

**Temporary Award**  
(Modifying Award and Decision of Administrative Law Judge)

Injury No.: 12-024808

Employee: John Jansen  
Employer: Jackson County, Missouri  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

This matter is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.<sup>1</sup> We have read the briefs, reviewed the evidence and considered the whole record. Pursuant to § 286.090 RSMo, we modify the final award and decision of the administrative law judge dated June 11, 2013, and issue this temporary award. We adopt the findings of the administrative law judge to the extent that they are not inconsistent with our findings and conclusions set forth herein.

**Preliminaries**

At the outset, we note that there are errors on page 1 of the administrative law judge's award. Question 1 asks "Are any benefits awarded herein?" The administrative law judge answered "Yes." The administrative law judge awarded no benefits by her award. Question 8 asks "Did accident or occupational disease arise out of and in the course of the employment?" The administrative law judge answered "Yes." The administrative law judge made no findings regarding whether the injury arose out of and in the course of employment and the parties did not stipulate that the injury arose out of and in the course of employment.

On the morning of April 5, 2012, employee was involved in a motor vehicle accident while he was driving from his home to his designated office in a vehicle owned and maintained by employer. Employee filed a claim for compensation. The matter proceeded to trial on employee's request for a hardship hearing.

The issue stipulated for trial was stated by the administrative law judge, as follows:

The issue to be tried by this hearing is whether 287.020.5 bars recovery under the workers' compensation statute.

**Facts**

Employee lives at 3511 NE Stanton Street in Lee's Summit, Missouri. Employee worked as a supervisor for employer, Jackson County, Missouri. Because supervisors are sometimes required to respond to after-hours emergencies, employer allows supervisors – including employee – to drive employer-owned vehicles to and from work.

Employer has many offices. The majority of employer's administrative and executive offices are located at 415 E. 12<sup>th</sup> Street, Kansas City, Missouri. Employer offices located at 415 E. 12<sup>th</sup> Street include the county executive's office, the assessment office, the

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2011, unless otherwise indicated.

Employee: John Jansen

- 2 -

collection office, the human resources office, and the finance and purchasing office. Employee worked at employer's office at 8100 E. Park Road in Lee's Summit, Missouri.

On the morning of April 5, 2012, employee was involved in a motor vehicle accident while he was driving from his home to his designated office at 8100 E. Park Road in a vehicle owned and maintained by employer.

### **Law**

Section 287.020.3 provides:

(1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(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.

Section 287.020.5 provides:

Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

### **Discussion**

The parties stipulated that employee sustained a motor vehicle accident in Jackson County, Missouri on April 5, 2012. The parties agree that employee was driving in an employer-owned vehicle at the time of the accident. Employer contends that compensability of employee's injury is barred by § 287.020.5 because employee's accident occurred while he was traveling from his home to his principal place of business. Employee contends he was not traveling to employer's principal place of business, so § 287.020.5 is not applicable.

Prior to 2005, the general rule in Missouri was that injuries sustained while traveling to or from work were not compensable.<sup>2</sup> There were numerous exceptions to this so-called

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<sup>2</sup> See *Garrett v. Industrial Commission*, 600 S.W.2d 516 (Mo. App. 1980).

Employee: John Jansen

- 3 -

going and coming rule. Inasmuch as amendments to the Workers' Compensation Law in 2005 specifically abrogated all prior case law definition of "arising out of and in the course of employment"<sup>3</sup> and simultaneously deleted the statutory directive that it did not cover workers except while engaged in or about the premises where their duties are being performed or where their services require their presence as a part of such service,<sup>4</sup> it remains to be seen to what extent, if any, the judicially-created going and coming rule or any of its exceptions survive.

The administrative law judge analyzed the first sentence of § 287.020.5 and concluded:

In this particular case, [employee]'s route to work and the actual work location is his customary office. There was no evidence presented that [employee] was required to report or reported for work at the Jackson County 415 E. Street [sic] office.<sup>5</sup> As such, when [employee] had his car accident traveling to the satellite office, he was traveling from his home to his office. The fact remains that the Employee was traveling from home to his place of work; and, therefore, his claim is not compensable.

Under the administrative law judge's reasoning, wherever an injured worker customarily works is the worker's "employer's principal place of business." The administrative law judge's ruling is directly contrary to the only appellate decision considering the meaning of the phrase "employer's principal place of business" as it appears in § 287.020.5.

The court in *Harness v. Southern Copyroll, Inc.*,<sup>6</sup> was confronted with the question of what constitutes an "employer's principal place of business" and answered thusly:

Appellants' argument is based upon the premise that § 287.020.5 would permit one employer to have more than one principal place of business. That premise is flawed. There is no statutory definition for the phrase "principal place of business" as used in § 287.020.5. When a statutory term is not defined, courts apply the ordinary meaning of the term as found in the dictionary. Because the word "principal" was used by the General Assembly to modify the phrase "place of business," we must give effect to that limitation. The word "principal" is defined by BLACK'S LAW DICTIONARY (8th ed. 2004) to mean: "Chief; primary; most important." *Id.* at 1230. Therefore, giving the phrase "the employer's principal place of business" a strict construction as we must, § 287.020.5 only authorizes the employer to have one principal place of business.<sup>7</sup>

The *Harness* case involved only two identified "places of business," whereas, the instant case involves a large employer with numerous offices. The administrative law judge, obviously and reasonably, perceived that adoption of the *Harness* rationale in cases such as this will inevitably limit (and randomize) the application of § 287.020.5. Like the court in *Harness*, we are constrained by the mandate of strict construction and cannot disregard the plain language of § 287.020.5 to achieve a result we may deem more just or prudent.

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<sup>3</sup> Section 287.020.10 RSMo.

<sup>4</sup> Section 287.020.5 RSMo.

<sup>5</sup> The administrative law judge omitted a portion of the address. The correct address is 415 E. 12<sup>th</sup> Street.

<sup>6</sup> 291 S.W.3d 299 (Mo. App. 2009).

<sup>7</sup> *Id.*, at 304-305 (some internal citations omitted).

Employee: John Jansen

- 4 -

Based upon the holding in *Harness*, employer can have but one principal place of business. Under the facts in this case, we find employer's principal place of business is 415 E. 12<sup>th</sup> Street, Kansas City, Missouri. We, therefore, find that on the morning of April 5, 2012, employee was not traveling from his home to employer's principal place of business.

### **Conclusions of Law**

Because employee was not traveling from his home to employer's principal place of business or from employer's principle place of business to his home when he sustained his injuries. Section 287.020.5 does not operate to bar compensation under the facts of this case. We reverse the administrative law judge's conclusion to the contrary.

As we pointed out in our preliminary findings and remarks, the administrative law judge made no findings regarding whether employee's injury arose out of and in the course of his employment and the parties did not stipulate that the injury arose out of and in the course of employment. Most importantly, the parties did not stipulate as an issue for trial whether employee's injury arose out of and in the course of employment. Consequently, we do not reach the issue of whether employee's injury arose out of and in the course of his employment.

### **Award**

We modify the award of the administrative law judge. We issue this temporary award concluding that the first sentence of § 287.020.5 does not operate to bar compensation under the facts of this case.

This award is only temporary or partial. It 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 § 287.510 RSMo. We return this matter to the Division of Workers' Compensation for further proceedings.

The award and decision of Administrative Law Judge Lisa Meiners, issued June 11, 2013, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of April 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## FINAL AWARD

Employee: John Jansen Injury No. 12-024808  
Dependents: N/A  
Employer: Jackson County, Missouri  
Insurer: Jackson County, Missouri – Self-Insured  
Additional Party: N/A  
Hearing Date: April 24, 2013 Checked by: LM/pd

### 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: April 5, 2012
5. State location where accident occurred or occupational disease was contracted: Lee's Summit, Jackson County, Missouri
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: Employee was driving a work owned vehicle to his place of employment and was involved in a car accident.
12. Did accident or occupational disease cause death? No. Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left shoulder, left upper extremity, right knee, right lower extremity, neck and body as a whole

14. Nature and extent of any permanent disability: Unknown
15. Compensation paid to date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A
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: 0
22. Second Injury Liability: N/A

**TOTAL: None**

23. Future requirements awarded: N/A

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of David Slocum, Employee's attorney, for necessary legal services rendered.

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

Employee: John Jansen Injury No. 12-024808  
Dependents: N/A  
Employer: Jackson County, Missouri  
Insurer: Jackson County, Missouri – Self-Insured  
Additional Party: N/A  
Hearing Date: April 24, 2013 Checked by: LM/pd

On April 24, 2013, the parties appeared for hearing. The Employee, John Jansen, appeared in person and with counsel, David Slocum. The Employer, Jackson County, Missouri, through its ability to self-insure, was represented by Ms. Tracey Chappell.

### **STIPULATIONS**

The parties stipulated to the following:

- 1) that the Employer and the Employee were operating under and subject to the provisions of Missouri Workers' Compensation Law on April 5, 2012;
- 2) that Mr. Jansen was its employee;
- 3) that jurisdiction is proper in Jackson County, Missouri;
- 3) that Employee sustained a moving vehicle accident on April 5, 2012 while on his way from home to work;
- 4) that notice was properly given and the claim was filed within the time allowed by law;
- 5) that Mr. Jansen sustained injuries of his left shoulder, left upper extremity, right knee, right lower extremity, neck and body as a whole as a result of this accident; and
- 6) that Claimant requires medical treatment to cure and relieve him from the effects of his injury that he sustained on April 5, 2012.

### **ISSUES**

The issue to be resolved by this hearing is whether §287.020.5 bars recovery under the workers' compensation statute.

## FINDINGS OF FACT AND RULINGS OF LAW

Claimant on April 5, 2012 was a supervisor for the Parks and Recreation Division of Jackson County, Missouri. His home was located at 3511 NE Stanton Street in Lee's Summit, Missouri. As a supervisor with the county, Claimant is required to supervise the maintenance of green spaces and natural reserves within the county. He is required to respond to emergencies happening after regular work hours. Because it is important for supervisors to respond to after-hour emergencies, the county allows supervisors to drive county-owned vehicles to and from their homes. On April 5, 2012, Claimant was driving from his home at 3511 NE Stanton Street, Lee's Summit, Missouri to his office at 8100 E. Park Road, Lee's Summit, Missouri when he was involved in a motor vehicle accident. The automobile he was driving at the time was owned and maintained by the county. The office he was driving to was his customary place for business. In this accident, Claimant sustained injuries to his left shoulder, left upper extremity, right knee, right lower extremity, neck and body as a whole.

Claimant testified that his office was located at 8100 E. Park Road and that payroll for his department was 2208 Woods Chapel Road. Claimant also testified that the majority of the county's payroll is operated through 415 E. 12<sup>th</sup> Street along with the official mailing address for the county as 415 E. 12<sup>th</sup> Street, Kansas City, Missouri, 64106. Indeed, the majority of county offices are located at 415 E. 12<sup>th</sup> Street, Kansas City, Missouri.

Claimant argues §287.020.5 does not apply because 415 E. 12<sup>th</sup> Street is a principal place of business for Jackson County and, therefore, the injury sustained in a car accident going to his office at 8100 E. Park Road is deemed compensable. §287.020.5 states: "Injury sustained in a company-owned or subsidized automobiles in accidents that occur while traveling from employee's home to the employer's principal place of business or from the employer's principle place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary approved permitted usual or accepted routes used by the employee to get to and from their place of business."

Claimant argues that the principle place of business is 415 E. 12<sup>th</sup> Street rather than his customary office at 8100 E. Park Road. Claimant also relies upon the case Harness v. Southern Copy Payroll, Inc., 291 SW 3d 299 (Mo. App. 2009). Claimant states for purposes of §287.020.5 an employee can only have one principle place of business, and this is based on the Harness case. However, the case in Harness involved an employer owning two separate and distinct companies, one located in Fairgrove, the other in the Lake of the Ozarks. Harness was an employee of the Fairgrove business but on occasion was instructed to drive to the separate and distinct company in the Ozarks. Harness was killed returning from the Ozark business and was awarded death benefits.

Here, Jackson County has many office locations and is the same employer rather than the employer in Harness who owned separate and distinct companies. According to Claimant's

argument then, an employee of a government entity who is injured in an automobile accident going to his customary office is covered, but those driving to the principle place of business or where the payroll is not covered. Accordingly, State employees who work in Jefferson City would not be covered under workers' compensation and instead excluded since, according to Claimant, the principle place of business for State government is in Jefferson City; whereas, State employees outside of Jefferson City would be covered driving in a State subsidized automobile to their respective offices. I find Harness is inapplicable in this case as there is just one employer involved, that of Jackson County.

In this particular case, Claimant's route to work and the actual work location is his customary office. There was no evidence presented that Claimant was required to report or reported for work at the Jackson County 415 E. Street office. As such, when Claimant had his car accident traveling to the satellite office, he was traveling from his home to his office. The fact remains that the Employee was traveling from home to his place of work; and, therefore, his claim is not compensable.

I find in this case with these particular set of facts that §287.020.5 applies and Harness is inapplicable since Claimant was traveling to his customary office from his office, and has one employer rather than an employer owning two separate and distinct businesses.

Accordingly, based on the stipulations of the parties, I find that the county of Jackson County, Missouri is not liable to Claimant for injuries he sustained as a result of the motor vehicle accident that occurred on April 5, 2012.

This award is subject to an attorney's lien for services rendered by David Slocum in the amount of 25 percent.

Made by: \_\_\_\_\_

Lisa Meiners  
Administrative Law Judge  
Division of Workers' Compensation