92.

22. Second Injury Fund liability: No

Total

23. Future requirements awarded: See above

Said payments to begin immediately 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 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

William Francis, Attorney

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ronald A. Harness, Jr.

Injury No: 06-086280

Dependents: Robin Yvonne Harness (Spouse)
Ronald Arthur Harness, III (Child)
Elizabeth Fern Harness

(Child)

Employer: Southern Copyroll, Inc.

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

Additional Party N/A

Insurer: Firstcomp Insurance Company

Checked by: RHH/meb

The parties presented evidence at a hearing on November 16, 2007. Yvonne Harness, the widow of Ronald A. Harness, appeared in person and with her attorney, William Francis. Employer/insurer appeared through their attorney, Kevin Dunaway. Only one issue was presented for determination at the hearing: whether Ronald A. Harness died as a result of an accident arising out of and in the course and scope of his employment. The ultimate issue is whether claimant's being killed while driving an automobile in a "subsidized vehicle" was an accident under Section 287.020.5, RSMo, dealing with going to and coming from work.

The parties agreed that claimant's average weekly wage was \$520.46 and that the workers' compensation rate was \$346.99 per week for all purposes. Additionally, the parties agreed that there was a burial expense of \$2,271.92 which has not been paid by the employer/insurer. The parties agree that the issue of whether those funeral and burial expenses should be paid by the employer fall with the issue of whether Ronald A. Harness died as a result of an accident arising out of and in the course and scope of his employment.

The record was left open until December 8, 2007, for the parties to present additional evidence regarding the nature of a limited liability corporation which may have been considered Claimant's additional employer. However, no evidence concerning an additional employer was presented. The only evidence presented by the parties was that Claimant was an employee of Southern Copyroll, Inc., even though he was performing work on the day of his death for Custom Tool Crafters. Apparently, Custom Tool Crafters was a subsidiary or related entity to Southern Copyroll, Inc. From the evidence in this case, specifically the testimony of Gary L. English, it is clear that he is the sole owner of Southern Copyroll, Inc., a South Carolina corporation. Additionally, it is clear that he is the owner of Custom Tool Crafters, LLC. Southern Copyroll, Inc., has its principal place of business in Fair Grove, Missouri. There are two locations for Southern Copyroll in Fair Grove, with the main business location at 10 West Old Mill Road in Fair Grove, where Ronald A. Harness normally worked. However, at times he would also be assigned to perform work at Custom Tool Crafters located in Ozark, Missouri.

On August 8, 2006, Mr. Harness was directed to work during the afternoon in Ozark, Missouri, at Custom Tool Crafters. He was to be paid for all of the hours he worked that day until the time he left the Ozark facility. However, as was the custom of Southern Copyroll, Mr. Harness also was provided with mileage reimbursement for the entire roundtrip from the principal place of business for Southern Copyroll in Fair Grove, Missouri, to and from the Custom Tool Crafters location in Ozark, Missouri.

Claimant finished his work at approximately 4 p.m. on August 8, 2006. He left the Custom Tool Crafters location near at CC and 65 Highway in Ozark, Missouri, first going to a gasoline station to get fuel for his vehicle. One of the individuals with whom Mr. Harness worked that day, Mr. Church, was also at that gas station. Mr. Harness told Mr. Church that he was going home to Pleasant Hope after getting gas. Mr. Harness had also told his supervisor, Richard Gourley, "that morning that he wanted to go home as soon as he got off work."

Also, on August 8, 2006, Mr. Harness told his stepson, Shawn Keen, that, "He had to stop by work and then he was going home" when he was to leave Custom Tool Crafters. After leaving the gas station, Claimant traveled on Highway 65 North. From the Missouri Highway Patrol Accident Report, it appears that the accident which resulted in Mr. Harness' death occurred three-tenths of a mile before CRD 102 [W] on Highway 65. That location was described by Claimant's widow as being just after Highway 65 crosses Interstate 44. Richard Gourley also testified that he was familiar with the location of Farm Road 102 which apparently is the same as listed in the Accident Report as CRD 102 [W] where it intersects with Highway 65. From Mr. Gourley's testimony, along with that of other witnesses, and as shown on the map marked Exhibit J, Farm Road 102 intersects with Highway 65 just north of the intersection of Highway 65 and I-44 as described by the Highway Patrol Accident Report. As described by Mr. Gourley and others, Highway 65 would be a direct route from the Ozark Custom Tool Crafters in Ozark location to Fair Grove. From the record it appears that Claimant's home was located near Pleasant Hope Missouri, as listed by his wife as 1965 East 558 Road, Pleasant Hope, Missouri. Claimant's stepson indicated a route to go to Claimant's home that would involve the use of Highway CC and H west of Fair Grove, Missouri, in order to go to Claimant's house. From the detailed map set out in Exhibit J, Highway CC intersects with Highway 65 and

continues west of Fair Grove toward Highway H. Pleasant Hope is north and west of Fair Grove.

The issue in this case is whether Mr. Harness died as a result of an accident arising out of and in the course and scope of his employment. Generally, an accident occurring while an employee is going to and from work is not compensable. *Cox v. Tyson Foods, Inc.*, 927 S.W2d 534 (Mo. Banc. 1996). However, there are exceptions to that rule, including the doctrines of extended premises, mutual benefit, and dual purpose. It is clear in this case that Mr. Harness was required to use an automobile for his work. Indeed, Mr. Harness was generally compensated for mileage and was to have been compensated on the day of his death for his travel from the principal business location of Southern Copyroll, Inc., in Fair Grove, Missouri, to and from the Ozark Custom Tool Crafters Facility in Ozark, Missouri. Thus, under existing Missouri case decisions, there would be an exception to the general rule of noncompensability for going to and coming from work “. . . where the employer, because of the distance to the job site or for the convenience of the employer, furnishes the employee’s transportation, compensates the employee for use of his own vehicle, or pays the employee for travel time.” *Garrett v. Industrial Commission*, 600 S.W. 2d 516, 519 (Mo. App. W. D. 1980). That exception is often known as the *Reneau* doctrine because it was established in *Reneau v. Bales Electric Co.*, 303 S.W.2d 76 (Mo. 1957). That doctrine generally is interpreted to mean that one whose work entails travel away from the employer’s primary premises is held to be in the course of employment except when on a distinct personal errand. *Baldrige v. Inter-River Drainage District of Missouri*, 645 S.W.2d 139 (Mo. App. 1982). Pursuant to the decision in *Baldrige* and other cases, individuals traveling in subsidized vehicles would be in the course of employment until the trip ended, generally upon reaching home. However, the Legislature in 2005 amended the law in Section 287.020.5 as follows:

Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee’s home to the employer’s principal place of business or from the employer’s principal place of business to the employee’s home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

Pursuant to the change in statute, the *Reneau* doctrine has been abrogated to the extent set out in Section 287.020.5. That new restriction applies only to going from an employee’s home to the employer’s principal place of business or from the employer’s principal place of business to the employee’s home. The language of the statute is precise. Moreover, the provisions of Chapter 287 are to be construed strictly pursuant to Section 287.800. With that admonition in mind, it appears that the statute has a limited restriction when an employee is injured going to and coming from work in company-owned or subsidized vehicles while traveling between employee’s home and employer’s primary place of business. The particular language of the law would not restrict individuals in subsidized vehicles or company-owned vehicles at times other than those circumstances.

In this instance, claimant was injured while he was traveling either to his home or to the company’s principal place of business following his having worked at a subsidiary company’s location as directed by his employer. It is unclear whether claimant was traveling to his home or to the employer’s principal place of business following his ending work in Ozark, Missouri, since the highway upon which he was traveling at the time he was injured was the highway he would normally take to reach a secondary route he could use in one direction (northwest) to his home or in a different direction (east) to his employer’s principal place of business. Clearly, claimant told his stepson that he would be going by the employer’s principal business location in Fair Grove before he went home, yet he told another co-employee that he was going home to Pleasant Hope. However, employee’s actual intent at the time of the accident is not clear under the facts of this case since he was injured on Highway 65 almost immediately after crossing Interstate 44, long before he reached the turnoff to go to his home at Pleasant Hope or the turnoff to go to his employer’s principal business location in Fair Grove. Consequently, claimant’s actual intent as to whether he was going home or to his employer’s principal place of business can never be known since he died in the accident. Yet it is clear that claimant was not traveling from his employer’s principal place of business to his home or from his

home to his employer's principal place of business at the time of the accident. Indeed, from the evidence in this case, it is clear that claimant had traveled to his employer's subsidiary's location in Ozark, Missouri, and had left that facility traveling on Highway 65 North at the time the accident occurred. It is also clear from the testimony in this case the claimant was to receive roundtrip mileage for the trip from employer's principal place of business in Fair Grove, Missouri, to employer's subsidiary business in Ozark, Missouri, and back to Fair Grove. The only deviation, if it can be called that, was leaving the highway in order to get gasoline for claimant's vehicle. Getting gasoline for his vehicle certainly was of mutual benefit for claimant and his employer in order to allow employee to have fuel for his vehicle's trip for business purposes. *Mann v. City of Pacific*, 860 S.W.2d 12 (Mo. App. E.D. 1993). Moreover, even if the deviation to get gas would be considered unrelated to business, once claimant returns to his route, a logical route back to employer's principal place of business, then the deviation no longer is in effect. *Parsons v. Kay's Home Cooking, Inc.*, (Mo. App. S.D. 1992).

Therefore, in strictly applying the language of the statute, claimant was not traveling from employer's principal place of business to his home or from his home to his employer's principal place of business at the time the accident occurred. The literal language of the law excluding such a trip does not apply. Additionally, claimant in receiving mileage for his trip from his employer's principal place of business to its subsidiary location and back to the principal place of business would under the *Reneau* doctrine make his trip compensable, and the statutory change limiting compensability does not apply to such a trip. Moreover, claimant was traveling a route from the subsidiary location that could take him to his employer's principal place of business, and he had not deviated from that route at the time of the accident. Based upon all of those facts, I find that Ronald A. Harness died as a result of an injury arising out of and in the course and scope of his employment while traveling from his work at a subsidiary business location and not from employer's principal place of business which he had not yet reached.

Ronald Arthur (Art) Harness was survived by his widow, Robin Yvonne Harness, and by his children: Ronald Arthur Harness, III, born December 1, 1989; and Elizabeth Fern Harness, born February 11, 1993. Pursuant to Section 287.240(4), claimant's widow and his minor children are conclusively presumed to be totally dependent for support upon the deceased employee and are entitled to the death benefit pursuant to Chapter 287. Consequently, I order employer and insurer to pay to Robin Yvonne Harness the entire death benefit of \$346.99 per week which shall include \$50.00 per week for each dependent child payable to Robin Yvonne Harness as the natural guardian of said dependent children to be used as she deems appropriate for their support, maintenance, and education. Ronald Arthur Harness, III, at the time of this award, was over the age of eighteen. There was no evidence presented at the hearing as to whether said dependent child continues to meet the definition of total dependent under Section 287.240(4)(b). If Ronald A. Harness, III, is no longer entitled to such benefits under the law, the \$50.00 share ordered to be paid to Robin Yvonne Harness as the natural guardian of Ronald Arthur Harness, III, shall be paid directly to Robin Yvonne Harness. Death benefits shall be paid from August 9, 2006, and continuing thereafter. Employer and insurer are also ordered to pay to claimant, Robin Yvonne Harness, \$2,271.92 to cover burial expenses since I have found this accident compensable.

Claimant Robin Yvonne Harness' attorney, William Francis, is allowed an attorney's fee of 25 percent of all amounts awarded herein which shall constitute a lien upon this award.

Date: February 5, 2008

Made by: /s/ Robert H. House
Robert H. House
Associate Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Jeffrey W. Buker
Jeffrey W. Buker
Director

