

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

Injury No.: 07-033559

Employee: Terry Henry

Employer: Precision Apparatus Inc.

Insurer: Hartford Fire Insurance Company c/o Specialty Risk Services

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 August 19, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued August 19, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of April 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Terry Henry

Injury No. 07-033559

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Precision Apparatus Inc.

Department of Labor and Industrial

Additional Party: None

Relations of Missouri

Insurer: Hartford Fire Insurance Company c/o Speciality Risk Services

Jefferson City, Missouri

Hearing Date: July 2, 2008

Checked by: HDF:lw

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease:
5. State location where accident occurred or occupational disease was contracted: Alleged accident occurred March 29, 2007
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? Please see award.
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: Please see award.
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: \$0.00
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: Terry Henry

Injury No. 07-033559

17. Employee's average weekly wages:
18. Weekly compensation rate: \$262.74
19. Method wages computation: By agreement

COMPENSATION PAYABLE

20. Amount of compensation payable: No benefits awarded.

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

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

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Terry Henry

Injury No: 07-033559

Dependents:

Before the

DIVISION OF WORKERS'

Employer: Precision Apparatus Inc.

COMPENSATION

Department of Labor and Industrial

Additional Party:

Relations of Missouri

Jefferson City, Missouri

Insurer: Hartford Fire Insurance Company c/o Speciality Risk Services

Checked by: HDF:lw

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on July 2, 2008. Memoranda were submitted by July 21, 2008.

The parties stipulated that on or about March 29, 2007, the claimant, Terry Henry, was in the employment of Precision Fire Apparatus, Inc. The employer was operating under the provisions of Missouri's workers' compensation law; the employer's liability for workers' compensation was insured by Hartford Fire Insurance Company c/o Specialty Risk Services. The employer had notice of the injury; a claim for compensation was timely filed. The compensation rate for all benefits is \$262.74 per week. No temporary disability benefits have been paid to the claimant to date; no medical aid has been provided.

The issues to be resolved by hearing are 1) the occurrence of an accident arising out of and in the course of employment, 2) the causation of the injuries alleged, 3) the liability of the employer/insurer for medical treatment, and 4) the liability of the employer/insurer for temporary disability benefits from March 29, 2007, forward to the present and ongoing.

FINDINGS OF FACT

The claimant, Terry Henry, was employed by Precision Fire Apparatus, Inc., on March 29, 2007. Precision Fire Apparatus, Inc. is in the business of building ambulances and fire trucks; Mr. Henry worked on the ambulances.

Mr. Henry worked four ten hour days per week, from 7:00 a.m. to 5:30 p.m. Mr. Henry testified that he

usually arrived at work about 15 to 30 minutes early in order to check the "board" about the day's work assignments and because he likes to be "on time."

On March 29, 2007, Mr. Henry arrived at work 15 to 20 minutes early and was filling out his time sheet while a co-worker, Shane Leal, was changing his personal truck tire in one of the work bays. Mr. Henry volunteered to get a rock to keep the truck from moving. As Mr. Henry was walking down a grassy embankment to obtain the rock he tripped over something and heard a loud snap which resulted in a broken leg. The alleged accident occurred before 7:00 a.m. and before Mr. Henry was being paid. Mr. Henry endured several surgeries and still continues to be unable to work.

APPLICABLE LAW

287.020.2 The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

287.020.3 (2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

287.020.10 In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002); Kaslv. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

287.100.1 Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter strictly.

AWARD

The claimant, Terry Henry, has failed to sustain his burden of proof that he sustained an accident arising out of and in the course of employment.

For an accident to be compensable under Missouri's workers' compensation law it must occur during a single work shift. Mr. Henry's accident arose prior to the inception of his work shift at a time when he was volunteering his assistance to a friend engaged in personal vehicle repair.

All other issues raised for resolution are hereby rendered moot

Date: _____

Made by: _____

Hannelore D. Fischer

*Administrative Law Judge
Division of Workers' Compensation*

A true copy: Attest:

Jeffrey Buker

Director

Division of Workers' Compensation