

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

Injury No.: 06-136147

Employee: Anthony Hughes
Employer: United States Postal Services
Insurer: N/A
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 19, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued October 19, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 7th day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Anthony Hughes

Injury No.: 06-136147

Dependents: N/A

Employer: United States Postal Services

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

Additional Second Injury Fund

Insurer: N/A

Hearing Date: August 2, 2010

Checked by:SC

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: Alleged June 6, 2006
5. State location where accident occurred or occupational disease was contracted: Alleged 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? N/A
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? No
10. Was employer insured by above insurer? N/A
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleged injury while working for the United States Post Office as a letter carrier.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged body as a whole - psychological
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Anthony Hughes

Injury No.: 06-136147

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: N/A
- 20. Method wages computation: N/A

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: Denied

TOTAL: NONE

23. Future requirements awarded: N/A

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: Claimant appeared pro se

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Anthony Hughes

Injury No.: 06-136147

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: United States Postal Service

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

Additional Second Injury Fund (Denied)

Insurer: N/A

STATEMENT OF THE CASE

A hearing was held at the Missouri Division of Workers' Compensation (DWC), St. Louis Office at the request of Anthony Hughes (Claimant-Prose), on August 2, 2010, pursuant to Section 287.450 RSMo (2005).¹ Claimant seeks a final award against the Second Injury Fund (SIF). Assistant Attorney General Karen Shute represented the SIF. The Employer and Insurer did not appear, and did not enter a Stipulation for Compromise settlement with Claimant prior to the hearing. Jurisdiction is an issue but no issue was raised regarding venue. The record closed after presentation of the evidence.

Claimant's Exhibit A and the SIF's Exhibits I and II were admitted without objection. Any notations contained in the Exhibits were present when admitted.²

STIPULATIONS

The parties provided no stipulations for the record.

ISSUES³

The parties identified the following issues for disposition:

1. Is jurisdiction with the DWC for Claimant's Workers' Compensation case?
2. Has the statute of limitations run on Claimant's claim?

SUMMARY OF THE DECISION

Based on the entire record, Claimant's written testimony, demeanor during the hearing, and the applicable law of the State of Missouri, I find this is not the proper jurisdiction for Claimant's dispute to be heard regarding his alleged work injury on August 6, 2006.

¹ All statutory references in this award refer to the 2005 Revised Statutes of Missouri unless otherwise stated.

² The Court took judicial notice of the DWC file and admits Court's Exhibits 1 and 2.

³ The Claimant refused the Court's request to state issues for disposition.

SUMMARY OF EVIDENCE

1. At the hearing Claimant refused to testify due to concern that his words would be misinterpreted. Therefore, Claimant submitted a written statement, titled: "An Affidavit: Sworn Testimony," marked Exhibit A.
2. Exhibit A reads as follows:⁴

"My name is Anthony Hughes I am of sound mind capable of making this affidavit, personally acquainted with the information herein. I am the Claimant in this matter seeking retroactive benefit entitlements and payment under workers' compensation, whereas it is fully established in the official records, that based on a reasonable medical certainty validated by the doctor of record, Anthony Hughes exacerbated medical condition is employment related. To date there is no evidence to the contrary to give rise to any plausible reason for OWCP to deny or delay, Anthony Hughes award as sought. For the record note that THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS DIVISION OF WORKERS' COMPENSATION

Has willfully delayed processing Anthony Hughes award, for almost four years for no plausible reason, other than a show of power, which is not necessary in this instance case. The history of (OWCP) perfunctory handling of this instance case, validates that a constructive denial is in place, to deploy misinformation, unethical acts, and trickery, to deny Anthony Hughes entitled benefits to retroactive payments. Whereas this affidavit will serve as my testimony this second day of August, 2010.

To protect our rights to further proceeding and or appeal we waver any verbal discussion in this proceeding this date, with high expectations of our entitled award being granted this date.

Respectfully submitted this 2nd day of August 2010.

(Signed) Anthony Hughes
1243 Peggy CT
St. Louis, MO 63147"

3. The Court takes judicial notice of the DWC record which contains the Claim for Compensation submitted by Claimant against the SIF, dated February 16, 2010. St. Louis was listed as the place of accident. The injured body part was listed as "exacerbated." The date of injury is listed as June 6, 2006. Claimant described his activity at the time of injury as:

"PTSD was exacerbated by the (USPS) undue stress and dispared treatment, that was imposed on claimant because claimant is a disabled person."

⁴ A duplicate copy of this affidavit was received through the United States mail, with a postmark dated August 4, 2010, and received at the DWC on August 6, 2010. It appears to be the same document that was admitted during the hearing. It is retained with the Exhibits, but not admitted.

4. Claimant sought permanent total disability from the SIF, signed “Anthony Hughes,” and dated February 12, 2010.
5. The SIF’s Answer to the Claim for Compensation dated February 19, 2010, stated: “...the SIF is without knowledge or information sufficient to form a belief as to the truth of the statements in the claim. At this time, none of the statements in the claim can be admitted, but the case will to be reevaluated when further information is received.” “...the State of Missouri states the claim appears to be time barred by Section 287.430, RSMo...,” signed Attorney General Levander Smith, Jr.
6. On August 18, 2010, the DWC received a document identified as Appellant’s Notice of Appeal, stating Claimant “disagree and appeal the erroneous decision arbitrarily handed down by the Honorable Judge: Suzette, Carlisle.”

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the competent and substantial evidence presented, and evidence contained in the DWC file, and the applicable law of the State of Missouri, I make the following rulings of law:

The DWC does not have jurisdiction to hear Claimant’s case involving an alleged work injury

At the hearing, Claimant refused to testify, but offered Exhibit A as his written testimony. Claimant seeks “retroactive benefit entitlements and payment under workers compensation” from the SIF “based on reasonable medical certainty validated by the doctor of record, Anthony Hughes exacerbated medical condition is employment related.” The SIF denied liability based on jurisdiction and the statute of limitations.

The party claiming benefits under The Workers' Compensation Law in Missouri bears the burden of proving all material elements of the claim. *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968) (Citations omitted). Section 287.110 RSMo states:

1. This chapter shall apply to all cases within its provisions **except those exclusively covered by any federal law**. (Emphasis added).
2. This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide, and also to all injuries received and occupational diseases contracted outside of this state where the employee's employment was principally localized in this state within thirteen calendar weeks of the injury or diagnosis of the occupational disease.

Section 287.030.1 RSMo defines “employer” as:

- (1) Every person, partnership, association, corporation, limited liability partnership or company, trustee, receiver, the legal representatives of a deceased

employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay;

(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi-corporation, or cities under special charter, or under the commission form of government;

Section 287.020 defines “**employee**” as every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations... .

Exhibit A does not identify an employer, but judicial notice is taken of the DWC file which shows the Claim for Compensation was filed against the SIF only. The injury was described as:

“PTSD, exacerbated by the (USPS) due to disparaged treatment, that was imposed on claimant because claimant is a disabled person.”

Neither the Claim for Compensation nor Exhibit A explains the meaning of USPS. However, a document contained in the DWC file labeled “Notice of Disagreement and Appeal,” dated June 8, 2009, and signed “Anthony Hughes” states:

“The official record show that claimant sustained a number of injuries and exacerbation of injuries; on the job while employed by the U.S. Postal Service St. Louis Missouri, claimant’s current status is extended sick leave, without pay, pending the out come of a timely filed (OWCP) claim... Furthermore, “based upon reasonable medical certainty; claimant’s condition is employment related. Claimant has provided clear and concise documentation to the agency (USPS) and (DOL); validated by the official records.”

A Notice of Occupational Disease and Claim for Compensation from the U.S. Department of Labor contained in the DWC records, signed “Anthony Hughes, and dated 5-20-8 and 6-27-8, lists employee’s occupation as letter carrier. June 6, 2006 is listed as the date of disease or illness caused or aggravated by employment.

I find Exhibit A is not credible. I find Claimant alleged an injury while working as a letter carrier for the U.S. Postal Service. Based upon the records contained in the DWC file, I find the U.S. Postal Service is not an employer pursuant to Section 287.030.1. I find Claimant is a U.S. Postal Service employee, not an employee. I find Chapter 287 does not apply to federal employees, therefore, the DWC does not have jurisdiction to hear Claimant’s claim.

Having found the DWC lacks jurisdiction to hear the case, all other issues are moot.

CONCLUSION

Claimant failed to show the Missouri Division of Workers' Compensation has jurisdiction to hear the claim. The Second Injury Fund claim is denied.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation