

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

Injury No.: 02-100938

Employee: Amanda Ketchem (deceased)

Dependents: Scott Ketchem (Husband)
Dustin Scott Ketchem (Son)
Rebekah Lyn Ketchem (Daughter)

Employer: Westran R-I School District

Insurer: Self-Insured through
Missouri United School Insurance Company

Date of Accident: September 18, 2002

Place and County of Accident: Monroe County, 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. We have reviewed the evidence, read the briefs of the parties and considered the entire record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated September 27, 2005. The award and decision of Administrative Law Judge Robert L. Dierkes, is attached hereto solely for reference.

The dispositive issue is whether or not the death of the employee is attributable to an accident arising out of and in the course of her employment. Section 287.120.1 RSMo. The administrative law judge concluded that the employee's death was compensable, and awarded the employee's dependents death benefits as provided by law.

The Commission disagrees with the conclusion reached by the administrative law judge, reverses the award, by concluding, as a matter of law, that the death of the employee was not attributable to an accident arising out of and in the course of her employment.

I. Summary of Facts

The relevant facts were basically undisputed, and in summary fashion, were as follows: as of the date of the accident, September 18, 2002, the deceased employee was employed as a first grade school teacher by the employer; the morning of September 18, 2002, while the deceased employee was driving her automobile from her residence, to her place of employment, the school district's elementary school building where she taught, she was involved in a fatal motor vehicle accident.

When the fatal motor vehicle accident occurred, the deceased had with her in her automobile some of the paraphernalia of her employment, i.e., school papers referred to as mid-quarter progress reports concerning her first grade class; and it was the decedent's personal custom to work on these type papers at home rather than on the school premises.

During the decedent's employment, her employer, the school district, never required her to take any type of schoolwork home or perform any services in behalf of her employer at home. School policy never required any work or services be performed at home.

The decedent, as with all teachers employed by the school district, had the opportunity to work in classrooms before students came or after the students left for the school day. The normal workday was 8:00 a.m. through 3:10 p.m., a seven-hour-and-ten-minute day that included a 50-minute planning time (time not teaching students), a 30-minute lunch break, and two 20-minute recess periods. The decedent could use that time to correct homework assignments, plan lessons, etc. The decedent could also stay after 3:10 p.m., if necessary, to work on assignments. The school doors were not locked and the teachers ushered out at 3:10 p.m.; a teacher had the option to stay as long as he or she felt necessary to conclude any work assignments; it strictly was for the convenience of any teacher if he or she decided to

take work home instead of completing the school work on the school premises. There was no policy or procedure implemented by the school district, employer, requiring any teachers to perform any type of work at home.

II. Principles of Law

The instant case is routinely classified or pigeonholed in workers' compensation matters as a "going to and from work" type accident. There are certain guiding principles, which control the resolution of these types of proceedings.

The general long standing principle is that an employee does not suffer injury or death arising out of and in the course of employment if the employee is injured or dies while going or journeying to or returning from the place of employment. *McClain v. Welsh Co.*, 748 S.W.2d 720 (Mo. App. E.D. 1988).

The Missouri Court of Appeals, Eastern District, further expounds this general principle at law in the *McClain* case *supra*, (at p. 725):

"Going to or returning from employment is a personal act, akin to dressing, grooming and presenting oneself for work. . . . In other words, a trip to or from one's place of work is merely an inevitable circumstance with which every employee is confronted and which ordinarily bears no immediate relation to the actual services to be performed.

'If a worker is to do the task for which he is employed, he must of course present himself at his place of work at the appointed hour; and when his day's work is over, he is no longer subject to his employer's direction and control but is free to return to his home to do anything else that may happen to suit his own personal convenience.'

. . . Suffice it to say that the following exceptions have been recognized by our courts: (1) the 'journey' exception authorizes compensation when an injury suffered by the employee occurs while the employee is traveling for the employer. . . . (2) the 'conveyance exception' where the employer furnishes the employee with a vehicle or the employee uses his own vehicle and the employer pays expenses on it when used for business purposes. . . . However, the use of the vehicle to go to or return home after the work day serves no employment-related function so that no award of compensation is authorized. . . . (3) the 'special task' exception whereby the employee performs a special task, service or errand in connection with his employment. In such cases compensation is awarded. . . . (4) the exception which authorizes compensation where the duties of the employee entail travel away from the employer's business to obtain parts or supplies for employer."

In the case of *Ray v. Great Western Stage and Equip. Co.*, 413 S.W.2d 576 (Mo. App. W.D. 1967), the Western District of the Missouri Court of Appeals cited with approval the following principles of law enunciated by Professor Larson in his treatise, (at p. 582):

"The mere fact that claimant is, while going to work, also carrying with him some of the paraphernalia of his employment does not, in itself, convert the trip into a part of the employment. For example, the mere fact that at the time of the accident the employee had with him some of the tools of his trade, such as a steamfitter's hard hat, a pocket rule, and a level, all belonging to the employer, does not make the accident compensable.

. . . . Adherence to this methodical process of analysis in particular cases can help remove some of the uncertainty that attends the many familiar situations involving teachers who prepare lessons or correct papers at home, lawyers who take home briefs, salesman who work on accounts at home, and newspapermen who polish up a bit of writing at home—all of whom might be tempted under a more vague rule to assert compensation coverage of all their movements to, from or around the house by virtue of some morsel of work carried around in their pockets."

Applying these principles, the Missouri Court of Appeals, Western District, reached the following conclusions in *Ray*, *supra*, (at pp. 582-583):

"In the case before us we find no substantial evidence that (1) employer contracted to pay claimant's transportation costs from his home to the office; (2) claimant was either to perform any part of his work at

home or that his duties required him to do so; (3) that at the time of the accident claimant was in the performance of any duty which the employer requested, required or even knew was being performed at home. . . . These activities are quite similar to school teachers grading papers at home, lawyers who take home briefs, salesmen who work on accounts at home, and newspapermen who polish up a bit of writing at home, none of whom are covered, as stated by Larson, *supra*.”

In addition to the reference to the *Larson* treatise in the *Ray* case, *supra*, the Commission also notes the following general principles of law in the same treatise, at *A. Larson, Workers' Compensation Law, Desk Edition, Sections 16-10*[2][3] (2004):

“When reliance is placed upon the status of the home as a place of employment generally, instead of or in addition to the existence of a specific work assignment at the end of the particular homeward trip, three principal *indicia* may be looked for: the quantity and regularity of work performed at home; the continuing presence of work equipment at home; and special circumstances of the particular employment that make it necessary and not merely personally convenient to work at home.

. . . .
. . . Is compensation law prepared to follow up the implications of a decision that professional employees (who all in some degree share the characteristic of doing part of their work at home) may convert virtually their entire day into the ‘course of employment’ by virtue of such trivia as opening the front door to see whether to suspend school on stormy days? Teachers, doctors, lawyers, architects, artists, executives—in fact almost any employee—may have frequent occasion to perform services of some kind at home, often far more substantial than that of looking over the weather. If the going and coming rule is to be subjected to a process of gradual erosion, through the device of finding some tidbit of work performed at home, then in fairness to employees generally the entire doctrine should be scrapped and a fresh start should be made in which all goings and comings are covered. . . .

Ohio, . . . became alarmed at where this line of cases might be leading. . . . [T]here was evidence that . . . teachers did work at home outside regular hours, although they were at liberty to do the work at the school if they wished. The choice was left to their own convenience. When injured, this teacher had some papers with her to be corrected at home, but the claim was based principally on the theory that claimant did some work at home in preparation for her school duties. The court suddenly saw before it the endless procession of indistinguishable cases ultimately destroying the going and coming rule,

. . . .
If work is done at home for the employee’s convenience, the going and coming trip is not a business trip within the dual-purpose rule, since serving the employee’s own convenience in selecting an off-premises place in which to do the work is a personal and not a business purpose. . . .

. . . .
Whenever it could honestly be said that the taking of work home was solely for the employee’s personal convenience, compensation for injuries during the regular trip to or from work which the claimant would have taken in any case has been denied. Thus, in a California case, the claimant was a schoolteacher who had been injured in an automobile accident while driving to school from her home. Reversing the appellate court, the California Supreme Court refused to allow compensation benefits. Applying the ‘going and coming’ rule, the court held that injuries sustained while traveling to work are compensable only when the employer requires work to be done at home. Although teachers normally do work at home, the court found that it was not required by the employer and was done merely for the convenience of the teacher. The court held that ‘if work is done at home for the employee’s convenience, the commute does not constitute a business trip.’ The court refused to hold that the claimant was within the scope of her employment merely because she was incidentally transporting instructional material at the time of her injury.”

III. Findings of Fact and Conclusions of Law

Relying on the undisputed facts and general principles of law as set forth above, the Commission concludes, as a matter of law, that the death of the employee was not attributable to an accident arising out of and in the course of her employment.

The deceased, at the time of her fatal motor vehicle accident, was driving from her residence to her place of employment, i.e., going to work.

At the time of the accident, the deceased was not traveling for her employer, and the "journey" exception is not applicable; at the time of the motor vehicle accident, the deceased had not been furnished a vehicle by her employer, the employee was not being reimbursed for the use of her own vehicle, no business purpose was being served, and her going to work was not serving any employment related function, therefore, the "conveyance exception" is inapplicable; the decedent, at the time of the fatal motor vehicle accident, was not performing a special task, service or errand in connection with employment, therefore rendering the "special task exception" inapplicable; and at the time of the fatal motor vehicle accident the decedent was not performing any duty entailing travel away from the business of her employer to obtain parts or supplies in behalf of her employer.

The mere fact that the decedent, while driving to work, had work paraphernalia with her in her automobile, does not, in itself, connect her trip into part of her employment. *Johnson v. Evans & Dixon*, 861 S.W.2d 633 (Mo. App. E.D. 1993).

In the case at bar, we find no competent and substantial evidence to conclude that the decedent was required to perform any part of her work at home, or that her duties required her to do so. Rather, it is clear the employer never required or requested the decedent to perform any work at home or perform any service whatsoever in behalf of the employer at home. The Commission finds that the decedent, in her discretion, found it personally convenient to work at home on occasion.

Pursuant to Missouri law, if work is performed at home for the convenience of the employee, the going and coming trip is not a business trip since serving the employee's own convenience in selecting an off premises place in which to perform work is personal and not a business purpose.

The decedent's death due to the motor vehicle accident is not deemed to have arisen out of and in the course of her employment merely because the decedent was incidentally transporting school paraphernalia at the time of her accident. It is clear that the decedent on her own initiative and volition, chose to take the work home rather than complete it at her place of employment. This action by the decedent does not create a second site of self-employment.

At the time of the fatal motor vehicle accident, the decedent was not in the performance of any duty, which the employer requested or required. Accordingly, the decedent's commute to work, the morning of the fatal accident, does not constitute a business trip. Therefore, the decedent's death is not attributable to an accident arising out of and in the course of her employment.

IV. Conclusion

The Commission determines and concludes that as a matter of law the death of the employee was not attributable to an accident arising out of and in the course of her employment. The deceased employee, as of the time of her fatal motor vehicle accident, was merely driving to work from her residence to her place of employment.

The general legal principle is that an employee does not suffer injury arising out of and in the course of employment if the employee is injured while going to work. From the undisputed facts in the case, there is no applicable exception to the general rule to award the dependents workers' compensation death benefits as requested.

Accordingly, the award of the administrative law judge issued September 27, 2005, is reversed; and, consequently, the dependents of the deceased employee are not entitled to any amount of compensation payable. Due to this finding, all remaining issues are deemed moot.

The award and decision of Administrative Law Judge Robert L. Dierkes, issued September 27, 2005, is attached hereto solely for reference.

Given at Jefferson City, State of Missouri, this 15th day of November 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

CONCURRING OPINION FILED

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

CONCURRING OPINION

I submit this concurring opinion to disclose the fact that I was previously employed as a partner in the law firm of Evans and Dixon. While I was a partner, the instant case was assigned to the law firm for defense purposes. I had no actual knowledge of this case as a partner with Evans and Dixon. However, recognizing that there may exist the appearance of impropriety because of my previous status with the law firm of Evans and Dixon, I had no involvement or participation in the decision in this case until a stalemate was reached between the other two members of the Commission. As a result, pursuant to the rule of necessity, I am compelled to participate in this case because there is no other mechanism in place to resolve the issues in the claim. *Barker v. Secretary of State's Office*, 752 S.W.2d 437 (Mo. App. 1988).

Having reviewed the evidence and considered the whole record, I join in the decision of Commissioner Bartlett reversing the award and decision of the administrative law judge.

William F. Ringer, Chairman

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be affirmed.

The administrative law judge performed thorough and well-reasoned analysis to conclude that employee's home had become part of the employment premises. I adopt the administrative law judge's opinion as my own.

I write separately to address some of employer's contentions. Employer suggests the many horrors that will befall the citizenry if the Commission affirms the administrative law judge's award:

- Taking [the administrative law judge's] ruling to its conclusion, every lawyer who takes a briefcase home, every clerk who takes a billing invoice home, every salesman who takes a sales reports [sic] home, would now be covered 24 hours a day for every accident that might happen at home while he or she was "looking" at work papers.
- [A]ny time an employee performed even [o]ccasional work at home with or without the employer's permission or knowledge, express or implied, the risk of travel to and from employment would be "incidence of employment."
- [The administrative law judge's decision] would create coverage for all salesmen, clerks, lawyers, teachers professors on a 24 hour basis as long as there was scintilla of evidence that he or she performed some type of work related duty at home.

In fact, employer predicts the very demise of workers' compensation insurance.

- There would be no more workers' compensation insurance, all employers would now be required to provide 24 hour a day general health insurance coverage to all of their employees.

Dire and dramatic predictions indeed, but they do not follow logically from the administrative law judge's ruling in this case.

"In our determination of whether an injury arises out of and in the course of employment, we must consider the particular facts and circumstances of each case." *Rogers v. Pacesetter Corp.*, 972 S.W.2d 540, 543 (Mo. App. 1998). The administrative law judge makes clear his ruling in *this* case is based upon the clear evidence that *this* employee regularly, daily, performed valuable services for employer in her home. The administrative law judge's decision was based upon much more than a scintilla of evidence. The evidence is uncontradicted that: *this* employee engaged in planning, grading, and evaluating at home –activities that are much more significant than looking at papers; *this* employee performed work duties at home daily – much more than occasionally; and, *this* employer was aware that its employees worked at home. The administrative law judge's conclusion that employee's home was an employment situs is fully supported by the competent and substantial evidence.

Employer did nothing to discourage the practice of its teachers working at home. After accepting the benefits of the extra work performed with its knowledge and approval, it should not now be relieved of its burden of providing compensation for the dependents of this dedicated and hard-working employee who was killed traveling between her two places of work.

I would affirm the award of the administrative law judge. I respectfully dissent from the decision of the majority of the Commission to deny benefits in this case.

John J. Hickey, Member

AWARD

Employee:	Amanda Ketchem (deceased)	Injury No. 02-100938
Dependents:	Scott Ketchem (Husband), Dustin Scott Ketchem (Son), Rebekah Lyn Ketchem (Daughter)	Before the DIVISION OF WORKERS' COMPENSATION Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Employer:	Westran R-1 School District	
Additional Party:	N/A	
Insurer:	Self-Insured through Missouri United School Insurance Company	
Hearing Date:	August 9, 2005	Checked by: RJD/tmh

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: September 18, 2002.
5. State location where accident occurred or occupational disease was contracted: Monroe 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? (Self-insured)
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was killed in a motor vehicle accident arising out of and in the course of her employment.
12. Did accident or occupational disease cause death? Yes. Date of death? September 18, 2002.
13. Part(s) of body injured by accident or occupational disease: N/A.
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? None.

17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$649.61.
19. Weekly compensation rate: \$433.29.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: Burial expenses of \$5,000.00 and statutory death benefits as set forth more fully herein.
Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Amanda Ketchem (deceased)

Injury No: 02-100938

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: Scott Ketchem (Husband),
Dustin Scott Ketchem (Son),
Rebekah Lyn Ketchem (Daughter)

Employer: Westran R-1 School District

Additional Party: N/A

Insurer: Self-Insured through Missouri United
School Insurance Company

Checked by: RJD/tmh

ISSUES DECIDED

The evidentiary hearing was held in this case on August 9, 2005, in Columbia. The hearing was held to determine whether Amanda Ketchem, deceased, sustained an accident arising out of and in the course of her employment with Westran R-1 School District on September 18, 2002.

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over this case;
2. That venue is proper in Monroe County and adjoining counties; the parties agreed, on the record, to holding the evidentiary hearing in Boone County;
3. That the claim for compensation against Employer was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;
4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That the rate of compensation is \$433.09, based on an average weekly wage of \$649.61;
6. That the notice requirement of Section 287.420, RSMo, is not a bar to this action;
7. That Westran R-1 School District was an authorized self-insured for Missouri Workers' Compensation purposes at all relevant times through Missouri United School Insurance Company; and
8. That Employer has paid no benefits pursuant to Chapter 287, RSMo.

EVIDENCE

The evidence consisted of the testimony of Wayne Johnson, grandfather of the deceased employee, Amanda Ketchem; the testimony of Lisa Howard, deceased's friend and former co-worker; the testimony of Rhonda Stith, deceased's stepmother and close friend; the testimony of Scott Ketchem, surviving husband of Amanda Ketchem; the testimony of Maureen Kruse, deceased's co-worker; the testimony of Susie Carter, deceased's co-worker; the testimony of Carol Harris, deceased's co-worker; marriage license; birth certificates; death certificate; teacher employment contract; correspondence and other documentary evidence; deceased's book bag and contents.

FINDINGS OF FACT AND RULINGS OF LAW

I find from the evidence that Amanda Ketchem ("Employee"), was employed by Westran R-1 School District ("Employer") for the 2002-2003 school year as a first grade teacher. Employee had been employed by Employer during the 2001-2002 school year as a "reading recovery" teacher. Prior to her Employment with Employer, Employee taught 4th grade in the Madison School District. Employee lived in Madison, Missouri, with her husband, Scott and children Dustin and Rebekah.

Early on the morning of September 18, 2002, Employee was killed in a motor vehicle accident on U.S. Highway 24 in Monroe County on her way from her home in Madison to her workplace (school) in Huntsville. The sole contested issue in this case is whether this motor vehicle accident arose out of and in the course of Employee's employment with Employer.

The evidence clearly established that Employee was a very hardworking and dedicated teacher. Even Employer's sole witness, Carole Harris, testified that Employee was "hardworking, conscientious and dedicated". It is also clear from the evidence that Employee spent a significant amount of time working on school preparation at her home during the summer. I find that Employee worked at home on school-related tasks – preparing lessons and assignments, grading papers, and preparing progress reports – for at least two hours each evening. I find that on the evening of September 17, 2002, Employee was working at her home on school-related tasks, including mid-quarter progress reports which were due to be mailed out on September 20, 2002. I find that Claimant had those progress reports with her, as well as other work-related materials, at the time of her fatal accident.

I also find that Employee was a member of the "intervention team", a panel of teachers from different grade levels who counseled other teachers about classroom problems. I find that the intervention team was scheduled to meet at 7:45 A.M. on September 18, 2002, and that Employee was on her way to the meeting at the time of her death.

I find that the first day of school for Employer's 2002-2003 school year was August 21, 2002, and that Employee had just completed four full weeks of teaching at the time of her death on September 18, 2002.

I find that Employee, as well as other teachers in the elementary school, had a 50-minute "planning" period each school day. Teachers could stay after school and work for as long as they desired. Employee and other teachers were not required to take work home, although many (including Employee) did so. Employer's sole witness, Carole Harris, also testified that she usually takes work home. I find that Employer did not prohibit or discourage teachers from taking work home.

I find that Employee generally utilized the kitchen table and/or the living room for doing her school-related work while at home. Employee did not maintain an office in the home for her schoolwork. Employee did not take a business deduction on her taxes for a home office or for travel.

Of course, the general rule is that "an employee does not suffer injury arising out of and in the course of employment if the employee is injured while going or journeying from the place of employment." *McClain v. Welsh Co.*, 748 S.W.2d 720, 724 (Mo. App. E.D. 1988). This is true because in most circumstances "a trip to or from one's place of work is merely an inevitable circumstance with which every employee is confronted and which ordinarily bears no immediate relation to the actual services to be performed." *Id.* at 725.

One exception to this general rule is the "dual purpose" doctrine which states: " 'If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own.' " *Cox v. Copeland Bros. Const. Co.*, 589 S.W.2d 55, 57 (Mo.App. W.D.1979). The rationale of the dual purpose doctrine "is that if the exposure to the perils of the highway is related to the employment even though the employment is not the sole cause of such exposure to such risks but is combined with or is a concurrent personal cause, the benefit of compensation is not to be withdrawn." *Id.* Another exception to the general rule is the "mutual benefit" doctrine. This doctrine states that "an injury suffered by an employee while performing an act for the mutual benefit of the employer and the employee, is compensable when some advantage to the employer results from the employee's conduct." *Brenneissen v. Leach's Standard Service Station*, 806 S.W.2d 443, 448 (Mo. App. E.D. 1991).

The reported Missouri cases on this subject are varied in their fact situations and somewhat varied in their outcomes. "Of course, each case involving the question of whether an injury or death of an employee occurs within the course and scope of his employment and is, therefore, compensable, must be determined from the facts and circumstances of that particular case, and this is also true where the resolution of that question involves the 'dual purpose doctrine'." *Cox v. Copeland Brothers Construction*, 589 S.W.2d 55, 57 (Mo. App. W.D. 1979). On one end of the spectrum is *Johnson v. Evans & Dixon*, 861 S.W.2d 633 (Mo. App. E.D. 1993) in which Johnson, an attorney, contended that a vehicle accident while traveling from home to work was compensable under the mutual benefit doctrine because he had case files in his vehicle. The appellate court agreed with the Commission that the accident was not compensable, and stated: "In this case, claimant presented no evidence he worked on any cases at home the evening before the accident. Claimant testified he did not have 'any idea' which files were in his vehicle at the time of the accident." *Id.* at 637.

On the other end of the spectrum are *Cox v. Copeland Brothers Construction, supra*, and *Rogers v. Pacesetter Corp.*, 972 S.W.2d 540 (Mo. App. E.D. 1998). In *Cox*, the appellate court reversed the Commission's denial of compensation. Cox was killed when traveling from his home in Chillicothe to a job site in Marshall. Cox, a plumbing foreman, was carrying with him plumbing plans and specifications for the job, as well as a log book, some material and tools owned by the employer, and a "spec book". There was evidence that the plumbing plans and specifications would change from day to day, and Cox had custody of the "marked-up" plans. In finding Cox's accident compensable, the Court stated:

The whole record in this case leads to the irresistible conclusion that it was necessary for the progress of the Marshall, Missouri job of the employer that the corrected and changed plans and specifications be made available upon the job site upon a day to day basis. This does not mean (and no one claims) that had these corrected plans of Cox's been destroyed that the job could not be completed but only under the necessity to "start all over" as to changes and only at the expense of considerable loss of time and presumptively profit to the employer. Neither will the record disclose any fact other than that Cox was a hard-working, conscientious, dedicated employee, who spent considerable time while not actually on a job in his employer's interest and in an endeavor through his work upon the plans and specifications to keep the construction jobs upon a current and ongoing basis with reference to the plumbing. It is, of course, readily conceded that one of the purposes of his trip from Chillicothe to Marshall, Missouri, which resulted in his death, carried with it a personal reason he wanted to get to work. But it was clearly, as a matter of law, a dual cause for this trip, a dual service accomplished thereby for his employer. As declared in *Gingell, supra*, it is not incumbent upon either the claimants or this Court to determine which cause was the dominant cause. If they were concurrent causes, as they clearly were, the dual purpose exception must govern and find significant application upon this record.

In *Rogers*, the appellate court also reversed the Commission's denial of compensation. Rogers, a telemarketing manager, was injured in an automobile accident while traveling on his way home after a meeting with his supervisor at a bar/nightclub. Rogers admitted that he had at least seven drinks. Rogers stayed at the club for 20 minutes after his supervisor left. Rogers had an accident while driving home "to do performance reviews before coming to work the next day". Rogers' employer did not know that Rogers ever worked at home. The accident occurred while Rogers "felt the effects of the alcohol" and while driving "a little faster than he should".

The *Rogers* court discussed *Cox* and *Johnson*, and concluded (at p. 545):

Upon review of the record before us, and bearing in mind the above principles, we find the denial of benefits was unsupported by the facts as found by the Commission. We disagree that the facts are more analogous to *Johnson* and find them more in the spirit of those facts found in *Cox*. Here, Claimant regularly worked twelve hours, Monday through Friday, and six hours each Saturday. Claimant also regularly did work for his employer at home, including writing advertisements and conducting performance reviews. The night of the accident was a Monday and it was Claimant's practice to do performance reviews of the week before on the telemarketers on Monday evenings in order that on Tuesday mornings he could discuss their performance with them. Claimant testified it was necessary to conduct these performance reviews at home because, as the Commission found, "there was insufficient time to perform [his duties] during regular office hours." Moreover, the Commission found that the work performed at home by Claimant "was an integral part of the conduct of his employer's business," and not only a convenience to Claimant. Clearly a benefit accrued to employer by Claimant conducting these performance reviews at home. We conclude that under the facts as found by the Commission, Claimant demonstrated that the demands of his employment created the expectation that work needed to be done at home for the benefit of his employer.

The *Rogers* court's discussion of *Cox* and *Johnson* also includes this analysis (at pp. 544-545):

While *Cox* and *Johnson* provide examples of the dual purpose doctrine in relation to work done at home, they fail to establish any clear rules. In his oft-cited treatise on Workers' Compensation Law, Mr. Larson helps to shed some light on the application of the dual purpose doctrine in relation to work done at home. He explains that compensation for injuries while traveling home may be proper under the dual purpose doctrine when "it can genuinely and not fictionally be said that the home has become part of the employment premises." Larson's Workers' Compensation Vol. 1 Section 18.31. In those circumstances, an employee fulfills a dual purpose by traveling home: "the personal purpose of making a normal trip home, and the business purpose of reaching a second employment situs." *Id.* Mr. Larson explains that an employee demonstrates this by showing "a clear business use of the home at the end of the specific journey during which the accident occurred." *Id.* However, Mr. Larson cautions, and we agree, that this exception does not extend compensation to

those " 'many familiar situations involving teachers who prepare lessons at home, lawyers who take home briefs, salesmen who work on accounts at home, and newspapermen who polish up a bit of writing at home--all of whom might be tempted under a more vague rule to assert compensation coverage of all their movements to, from or around the house by virtue of some morsel of work carried around in their pockets.' " [Ray v. Great Western Stage & Equipment Co., 413 S.W.2d 576, 582 \(Mo.App. W.D.1967\)](#) (quoting Larson's Workers' Compensation Law Vol. 1 Section 18.31). Instead, recovery must be limited to those exceptional circumstances in which " 'the employee's home is truly a second employment location in that more than occasional employment services are required to be rendered there.' " [Id.](#)

Employer argues in its brief that the quoted portion of *Larson*, above, referencing teachers, demonstrates the non-compensability of the claim in the instant case. However, analyzing this case as a whole, notwithstanding Mr. Larson's "teacher comments", this case appears very close on its facts to *Cox* and *Rogers*, and also appears to meet the essential criterion of Mr. Larson's analysis: Employee's home was "truly a second employment location" where Employee rendered "more than occasional employment services". While Employer wishes to portray Employee's use of her home for work as "casual work" (presumably because Employee sometimes performed them while her small children were present, and, undoubtedly requiring more than a little of her attention), it does not appear to me to be any more "casual" than *Rogers'* working on performance reviews at home late at night after consuming at least seven alcoholic drinks.

Like *Rogers*, employee herein had "insufficient time to perform (her duties) during regular office hours". Unlike *Rogers*, whose employer was unaware that *Rogers* was performing work at home, there is no question that Westran School District knew that its teachers worked at home. Employee Amanda Ketchem worked regularly at home two hours each night; she did so because she was a hardworking, dedicated and conscientious teacher who wanted to perform the best job she could for her students, and thus for Employer. In this regard, she was exactly the same as the employee-decedent in *Cox*, who was "a hard-working, conscientious, dedicated employee" according to the reviewing court.

It is interesting to note that the *Johnson* court did not deny benefits based on Mr. Larson's "lawyers who take briefs home" comment; the *Johnson* court instead specifically noted that *Johnson* "presented no evidence he worked on any cases at home the evening before the accident." In the instant case, Employee worked on schoolwork the night before the accident, and, indeed, every night.

There is no question in this case that Employee regularly, *daily*, performed valuable services for Employer in her home. That work, performed in Claimant's home, clearly benefited Employer. In this case, I find that it can genuinely and not fictionally be said that Employee's home became part of the employment premises. Claimant's fatal accident occurred while traveling from one employment situs (her home) directly to another employment situs (school). This clearly brings Claimant's trip under the mutual benefit doctrine, which was utilized to find *Cox* and *Rogers* compensable.

I find that Employee was married to Scott Ketchem on January 18, 1997, and that Employee and Scott Ketchem lived together as husband and wife until the time of Employee's death. I find that Employee had two children, Dustin Scott Ketchem, born May 24, 1997, and Rebekah Lyn Ketchem, born November 30, 2000, both of whom survived Employee. Therefore, I find that Scott Ketchem, Dustin Scott Ketchem and Rebekah Lyn Ketchem are the "total dependents" of the deceased employee, Amanda Ketchem, as contemplated by Section 287.240, RSMo, and are the only persons entitled to death benefits under Chapter 287, RSMo, upon the death of Amanda Ketchem.

I find that Scott Ketchem is the father of Dustin Scott Ketchem and Rebekah Lyn Ketchem, and I find that it is appropriate, pursuant to Section 287.240(5), for the benefits due to Dustin Scott Ketchem and Rebekah Lyn Ketchem to be paid to Scott Ketchem, for the support, maintenance and education of Dustin Scott Ketchem and Rebekah Lyn Ketchem.

I find that Scott Ketchem incurred burial expenses of \$7,096.93 for Employee's burial. Employer is ordered to pay the sum of \$5000.00 to Scott Ketchem for burial expenses.

Beginning September 19, 2002, Employer is ordered to pay weekly death benefits totaling \$433.09, as follows:

To Scott Ketchem, husband, the sum of \$144.37 per week, indefinitely, in accordance with RSMo Section 287.240(4)(a);

In accordance with RSMo Section 287.240(5), to Scott Ketchem, father and natural guardian of Dustin Scott Ketchem, for the support, maintenance and education of Dustin Scott Ketchem, the sum of \$144.36 per week indefinitely;

In accordance with RSMo Section 287.240(5), to Scott Ketchem, father and natural guardian of Rebekah Lyn Ketchem, for the support, maintenance and education of Rebekah Lyn Ketchem, the sum of \$144.36 per week indefinitely;

And to be payable and be subject to modification and review as provided by law.

The attorney for dependents, Gillis Leonard, is allowed 25% of all sums awarded hereunder, up to a maximum of \$35,000.00, as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon until paid.

Interest shall accrue as per applicable law.

Date: _____

Made by: _____

ROBERT J. DIERKES
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation