

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

Injury No.: 02-142823

Employee: Arminnie Hudson
Employer: St. Mary's Health Center
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: December 11, 2002
Place and County of Accident: St. Louis, 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 October 19, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued October 19, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 27th day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Arminnie Hudson

Injury No.: 02-142823

Dependents: N/A
Employer: St. Mary's Health Center
Additional Party: Second Injury Fund
Insurer: Self-Insured
Hearing Date: August 25, 2006

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: SC:tr

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: December 11, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
While the employee was walking across the parking lot, she fell and injured her right knee and low back.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back, right knee
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Arminnie Hudson Injury No.: 02-142823

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$440.00
19. Weekly compensation rate: \$293.33/\$293.33
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: Dismissed

TOTAL:

None

23. Future requirements awarded: None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Frank Niesen

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Arminnie Hudson	Injury No.:	02-142823
Dependents:	N/A	Before the	
Employer:	St. Mary's Health Center	Division of Workers'	
		Compensation	
		Department of Labor and Industrial	
Additional Party:	Second Injury Fund	Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Self-Insured	Checked by:	SC:tr

PRELIMINARIES

A hearing was held August 25, 2006, at the Missouri Division of Workers' Compensation, St. Louis City office, at the request of Arminnie Hudson, ("Claimant") pursuant to §287.450(RSMo. 2000). Attorney Frank Niesen represented Claimant. Attorney Heidi Jennings represented St. Mary's Hospital, ("Employer") and its self-insurer. The Second Injury Fund (SIF) did not appear for the proceeding and Claimant requested the SIF remain open. The record closed after presentation of all the evidence. Hearing venue is correct and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

The parties stipulated to the following:

1. On or about December 11, 2002, Claimant was employed by Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured.
4. Employer had notice of the injury, and a Claim for Compensation was filed within the time prescribed by law.
5. Claimant's average weekly wage is \$440.00. The rates for temporary total disability (TTD) and permanent partial disability (PPD) are \$293.33 respectively.
6. Employer paid no TTD or medical benefits to date.

ISSUES

1. Did an accident occur?
2. If an accident occurred, did it arise out of in the course of Claimant's employment?

3. Were Claimant's injuries causally related to the December 11, 2002 alleged accident?
4. Did Claimant sustain permanent partial disability, and if so, to what extent?

SUMMARY OF EVIDENCE

Only evidence supporting this award is summarized below. Any objections not expressly ruled upon are overruled. Claimant offered Exhibits A through H which were admitted into evidence without objection, and Employer offered Exhibit I which was admitted into evidence without objection.

FINDINGS OF FACT

Based upon the competent and substantial evidence presented, I find the following facts:

The pre-existing low back and right knee injuries

1. Claimant's initial back problems began in 1998 after she injured her back when she pushed a patient in a bed. Following the injury, Claimant received physical therapy.
2. Prior to December 2002, Claimant took over the counter medication and received occasional examinations by Dr. Guilmette for her back. Dr. Guilmette is Claimant's personal physician.
3. Claimant received right knee arthroscopic surgery in June 2001 for a non work injury and used a cane for six weeks following surgery.

The December 11, 2002 low back and right knee injuries

4. Claimant, a 64 year old retiree with an eleventh grade education, worked for Employer eight years primarily as an Operating Room Assistant, until August 2006 when she retired. Claimant stocked supplies and transported blood and patients on a daily basis.
5. On December 11, 2002, Claimant's shift began at 7:15 a.m. Claimant parked in the East parking garage on the second level, and took the bridge to the first floor of the Hospital Building where she worked. All of Claimant's duties were performed in the Hospital Building.
6. Claimant worked her regular shift and clocked out at 3:45 p.m. Claimant proceeded to Building D for an appointment with Dr. Bailey, an ear, nose and throat specialist recommended by her primary physician and located on the Employer's campus.
7. After Claimant left Dr. Bailey's office, she headed toward the parking garage to get in her car and go home. Claimant had no plans to return to work that day. Claimant walked up the ramp, slipped and fell; face down on the ground and ended up on her back.
8. Claimant did not seek medical attention until the next day when she visited the Employee Health Center with stiffness and occasional shooting pains into her right leg. Claimant was informed that this was not a work related injury and referred her to group health insurance for coverage.
9. Claimant's Outpatient Lumbar Assessment form dated December 18, 2002, stated she "fell-loose asphalt, fell on knees and ended up on back." The injury was marked as non-work related on the intake form (Exhibit C). Dr. Guilmette ordered physical therapy.
10. An MRI ordered by Dr. Guilmette on February 11, 2003 diagnosed Claimant with a low back disc bulge.
11. Physical therapy ended when Claimant did not return after March 14, 2003.
12. Claimant disputed medical reports that her back pain shifted, her leg pain resolved, and her back problems were caused by weak abdominals. Claimant denied receiving abdominal strengthening exercises.
13. Claimant did not seek further medical care until after the April 2004 automobile accident.

The subsequent car accident in April 2004

14. On April 22, 2004, Claimant re-injured her lumbar spine after being rear-ended in an automobile accident. Dr. Boehm examined Claimant who complained of tenderness over the sacroiliac joint. Dr. Boehm diagnosed lumbosacral, thoracic and cervical strains. He prescribed medication, and ordered x-rays and physical therapy. X-rays revealed height loss at L-5, S1 disc space with no radiculopathy. No treatment was provided for her right knee.

15. Claimant testified she had occasional low back pain before December 2002, but now has back pain everyday. She testified the December 2002 injury caused more problems with her back than the 1998 injury or the 2004 car accident.
16. Claimant developed foot problems in late 2005. Dr. Pada and Dr. Boehm recently injected Claimant's back and ordered physical therapy, which improved her foot problems.

Current Complaints

17. Claimant's right leg pain increased after the December 2002 fall. Current complaints include: difficulty bending, walking, or standing in one location more than five minutes due to back discomfort. She has been unable to league bowl for four years due to her back. Her back hurts going up and down stairs or picking up heavy objects. She uses a cane to get up and down. However, she admitted she used a cane after the right knee surgery in June 2001 for six weeks. Claimant's knee symptoms increased slightly after December 2002.
18. DePaul Hospital Emergency Room x-rayed Claimant's back due to pain in April 2006 and referred her to Dr. Scodary but he has not examined her.

RULINGS OF LAW

After careful consideration of the entire record, including the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

1. Claimant sustained an accident on December 11, 2002.

Claimant has the burden to establish that he has sustained an injury by accident arising out of and in the course of his employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. App. 1991).

§287.120.1 RSMo. (2000) provides workers' compensation where an injured worker shows that his injury was caused by an accident "arising out of and in the course of the employee's employment." §287.020.2 RSMo. (2000) defines accident as "an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor."

I find Claimant sustained an injury on December 11, 2002 when she stepped on a piece of asphalt and fell in the parking garage where Employer permitted her to park. The fall was sudden, violent and unexpected. Claimant reported the injury to Employee Health the next day after she experienced stiffness and occasional radiating pain into her right leg. Claimant visited her doctor on December 18, 2002 with complaints of back and right knee soreness and requested physical therapy. The issue is whether the accident arose out of and in the course of Claimant's employment.

2. Claimant's accident did not arise out of and in the course of employment.

An injury 'arises out' of employment if it a natural and reasonable incident of the employment; the injury occurs 'in the course of employment' if the accident occurs within the period of employment at a place where the employee may reasonably be fulfilling the duties of employment." *Davison v. Florsheim Shoe Company*, 750 S.W.2d 481, 483 (Mo.App. 1988). The tests are separate and both must be met before an employee is entitled to compensation. *Abel v. Mike Russell's Standard Service*, 924 S.W.2d 502, (Mo. banc 1996). "In the course of employment" refers to the time, place and circumstances under which the injury occurs. *Auto Club Inter-Insurance Exch. v. Bevel*, 663 S.W.2d 242, 245 (Mo. 1984).

§287.020.3(1) RSMo. (2000) states that an injury shall be deemed to arise out of and in the course of employment only if the injury meets all the following four tests:

- a) It is reasonably apparent upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury, and
- b) It can be seen to have followed as a natural incident of the work, and
- c) It can fairly be traced to the employment as a proximate cause, and
- d) It does not come from a hazard or risk unrelated to the employment in normal non-employment life.

I do not find Claimant's employment was a substantial factor in causing her injury. Claimant clocked out at the end of her shift and left the Hospital Building for her doctor's appointment in Building D. Although the appointment was convenient to Claimant's place of employment, it was not work related. Claimant's appointment

provided no benefit to Employer and she did not intend to return to work after the appointment. In fact, Claimant was on her way to her car to leave the garage when the accident occurred.

The injury was not a natural incident of her work. Dr. Bailey was conveniently located near Claimant's Employer, but Dr. Guilmette could have referred her to any ear, nose and throat specialist. Claimant's duties as an Operating Room Assistant were performed exclusively in the Hospital Building. Claimant did not stock supplies, transport blood or patients at the injury site. The loose asphalt did not pose a hazard or risk to Claimant's employment. But for her doctor's appointment, she would not have been in that area of the garage. Claimant did not fulfill any work duties after she clocked out and went to the doctor with no plans to return to work. For these reasons, I find the December 11, 2002 injury did not arise out of and in the course of Claimant's employment.

3. The extended premises and mutual benefit doctrines do not apply.

Extended Premises

...Parking lots maintained by employers for the employees are generally considered part of the employer's premises. *Wells v. Brown*, 2000 WL 29417, 1, 4 (Mo.App.W.D). In 1996, Missouri applied the rule to parking lots used with the permission of the employer. *Id.* In *Cox v. Tyson Foods, Inc.* 920 S.W. 2d 534, 535-36, the Court discussed a two part test to determine whether the extended premises doctrine was applicable:

- a) "premises not actually owned or controlled by the employer, [but] had been so appropriated by the employer or situate, designed and used by the employer and his employees incidental to their work as to make them, for all practical intents and purposes a part and parcel of the employer's premises and
- b) The injury occurred on a portion of the premises which is the "approved, permitted, usual and acceptable route or means employed by workmen to get to and depart from their places of labor" and was "**being used for such purpose at the time of the injury.**" (Emphasis added).

I find the site of the injury was not an extension of Employer's premises. It is not clear who owned the garage; however, Employer granted Claimant permission to park in the East garage where it was her custom to park on the second level. Claimant walked across the bridge to the second floor of the Hospital Building and proceeded to the first floor to begin her shift each day. The injury occurred as Claimant left Building D and proceeded down the walkway toward the East garage, which was not her logical or usual route to leave work. Nor was Claimant departing from her "place of labor" when the injury occurred, she was leaving the doctor's office.

Even if Claimant had traveled her usual route, the detour to the doctor's office was sufficient to remove her from the course of employment. The test of when a deviation begins or terminates is not so much a matter of the time consumed and the distance traveled, but rests primarily on whether the employer's or the employee's purpose is being served. *Parson v. Kay's Home Cooking Inc.*, 830 S.W.2d 46, 49 (Mo.App. S.D. 1992, (citing *Miller v. Sleight & Hellmuth Inc.*, 436 S.W.2d 625, 628 (Mo.1969)). Claimant was not on a business errand when she fell while walking toward the East parking garage. Nor did Claimant plan to return to work to complete any tasks. Therefore, I find the deviation began when Claimant appeared for the doctor's appointment and remained in effect at the time of the injury.

The mutual benefit doctrine does not apply because Employer received no benefit from either Claimant's doctor's appointment or her plan to leave following the examination. The remaining issues are moot.

CONCLUSION

Claimant did not meet her burden to establish that she sustained an injury by accident which arose out of and in the course of her employment. Therefore, the claim is denied against the Employer and Insurer and the claim against the Second Injury Fund is dismissed.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation