

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

Injury No.: 03-144610

Employee: Norman Heiskell (deceased)

Dependents: Paula Heiskell, spouse  
Charissa Heiskell, dependent child  
Aaron Heiskell, dependent child

Employer: Golden City Foundry Inc.

Insurer: Traveler's Casualty and Surety

Date of Accident: October 2003

Place and County of Accident: Golden City, Barton 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 July 31, 2007. The award and decision of Administrative Law Judge Karen Wells Fisher is attached hereto solely for reference.

A claim for compensation was filed by the dependents of Norman Heiskell, employee, alleging that the dependents were entitled to workers' compensation death benefits pursuant to the provisions of section 287.240 RSMo and section 287.120 RSMo, by further alleging that the employee's death of November 19, 2003, was due to an accident arising out of and in the course of his employment. The employer/insurer filed its Answer to the Claim for Compensation denying all allegations contained in the Claim for Compensation filed in behalf of the dependents.

The administrative law judge issued an award dated July 31, 2007, determining and concluding that employee's death was due to an accident arising out of and in the course of employment and consequently awarded death benefits to the dependents.

A timely Application for Review was filed with the Commission by employer/insurer alleging that the award issued by the administrative law judge was erroneous in finding that the death of the employee was due to an accident arising out of and in the course of employment and in ordering payment of death benefits to the dependents.

The dispositive issue is whether or not the death of the employee is due to an accident arising out of and in the course of his employment. Section 287.120 RSMo. The Commission disagrees with the conclusion reached by the administrative law judge, reverses the award, and concludes that the death of the employee was not due to an accident arising out of and in the course of his employment.

#### I. Principles of Law

The Commission reviews the record, and, where appropriate, it will also determine the credibility of witnesses and

the weight of their testimony, resolve any conflicts in the evidence, and reach its own conclusions of factual issues independent of an administrative law judge. *Pavia v. Smitty's Supermarket*, 118 S.W.3d 228 (Mo.App. S.D. 2003).

The ultimate determination of credibility of witnesses rests with the Commission. The Commission should take into consideration the credibility determinations made by an administrative law judge. However, the Commission is not bound to yield to an administrative law judge's findings, including those relating to credibility, and the Commission is authorized to reach its own conclusions. The law only requires the Commission to take into consideration the credibility determinations of an administrative law judge and not give those determinations deference. *Kent v. Goodyear Tire & Rubber Co.*, 147 S.W.3d 865 (Mo.App. W.D. 2004).

A decision made by an administrative law judge in a workers' compensation proceeding does not in any way bind the Commission and in fact, the Commission is free to disregard an administrative law judge's findings of fact. *Bell v. General Motors Assembly Div.*, 742 S.W.2d 225 (Mo.App. E.D. 1987).

An administrative law judge is no more qualified than the Commission to weigh expert credibility from a transcript or deposition. *Kent v. Goodyear Tire & Rubber Co.*, 147 S.W.3d 865 (Mo.App. W.D. 2004).

Medical causation not within common knowledge or experience must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221 (Mo.App. W.D. 1992). Section 287.240 RSMo, provides for compensation "if the injury causes death".

## II. Summary of Facts

The dependents filed the Claim for Compensation August 19, 2004. The following allegations were contained in the Claim for Compensation: October 2003, was the alleged date of accident; the description of how the injury occurred was that employee died from complications due to work related blunt trauma; and the date of death was alleged to be November 19, 2003.

The date of the hearing before the administrative law judge was May 2, 2007.

### Summary of Testimony of Paula Ann Heiskell, surviving spouse

Ms. Heiskell, surviving spouse, testified that while at home approximately two weeks prior to the death of her husband, he indicated to her shortly after showering that he needed to lose some weight and she noticed that he was breathing heavy. Ms. Heiskell did not notice any physical marks on employee's body. Ms. Heiskell admitted she had no knowledge of employee sustaining a work related injury in approximately October 2003.

Ms. Heiskell further testified and described a fainting episode sustained by employee at home in the early morning hours of Sunday, November 16, 2003. On this occasion, 911 was called and employee was taken by ambulance to Barton County Memorial Hospital. Ms. Heiskell testified that employee, contra to medical advice given when seen in the emergency room at Barton County Memorial Hospital, refused admission and left the hospital on his own accord.

Ms. Heiskell further testified that the evening of November 18, 2003, employee complained to her of leg pain but he did not mention any previous injury, trauma or accident occurring.

