

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

Injury No. 09-001261

Employee: Cynthia Knight  
Employer: Con-Agra Foods, Inc.  
Insurer: Old Republic Insurance Company  
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 § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 18, 2014, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued November 18, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 14<sup>th</sup> day of April 2015.

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

## AWARD

Employee: **Cynthia Knight**

Injury No. **09-001261**

Dependents:

Employer: **Con-Agra Foods, Inc.**

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: **Second Injury Fund**

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

Insurer: **Old Republic Insurance Company**

Hearing Date: **October 20, 2014**

Checked by: **RJD/njp**

### 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? **Yes.**
4. Date of accident or onset of occupational disease: **January 13, 2009.**
5. State location where accident occurred or occupational disease was contracted: **Saline 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? **No.**
10. Was employer insured by above insurer? **Yes.**
11. Describe work employee was doing and how accident occurred or occupational disease contracted: **Employee stepped into an access hole in the floor that was apparently uncovered.**
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: **Head.**
14. Nature and extent of any permanent disability: **Not applicable.**
15. Compensation paid to-date for temporary disability: **None.**
16. Value necessary medical aid paid to date by employer/insurer? **\$1113.15.**
17. Value necessary medical aid not furnished by employer/insurer? **Unknown.**

Employee: **Cynthia Knight**

Injury No. **09-001261**

18. Employee's average weekly wages: **Unknown.**
19. Weekly compensation rate: **Unknown.**
20. Method wages computation: **Not applicable.**

### **COMPENSATION PAYABLE**

**No compensation is payable from Employer-Insurer or from the Second Injury Fund as the claim for compensation is barred by the statute of limitations, Section 287.430, RSMo.**

**The claim for compensation is denied in full.**

Employee: **Cynthia Knight**

Injury No. **09-001261**

## **FINDINGS OF FACT AND RULINGS OF LAW**

Employee: **Cynthia Knight**

Injury No. **09-001261**

Dependents:

Employer: **Con-Agra Foods, Inc.**

Additional Party: **Second Injury Fund**

Insurer: **Old Republic Insurance Company**

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

### **ISSUE DECIDED**

The evidentiary hearing in this case was held on October 20, 2014 in Marshall. The parties requested leave to file post-hearing briefs, which leave was granted. The case was submitted on November 10, 2014. The hearing was held to determine whether the claim for compensation was filed within the time allowed by the statute of limitations, §287.430, RSMo.

### **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 Saline County;
3. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
4. That Claimant sustained an accident on January 13, 2009;
5. That Employer filed a report of injury with the Missouri Division of Workers' Compensation on January 14, 2009;
6. That the notice requirement of Section 287.420 is not a bar to Claimant's action;
7. That Con Agra Foods, Inc. was insured for Missouri Workers' Compensation purposes at all relevant times by Old Republic Insurance Company.

### **EVIDENCE**

The evidence consisted of the deposition testimony of Claimant, Cynthia Knight; the deposition testimony of Theresa Elaine Garrison; affidavit of Shelly Bowman; payment records of Blue Cross/Blue Shield.

Employee: **Cynthia Knight**

Injury No. **09-001261**

**FINDINGS OF FACT AND RULINGS OF LAW**

I find that Claimant, Cynthia Knight, was born December 8, 1955. On January 13, 2009, while in the employ of Con Agra Foods, Inc. (“Employer”), Claimant stumbled into a hole, hitting her head on the ground. Claimant was taken to the emergency room with head complaints. Claimant was diagnosed with a concussion and released that afternoon. Claimant was not admitted to the hospital. Claimant returned to regular duty for Employer and continued to work for approximately two years.

Employer filed a report of injury with the Missouri Division of Workers’ Compensation on January 14, 2009.

Employer and Insurer authorized the January 13, 2009 emergency room treatment and paid for all medical bills associated with that visit. The last such payment was made on April 13, 2009. No other payments have been made by Employer or by Insurer on account of the January 13, 2009 accident.

During the two years after January 13, 2009, Claimant presented to Employer’s in-house nurses requesting additional medical treatment. Claimant testified that each time she made a request for additional medical treatment, Employer’s nurses denied the request, believing that Claimant’s complaints were not work-related.

Claimant agreed that Employer did not authorize any treatment after the January 13, 2009 emergency room visit. Eventually, after being denied treatment by Employer’s nurses, Claimant told the nurses “I’m going to my own doctor.” Claimant did seek treatment on her own and selected her own health care providers. Payments to the health care providers were made by Blue Cross/Blue Shield, Claimant’s health insurance.

Claimant filed a Claim for Compensation with the Missouri Division of Workers’ Compensation on August 21, 2013 for the January 13, 2009 accident. Employer, Insurer and the Second Injury Fund have all raised the statute of limitations as a defense.

The statute of limitations is §287.430, RSMo, which states:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the periods of limitation provided in this section. The filing of the report of injury or death three years or more after the date of injury, death, or last payment made under this chapter on account of the injury or death, shall not toll the running of the periods of limitation provided in this section, nor shall such filing reactivate or

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revive the period of time in which a claim may be filed. A claim against the second injury fund shall be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a conservator shall be deemed the termination of the legal disability from minority or disability as defined in chapter 475. The statute of limitations contained in this section is one of extinction and not of repose.

As Employer filed a timely report of injury, the statute of limitations bars the claim for compensation unless same was filed within two years of “the last payment made under this chapter on account of the injury”. The last payment made under Chapter 287 on account of Claimant’s injury was on April 13, 2009. The claim was filed more than four years thereafter. There is no question that the Claim for Compensation is barred by the statute of limitations.

Claimant claims that “the last payment made under this chapter on account of the injury” was made by Blue Cross/Blue Shield on November 14, 2011. Blue Cross/Blue Shield did indeed make payments for medical treatment rendered to Claimant on November 14, 2011. Claimant’s assertion that the Blue Cross/Blue Shield payments were made “under this chapter (Ch. 287) on account of the injury” fails on two counts. First, there is no medical evidence whatsoever that the medical treatment of November 14, 2011 for which Blue Cross/Blue Shield made payments, was medical treatment rendered “on account of the injury” (i.e., an injury incurred by Claimant in the January 13, 2009 accident). Second, *Dungan v. Fuqua Homes, Inc.*, 437 S.W.3d 807 (Mo. App. W.D. 2014) held that payments made by a health insurance carrier do not constitute “payments made under this chapter”, and thus do not toll the running of the statute of limitations. *Dungan* is clearly on point and is dispositive of the issue.

Claimant’s claim for compensation against Employer-Insurer and Second Injury Fund was not filed within the limitations period, and thus the claim is time-barred.

**ORDER**

The claim for compensation against Employer-Insurer is denied in full. The claim for compensation against the Second Injury Fund is also denied in full.

Made by /s/Robert J. Dierkes 11/18/2014  
Robert J. Dierkes  
Chief Administrative Law Judge  
*Division of Workers’ Compensation*