

TEMPORARY OR PARTIAL AWARD  
(Modifying the Award and Decision of the Administrative Law Judge)

Injury No.: 06-081063

Employee: Christopher Hultz  
Employer: C & R Market  
Insurer: Hawkeye Security Insurance  
Date of Accident: January 9, 2006

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. The Commission modifies the award and decision of the administrative law judge dated April 16, 2007, to designate the award as a temporary or partial award.

#### Discussion

On March 8, 2007, the administrative law judge held an evidentiary hearing. Upon commencing the hearing, the administrative law judge identified the issues to be resolved as "notice, accident, causation, past and future medical, and future temporary total disability." The administrative law judge and counsel for employer/insurer agreed the matter was taken up for a temporary hearing. Employer/insurer did not request that the administrative law judge issue a final award.

The administrative law judge concluded the employee established that he sustained an accident on January 9, 2006, as contemplated by the Workers' Compensation Act and that employee provided actual notice of the accident to employer's store manager. We affirm these determinations.

The administrative law judge determined that employee failed to carry his burden of proving the conditions of which he complains are medically causally related to the accident of January 9, 2006. As a consequence, the administrative law judge issued a final award denying compensation.

In recent years, Missouri appellate courts have frequently held that the Division of Workers' Compensation (Division) and Commission exceed their powers when they address issues not stipulated for hearing by the parties.

The rules of the Department of Labor and Industrial Relations, in particular, 8 CSR 50-2.010(14), provide: "hearings before the division shall be simple, informal proceedings. The rules of evidence for civil cases in the state of Missouri shall apply. Prior to hearing, the parties shall stipulate uncontested facts and present evidence only on contested issues." Therefore, the ALJ should confine the evidence during the hearing to the stated contested issues. Stipulations are controlling and conclusive, and the courts are bound to enforce them. A stipulation should be interpreted in view of the result, which the parties were attempting to accomplish... [O]ur colleagues in the Southern District [have] concluded that the Commission acted in excess of its powers in making its award on grounds not in issue.

*Boyer v. Nat'l Express Co.*, 49 S.W.3d 700, 705 (Mo.App. 2001). See also, *Aldridge v. S. Mo. Gas Co.*, 131 S.W.3d 876 (Mo.App. 2004), *Bock v. Broadway Ford Truck Sales*, 55 S.W.3d 427, 436 (Mo.App. 2001) (set

aside on other grounds). Because no party was seeking final disposition of this matter, it is error to enter a final award. We modify the award to designate it as a temporary award.

Award

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo. The matter is returned to the Division for further proceedings.

The award and decision of Administrative Law Judge Ronald F. Harris issued April 16, 2007, is attached and incorporated to the extent it is not inconsistent with our modifications herein.

Given at Jefferson City, State of Missouri, this 21<sup>st</sup> day of December 2007.

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