The following morning, November 19, 2003, Ms. Heiskell served employee breakfast in the "back room", located next to the kitchen, and Ms. Heiskell returned to the kitchen. While in the kitchen, Ms. Heiskell heard the plate drop. She turned around and saw employee slumped in a chair. Ms. Heiskell placed employee on the floor and attempted to revive him while Aaron Heiskell, her then 13 year old son, called 911. Aaron Heiskell also called a neighbor, Henry Lopez, for assistance, as Henry worked with the local ambulance service. Henry Lopez arrived before the ambulance and attempted to assist the employee. By the time the ambulance unit arrived, employee had died. The ambulance transported employee to Springfield, Missouri, and Ms. Heiskell requested an

autopsy be performed.

#### Testimony of Charissa Heiskell, daughter of employee

At trial Ms. Charissa Heiskell testified that she had one discussion with her father approximately one month or so prior to his death about a work injury. After acting on her father's request she furnished him an analgesic cream and she watched him apply it to his upper thigh. Her father told her he hurt himself at work, i.e., a pallet had hit him in the leg at work.

#### Testimony of Aaron Dale Heiskell, son of employee

Aaron was 13 when his father died. He remembered he had one conversation with his father concerning a work injury. The conversation took place approximately three weeks before he died. His father was rubbing a sports analgesic cream on his stomach and his father told him he was messing with a pallet and it started to fall and it "landed on his lower abdominal - - on his leg". Aaron further testified he noticed a hitch in his father's leg one week before he died. Aaron additionally recounted his father falling unconscious on November 16, 2003, and being transported to Barton County Memorial Hospital where his father later checked himself out that same day.

#### Testimony of Norman Heiskell, Sr., father of employee

Mr. Norman Heiskell, Sr., was the father of the employee. He testified by deposition he was aware of an injury approximately 30 days or more preceding the death of his son. He observed his son walking with a limp one day, although he cannot recall which leg. He talked to his son concerning his limp and his son indicated to him he was "moving or loading something" at work and "something fell off of something and dropped and hit him in the leg". He testified his son told him it weighed approximately 500 pounds.

#### Testimony of George V. Nichols

George V. Nichols, an acquaintance of employee, saw employee limping one day and inquired about his condition. Employee indicated to Mr. Nichols that he was "acting stupid and hurt himself a little".

#### Testimony of Tony Chris Peterson

Mr. Peterson and employee were co-owners of the business. Deceased was a first cousin of Mr. Peterson and they were partners for 13 years preceding the death of employee. Prior to employee's death on November 19, 2003, Mr. Peterson was unaware of any injury. Mr. Peterson never noticed any evidence of an injury. After employee sustained the fainting episode at home on Sunday, November 16, 2003, and after employee discharged himself from Barton County Memorial Hospital contra to all medical advice, employee came to work Monday, November 17, 2003. Employee told Mr. Peterson he needed to get back on his medication for diabetes and there was absolutely no mention of any work injury. Employee further volunteered that he had been "binging", eating snacks at midnight and not taking care of himself.

#### Testimony of Dr. Koprivica (by deposition)

Dr. Koprivica testified at the request of the dependents of the employee. Dr. Koprivica is board certified in emergency medicine and occupational medicine. Dr. Koprivica performed a medical records review of the following documents: the certificate of death of employee; the autopsy report from Greene County Medical Examiner; a copy of the EMS trip ticket addendum sheet; records from Barton County Memorial Hospital; records of Dr. Christiansen; and a copy of the deposition testimony of Norman Heiskell, Sr., dated February 21, 2005.

The conclusions of Dr. Koprivica were as follows: the direct cause of death of the employee was the development of pulmonary emboli. Based on the deposition testimony of employee's father, Dr. Koprivica was of the opinion that the prevailing factor in the development of deep venous thrombosis and subsequent pulmonary embolism was a traumatic injury approximately 30 days preceding his death. And it was his opinion within a reasonable degree of

medical certainty that employee's death arose as a direct and probable consequence of an injury sustained at work approximately 30 days prior to his death.

#### Testimony of Dr. Boulware (by deposition)

At the request of employer/insurer, Dr. Boulware performed a medical records review of employee. Dr. Boulware reviewed the autopsy report, emergency room and EMS reports and the treating records of employee's primary care physician, Dr. Christiansen. Dr. Boulware is board certified in internal medicine and experienced in treating deep venous thrombosis and pulmonary embolus.

Dr. Boulware was of the opinion that the most likely cause of death was due to a pulmonary emboli but the cause of the pulmonary emboli was unclear. Dr. Boulware noted from the autopsy report that the emboli were multiple and of varying ages. Dr. Boulware discussed several risk factors which were possible causes of employee's pulmonary emboli, including obesity, male sex, diabetes, heart failure, etc.

As to the allegation by employee's dependents that an injury occurring to employee's leg approximately 30 days preceding his death, while at work, resulted in a deep vein thrombosis which embolized to the lung, Dr. Boulware indicated that there were no significant abnormalities to the patient's extremities noted in the autopsy report and the follow-up visit of November 17, 2003 with his primary care physician, Dr. Christiansen, was noteworthy for the absence of any leg pain or swelling and no mention of any alleged work related injury. Dr. Boulware stated there was no medical evidence of deep vein thrombosis in the vascular system peripheral to the lungs and certainly no evidence of any trauma. Accordingly, Dr. Boulware opined there was no medical evidence to support a conclusion that employee died from a pulmonary embolism caused by trauma. Dr. Boulware was also of the opinion that even if one were to presume employee sustained a blunt trauma to a leg approximately 30 days prior to his death, it would not change his medical opinion, as the medical evidence was overwhelming as to multiple pulmonary emboli rather than a single blunt trauma to the leg.

Dr. Boulware admitted that deep vein thrombosis was possible but not most likely. Dr. Boulware could not state an exact cause of death but he opined that the lay testimony really had no impact. Ultimately, he was of the opinion that an exact cause cannot be determined. As stated by Dr. Boulware, unfortunately, the patient refused hospitalization when it was offered on November 16, 2003, which limited his treating physician's diagnostic and therapeutic options.

### III. Findings of Fact and Conclusions of Law

Upon reviewing the entire record, carefully reviewing the testimony of all witnesses as well as all the various exhibits offered and admitted into evidence, the Commission determines and concludes that the dependents failed to meet their burden of proof that employee's death was due to an accident arising out of and in the course of his employment as required by section 287.120 RSMo.

The instant appeal does not present a novel issue to the Commission. If the facts and evidence presented by the dependents of the employee are deemed to be more credible, trustworthy and persuasive, either the administrative law judge or the Commission could find that employee's death was due to an accident arising out of and in the course of employment; or, on the other hand, if the facts and evidence presented in behalf of the employer are found to be more believable, persuasive, credible and worthy of belief, the administrative law judge or the Commission could find that the dependents failed to meet their burden of proof that employee's death was due to an accident arising out of and in the course of employment.

The Commission denies death benefits on two separate grounds: (1) the dependents did not meet their burden of proof that employee sustained a work related accident as alleged sometime in October 2003; and (2) consequently, the dependents failed to satisfy their burden of proof that a work related injury caused the death of employee.

As to the issue of accident, the Commission will not defer to the credibility findings of the administrative law judge. The administrative law judge relied on the testimony of witnesses, Charissa Heiskell, employee's daughter, Aaron

Dale Heiskell, employee's son, and Norman Heiskell, Sr., employee's father, to conclude that due to a blunt force trauma to employee's leg in October 2003, employee sustained a work related injury. The testimony of each of these three witnesses concerning any possible accident occurring at work sometime in October 2003, was based on hearsay statements made to each of them on one single occasion by the deceased employee. Due to the absence of any supporting documentation or corroboration from any type of additional evidence and the inherent bias of these three witnesses the Commission does not afford such testimony much weight in order to find that there was a work related accident.

In contrast, employee's surviving spouse admitted that she was totally unaware of any alleged work related accident occurring October 2003, and further admitted that employee never at anytime discussed, mentioned or indicated to her that he was injured at work in any fashion in October 2003. She also admitted she never noticed any evidence of physical injury, be it markings/bruising of the lower extremities or observing employee limping.

In addition, all of the relevant and pertinent treating medical records are devoid of any history of a work related accident or even trauma occurring to the employee prior to his death occurring November 19, 2003.

The treating medical records from employee's treating family physician, Dr. Christiansen, contain no mention of a work related accident or even complaints of leg pain prior to employee's death; none of the emergency room records indicate any history of trauma or accident or problems with employee's lower extremities; the day after leaving the hospital contra to medical advice on November 16, 2003, employee returned to Dr. Christiansen and did not indicate any history of an injury or leg pain complaints; and the autopsy report did not indicate any evidence of trauma, accident or injury to the lower extremities.

Mr. Peterson, his cousin and business partner, had no knowledge of an accident at work. Mr. Peterson never noticed any physical evidence of an injury. Upon reporting to work Monday, November 17, 2003, employee stated he was "binging" and not taking care of himself.

Consequently, the Commission makes its own findings of credibility and in so doing, reverses the finding of an accident occurring sometime and somehow in October 2003, while at work. The dependents failed to satisfy their burden of proof that there was an injury due to an accident arising out of and in the course of his employment that resulted in his death. In so doing, the Commission finds the testimony of the spouse of the employee, in conjunction with the medical records and testimony of Mr. Peterson, to be the most credible, believable and trustworthy evidence, when compared and contrasted to the testimony of the two children and father of the deceased.

The Commission further notes that the administrative law judge did not specifically comment on or rely on the testimony of Mr. Nichols as to resolving the issue of accident. The Commission has considered his testimony and affords it little if any weight to base a finding of accident occurring as alleged.

The instant case further involves a complex medical condition which caused the death of the employee, i.e., a pulmonary emboli. Medical causation of a pulmonary emboli is clearly outside the realm of lay understanding and consequently must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition, the death of the employee, and the asserted cause.

After reviewing the deposition testimony of both medical experts, Dr. Boulware and Dr. Koprivica, in conjunction with the entire record, the Commission will not defer to the credibility finding of the administrative law judge, and in lieu thereof, the Commission finds the testimony and medical opinions of Dr. Boulware to be more credible, persuasive, trustworthy and worthy of belief. The Commission finds the qualifications of Dr. Boulware more authoritative and impressive as those compared with Dr. Koprivica concerning the issue of medical causation of pulmonary emboli, along with the fact that Dr. Boulware is more experienced in treating conditions of pulmonary emboli than Dr. Koprivica.

Upon reviewing the medical opinions of Dr. Boulware, the Commission finds his opinions to be extremely cogent and knowledgeable, concerning the issue of any medical causal relationship between employee's death and any

alleged injury/accident occurring at work in October 2003.

The Commission finds the testimony and opinions of Dr. Boulware refreshingly candid when he opines that the exact cause of the death of employee cannot be determined within a reasonable degree of medical certitude. As stated by Dr. Boulware, "unfortunately, the patient refused hospitalization when it was offered on November 16, 2003, which limited his treating physician's diagnostic and therapeutic options."

The Commission agrees with the medical opinion of Dr. Boulware, which in essence, concludes that some medical conditions occur that medical science cannot fathom. In the instant case, it is not possible to determine the cause of the employee's pulmonary emboli which lead to employee's death.

#### IV. Conclusion

The Commission finds that the dependents of the employee failed to carry its burden of proof that employee sustained an injury due to an accident arising out of and in the course of his employment, which resulted in his death.

In addition, even if the Commission were to believe that employee sustained an accident arising out of and in the course of his employment to some body part at some time in October 2003, the accident did not result in the death of the employee occurring November 19, 2003. Based on the credible evidence presented in the instant case, the exact cause of death cannot be determined.

Accordingly, the award of the administrative law judge issued July 31, 2007, is reversed; and, consequently, the dependents of the employee are not entitled to any amount of compensation payable. Due to this finding, all remaining issues before the Commission are moot.

The award and decision of Administrative Law Judge Karen Wells Fisher, issued July 31, 2007, is attached hereto solely for reference.

Given at Jefferson City, State of Missouri, this 11th day of March 2008.

#### LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

**AWARD**

Employee: Norman Heiskell

Injury No. 03-144610

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: Paula Heiskell, surviving spouse

Charissa Heiskell, dependent child

Aaron Heiskell, dependent child

Employer: Golden City Foundry

Additional Party: N/A

Insurer: Traveler's Casualty and Surety

Hearing Date: May 2, 2007

Checked by:

**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: OCTBER 2003
5. State location where accident occurred or occupational disease was contracted: GOLDEN CITY, MO
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:  
MAKING STEEL CASTINGS
12. Did accident or occupational disease cause death? YES
13. Part(s) of body injured by accident or occupational disease: N/A

- Nature and extent of any permanent disability: DEATH

15. Compensation paid to-date for temporary disability: NONE

16. Value necessary medical aid paid to date by employer/insurer? NONE
17. Value necessary medical aid not furnished by employer/insurer? \$1,511.15
18. Employee's average weekly wages: \$520.00
19. Weekly compensation rate: \$346.67

- Method wages computation: STIPULATION

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses: \$1,511.15

Funeral expenses: \$5,000.00

-0- weeks of temporary total disability (or temporary partial disability)

-0- weeks of permanent partial disability from Employer

-0- weeks of disfigurement from Employer

22. Second Injury Fund liability: NONE

Total:

23. Future requirements awarded: DEATH BENEFITS AWARDED

Said payments to begin OCTOBER 2003 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 \_\_\_\_\_ of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

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

Employee: Norman Heiskell

Injury No. 03-144610

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: Paula Heiskell, surviving spouse

Charissa Heiskell, dependent child

Aaron Heiskell, dependent child

Employer: Golden City Foundry

Additional Party: N/A

Insurer: Traveler's Casualty and Surety

Hearing Date: May 2, 2007

## AWARD ON HEARING

A hearing was held May 2, 2007, before the undersigned Administrative Law Judge, Karen Fisher. The employee's dependent spouse and three children appeared with attorney, Darren Morrison. The employer/insurer was represented by Katherine Collins.

The parties stipulated that the average weekly wage at the time of death was \$520.00 and that the compensation rate is \$346.67. There were four issues in dispute to be determined as a result of this hearing.

### ISSUES

1. Whether an accident occurred in the course and scope of the employee's work that resulted in his death.
2. Whether or not the accident was, in fact, the cause of employee's death.
3. Whether employer/insurer would be responsible for medical incurred as a result of the employee being transported to a hospital.
4. Whether or not the employer/insurer is responsible for funeral expenses incurred as a result of the employee's death.

### EVIDENCE PRESENTED

The employee presented the live testimony of the dependent spouse and the two dependent children as well as the following:

Exhibit A	Report of Dr. Bent Koprivica
Exhibit B	Certificate of Death
Exhibit C	Autopsy examination
Exhibit D	Golden City Ambulance records
Exhibit E	Barton County Memorial records
Exhibit F	Dr. Christiansen records
Exhibit G	Medical and burial bills
Exhibit H	Norman Heiskell, Sr. deposition
Exhibit I	Dr. Petersen deposition
Exhibit J	Dr. Nichols deposition
Exhibit K	Birth certificate of Charissa Heiskell
Exhibit L	Birth certificate of Aaron Heiskell
Exhibit M	Marriage certificate

The employer/insurer presented the testimony of Tony Peterson, the co-owner of Golden City Foundry and the deposition of Dr. Robert Boulware.

Paula Heiskell, employee's widow, testified that they were married November 19, 1977. There were three children born of the marriage: Dustin, born March 29, 1982; Charissa, born August 22, 1987; and Aaron, born January

4, 1990. The oldest son, Dustin, was attending college at Missouri Southern State University in Joplin, Missouri pursuing a criminal justice degree at the time of his father's death. She testified that Norman Heiskell was half owner of the Golden City Foundry. His job involved making steel castings. Mrs. Heiskell testified that the night before her husband died he was short of breath and told her, "my leg is killing me" but she did not observe anything abnormal in the leg. She indicated that the next morning, which was their wedding anniversary, her husband was in a back room off the kitchen and she went to prepare his breakfast. When she returned to the room she found him slumped over and called an ambulance. He was taken to the Barton County Memorial Hospital where he was later pronounced dead. Mrs. Heiskell also indicated that he had had no real symptoms of diabetes prior to his death.

The employee's daughter Charissa testified that her father was a person who did not like to discuss his ailments or any type of pain that he might be experiencing. However, she had a conversation with him when he admitted his upper thigh was hurting and mentioned that a pallet had hit him in the leg at work. This conversation occurred three to four weeks prior to his death.

The employee's son, Aaron, also testified regarding his recollection of a conversation he had had with his father about an injury at work. He indicated that his father said the pallet started to fall and he went to catch it and the pallet had hit his lower abdomen and upper leg area. Aaron further testified that the Sunday before his dad's death they were getting ready to go deer hunting. He said his father grabbed the rail and had a "hitch in his leg." He got in the truck and started breathing heavily and when he headed back into the house he passed out on the front steps. They took him to Barton County Memorial Hospital, but his father later checked himself out of the hospital against physician advice.

The testimony of Norman Heiskell, Sr., employee's father, was admitted by deposition. He indicated that he saw his son within minutes after the injury occurred at his employment. He was in Golden City on that day. He indicated it was sometime in the morning between 9:00 and 10:00 and that he had seen his son's truck at the foundry. Mr. Heiskell went to the post office and parked and happened to see his son coming up the street because he regularly would run errands from the foundry to various places in town. When he looked down his son was about a block away. He noticed he was limping real bad. He couldn't remember which leg, but it was very noticeable. He couldn't remember exactly which day it was, but believed it was a Saturday. He waited for his son and they visited and Mr. Heiskell asked his son why he was limping and he said, "I about broke my leg." He asked him how that had happened and his son proceeded to describe what had occurred. He specifically told him how it happened in the foundry, "He was loading something or moving something. And I was -- in my mind, I wasn't familiar with the equipment that he was telling me about. And I couldn't -- couldn't get the picture of it exactly. But something fell off of something and dropped and hit him in the leg. And I said it must have been awful big. He said it weighed about 500 pounds. I said, 'Well, you better -- have you had it looked at?' And he said no. And I said, 'Well, you better go to the doctor and have that looked at. Anything that hurts you that bad.' 'Oh,' he said, 'I'm still walking. It will be all right.'" Then Mr. Heiskell testified that if he had not seen his son and asked him about it he wouldn't have complained about it. He wouldn't have told him if he hadn't just asked him. "That's just the way he was." He believed that this incident occurred approximately 30 days before his death.

The claimant also submitted the medical report and deposition of Dr. Brent Koprivica. Dr. Koprivica opined that, "The direct cause for Mr. Heiskell's death was the development of pulmonary emboli. He did have more than one embolic event from the autopsy results, although, the final event is felt to have been a pulmonary embolism." Dr. Koprivica indicated that the timing of the traumatic work injury followed by his death with a history of pulmonary emboli of differing ages was consistent with the traumatic event occurring as described with the development of a deep venous thrombosis. He indicated with a reasonable degree of medical certainty that Mr. Heiskell's death arose as a direct and probably consequence of the traumatic injury he sustained at the foundry. He did rely on the deposition testimony of Mr. Heiskell's father that the incident had in fact occurred at the foundry, and he felt that that information was consistent with the medical records in the case. Dr. Koprivica clarified in his deposition that while there may have been some risk factors present in the employee for deep vein thrombosis, his opinion was that the trauma was a substantial contributing factor to the development of the blood clot. His opinion did take into consideration the risk factors that were identified in the medical records. He further indicated that those factors actually placed him at greater risk with the traumatic event that was described. Additionally, Dr. Koprivica felt that the multiple syncopal episodes were consistent temporally with the different aged pulmonary emboli. In other words, they occurred at different times

and would cause a syncopal episode but were not sufficient to be fatal. Additionally, Dr. Koprivica indicated that it was not surprising that there were no bruises noted on the autopsy on the decedent's lower extremities. He indicated that it is not surprising when it is 30 days old. What happens is the person recovers from the acute traumatic injury that led to the blood clot, but the blood clot is still there and a chronic blood clot may not be symptomatic except when it breaks off and embolizes. Dr. Koprivica clarified that if you have a deep venous thrombosis it can embolize more than one time. An emboli is just a broken off piece of clot if you have clotting and a piece breaks off and there is still remaining clot then another piece of it can break off at a later time, but it is all from one deep vein thrombosis.

Tony Peterson, co-owner of the Golden City Foundry, also testified at hearing and by deposition. He indicated that Mr. Heiskell had made no mention to him or any of the employees regarding a work injury to his leg. He testified that he was aware that Mr. Heiskell, who was his first cousin and co-worker for 23 years, had diabetes and that he had not been on his diabetes medicine for some time. He thought that it was the diabetes that had caused the deep vein thrombosis.

The employer/insurer offered the report and deposition testimony of Robert Boulware, M.D. Dr. Boulware is an internal medicine doctor. He indicated that it is possible to form a blood clot without having a trauma based upon various possible risk factors. In the case of Mr. Heiskell, he testified that after reviewing the medical records of his family physician, Dr. Christensen, and the emergency room records from Golden City Memorial Hospital, and the EMS records from Golden City Ambulance there was no mention of leg pain or injury in those records. He did note, however, that there had been a prior syncopal episode within the week proceeding the employee's death. He had also experienced a near syncope episode. Dr. Boulware felt that those episodes would be considered quite significant and would have required a very aggressive out-patient evaluation, if not, an in-patient hospital stay to rule out the possibility of a pulmonary embolus. He indicated that after the syncopal episode the EKG showed continued tachycardia and a right axis deviation which means the right side of his heart was enlarged and likely experiencing an elevation in pressures. He testified that that would lead one to believe that a possible cause of the syncopal episode would be a pulmonary embolus and would be a reason to admit the patient. However, Mr. Heiskell chose to leave the hospital AMA without having any further tests or treatment performed.

He noted that the employee had diabetes which not controlled. He had hyperviscosity related to that. That means his blood is thicker than it should be because of the circulating blood sugar in his blood. He was obese as well which is a risk factor for pulmonary embolism. He also testified that in the emergency room the employee had an elevated PTT (partial thromboplastin time) level which suggests the possibility of an underlying hypercoagulable state specifically antiphospholipid or lupus anticoagulant which carries a fifty to seventy percent risk of blood clotting per year if it is not treated. The PTT test tests the speed at which blood clots. The autopsy showed that he had an enlarged heart which weighed 494 grams and that heart for a person his size should weight 231 to 391 grams. This can clotting by the fact that it does not contract normally and blood can pool in the heart and get thicker and throw a clot. Finally, he also testified that apparently there were abnormal liver function tests and certainly liver disease can be a risk for coagulation problems since the blood clotting factors are produced in the liver.

Dr. Boulware testified that the multiple emboli of varying ages indicated in the autopsy report suggested that the employee had a pulmonary emboli at different times and different locations in his lung over different periods of time. It was his suspicion that would be more consistent with the other diagnoses rather than a single trauma. When asked if it was possible that some of the multiple emboli were present prior to the alleged October work incident, the doctor indicated it was possible but difficult to determine how long they had been present. Dr. Boulware could not state within a reasonable degree of medical certainty that Mr. Heiskell died from a pulmonary embolism caused by trauma to his leg. He testified that in his opinion there was not medical evidence to support a claim that the alleged work injury was the prevailing factor in the development of the pulmonary embolism that led to Mr. Heiskell's death.

On cross-examination Dr. Boulware admitted that he had not seen the deposition testimony of Norman Heiskell, Sr., the deceased's father, in regard to his testimony about the work accident. When asked if he felt that with the testimony that approximately thirty days before the employee's death he suffered a blunt trauma to his leg would change his opinion he indicated it did not alter his opinion. He felt there was overwhelming evidence that employee had medical conditions predisposing him to multiple pulmonary emboli rather than having had a single pulmonary embolus caused by a blunt trauma. Dr. Boulware also indicated that the autopsy report showed no evidence of trauma

at the time of death either to the vascular system of the legs or to the subcutaneous tissue of the skin or the bone. So, again, he did not feel it would substantially change his opinion as to the cause of the pulmonary emboli. However, he also states that he has no way of knowing whether the examining pathologist tested the tissue or the bone in the lower extremities. Additionally, he admitted that depending on how fast someone heals it can take a period of two to four weeks for a bruise to completely resolve and therefore if the trauma was thirty days before the pathological exam, the bruise would not necessarily have been visible. Under cross-examination Dr. Boulware noted that in the emergency room records ankle swelling was noted by the emergency room physician, which would be a potential sign of deep vein thrombosis. Dr. Boulware disagreed with the suggestion that in light of the employee's syncope, swelling of the ankle, and history of blunt trauma as testified to by two witnesses, that a deep vein thrombosis was certainly at the top of the list for diagnoses. He felt that based on the patient's abnormal PTT and evidence of multi-pulmonary emboli syndrome he had had more than one clot and was not persuaded by the question as to whether multiple emboli could have occurred from one DVT. He concluded that the most likely cause was antiphospholipid syndrome due to the elevated PTT and other documented risk factors of obesity, diabetes, and heart failure. Under cross-examination he admitted that in order to diagnose antiphospholipid syndrome however it requires two positive tests for the lupus anticoagulant separated by a three-month interval. These tests were never performed, therefore, there is merely a clinical suspicion of this diagnosis. He additionally, admitted that a normal PTT is normal if it is between 22 and about 31 and the employee's score was 31.4. The doctor insisted that this was an abnormal lab, albeit barely abnormal.

## **FINDINGS**

As to the issue of accident in this case, I find that the testimony of Norman Heiskell, Sr., Aaron Heiskell, and Charissa Heiskell to be very credible and believable and based upon their testimony that they had had conversations with the employee regarding his accident at work which involved a blunt force trauma to his leg and caused him limping and pain, I find that an accident did occur in October of 2003. I find the testimony of employee's father, Norman Heiskell, Sr. particularly persuasive in that he observed and spoke to claimant only minutes after the accident had occurred.

As to the issue of causation I find the medical opinion of Dr. Koprivica to be more persuasive. He took into consideration the testimony regarding the accident and described the relationship of the near syncopal episode and the syncopal episode prior to claimant's death. He explained how the blunt force trauma to the leg could have, in fact, caused a deep vein thrombosis and could have resulted in multiple emboli causing those episodes and then the eventual pulmonary embolism which caused claimant's death.

It is my opinion that the testimony of Dr. Boulware regarding the claimant's other risk factors is not as persuasive in that some of the risk factors were minimal at best. In addition, Dr. Koprivica acknowledged those risk factors and said, in fact, they did exist and made the employee more vulnerable, but that the blunt force trauma was a substantial factor in causing the deep vein thrombosis.

I therefore find that the work accident was the cause of the pulmonary embolism which resulted in employee's death on November 19, 2003.

I find that the spouse, Paula Heiskell, and the minor children, Dustin Heiskell, Charissa Heiskell, and Aaron Heiskell, are entitled to death benefits pursuant to §287.240, RSMo.

At the time of Norman Heiskell's death he and Paula Heiskell were married and living together as husband and wife and continued in this relationship until Mr. Heiskell's untimely death. Mrs. Heiskell has not remarried and has no plans to remarry. As the surviving spouse of the deceased employee, Paula Heiskell is a total dependent as recognized under §287.240, RSMo. Dustin Heiskell, Charissa Heiskell, and Aaron Heiskell are the natural children of Norman Heiskell and were born of the marriage of Norman and Paula Heiskell. At the time of their father's death these children were living with Norman and Paula Heiskell and were dependent upon Mr. Heiskell for financial support. On the date of the employee's death Dustin Heiskell, born March 29, 1982, was 21 years of age and attending Missouri Southern State University in the criminal justice program as a full-time student. Charissa Heiskell, was 16 years of age, born August 22, 1987, and Aaron Heiskell was 13 years of age having been born on

January 4, 1990. The parties have agreed that Paula Heiskell will receive 50 percent of the benefit awarded to all dependents. The remaining 50 percent will be divided equally among the three children while they remain eligible dependents. The parties have stipulated to the compensation rate. At the point in time that each of the dependent children cease to be eligible for death benefits under §287.240, RSMo. and Paula Heiskell continues to be a total dependent she shall receive the weekly benefit amount of that child no longer an eligible dependent in addition to her 50 percent. Should Paula Heiskell remarry she shall be entitled to a lump sum payment of two years of her portion of the death benefit at that time. If during the dependency of the children Paula Heiskell should remarry or die the remaining dependents shall receive the full benefit of the weekly benefit amount of \$346.67. The payment of death benefits to the children as dependents shall cease when that dependent dies, attains the age of 18 years, or becomes physically and mentally capable of wage earning over that age or until 22 years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution or if at 18 years of age the dependent child is a member of the Armed Forces of the United States on active duty.

I hereby order that the death benefits shall be paid in an amount of 50 percent per week to Paula Heiskell and 50 percent to the dependent children. These benefits shall begin on November 20, 2003, and each child shall each receive their one-third proportionate share until March 29, 2004. At that time the eldest dependent child, Dustin Heiskell, reached the age of 22 and was no longer entitled to a death benefit. He had been in attendance and a full-time student at Missouri Southern State University in the criminal justice program until the time he reached age 22 upon which his right to death benefits ceased. As of that date his portion shall revert to dependent spouse, Paula Heiskell. Benefits shall continue to be paid to the two remaining dependents, Charissa Heiskell and Aaron Heiskell, as long as they remain eligible under the provisions of §287.240, RSMo. Each of their portions shall revert to the dependent spouse, Paula Heiskell, as they become ineligible as dependents.

I order employer/insurer to pay medical benefits in the amount of \$1,511.15. I order employer/insurer to pay funeral expenses in the amount of \$5,000.00.

I hereby order attorney fees in the amount of 25 percent of all benefits awarded herein to be paid to attorney, Darren Morrison, which shall constitute a lien upon this award.

Date: \_\_\_\_\_ July 31, 2007 \_\_\_\_\_

Made by: \_\_\_\_\_ /s/ Karen Wells Fisher \_\_\_\_\_  
Karen Wells Fisher  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_/s/ Jeffrey W. Buker \_\_\_\_\_  
Jeffrey W. Buker  
*Acting Director*  
*Division of Workers' Compensation*