

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

Injury No.: 06-040056

Employee: Alan Leake, Deceased
Dependent: Linda Leake, Widow
Employer: City of Fulton
Insurer: Missouri Intergovernmental Risk Management Association

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we reverse the award and decision of the administrative law judge dated February 9, 2009. The award and decision of Administrative Law Judge Ronald Harris is attached hereto solely for reference.

Preliminaries

The administrative law judge heard this matter to determine the following issues: (1) whether the employee sustained a compensable injury by way of an accident arising out of and in the course of employment; (2) whether there was a medical connection between employee's alleged accident and his death; (3) whether the employee's widow is entitled to death benefits; and (4) whether employer and insurer are liable for any of employee's funeral expenses.

The administrative law judge denied the claim for compensation on a finding that employee's work activities were not the prevailing factor in causing his death, and that employee's dependent thus failed to meet the burden of proving employee sustained a compensable injury arising out of and in the course of employment.

Employee's dependent, through her attorney, filed a timely Application for Review with the Commission alleging the administrative law judge erred in finding that employee's work activities on April 30, 2006 were not the prevailing factor in causing his death.

Therefore, the primary issue currently before the Commission concerns whether the alleged work injury of April 30, 2006 was the prevailing factor in causing employee's death.

Findings of Fact

Employee worked as a firefighter for employer, the City of Fulton, for approximately twenty-four years. On April 30, 2006, employee responded to two separate motor vehicle accidents in his capacity as captain of the city's fire department.

Testimony of Mr. Moses and Employee's Work Injury

Mr. Mark Moses was on duty as a police officer for the City of Fulton on April 30, 2006. He was present at both accidents on that date and worked alongside employee and witnessed firsthand the events of that day. He testified to his recollection of the events of April 30, 2006. We find the testimony of Mr. Moses to be credible.

Employee: Alan Leake, Deceased

- 2 -

The first accident involving employee on April 30, 2006 was a three car accident on Business Loop 54 near the high school in Fulton. Mr. Moses responded at approximately 2:55 p.m. Mr. Moses observed that employee and other fire fighters were present at the scene. One of the cars involved in the accident was disabled and blocking the roadway. A severe rainstorm moved through the area soaking Mr. Moses and the other rescue personnel on the scene. After the rain cleared, the sun came out, creating a hot and humid climate. Employee assisted Mr. Moses and one other individual in pushing the disabled car off the roadway and into a parking lot. Mr. Moses and the other rescue personnel received a call for a second accident while they were still on the scene at this first accident.

The second accident occurred approximately one half-mile away on Highway 54 in Fulton and involved a vehicle that had flipped over a guardrail and rolled down a steep embankment into a ravine, ejecting the victim, who lay face up next to the vehicle at the bottom of the ravine in a concrete ditch. In Mr. Moses' twelve years of responding to traffic accidents, this was his most difficult and physically demanding rescue.

In order to reach the victim, it was necessary for employee and other rescue personnel to descend a steep embankment covered with tall, thick grass and mud. Employee was wearing his "turn-out" firefighting gear, which included a heavy insulated coat, heavy insulated pants, and large rubber boots. The grass was wet from the rainstorm and intertwined with vines, adding to the difficulty and physical exertion required to navigate the embankment. Employee first assisted in attempting to resuscitate the victim. The victim was a male and was at least six feet tall and weighed approximately two hundred and fifty pounds. The victim's large size made it more physically demanding to attempt resuscitation, as it was necessary to push harder on the victim's chest and to work harder to force air into the lungs. Employee was responsible for "bagging," a job ideally performed by two persons due to the physical exertion required. However, because the victim was situated tightly against the wrecked vehicle, there was insufficient space for the various emergency personnel involved to participate fully in the resuscitation attempt. The task of bagging involved manually compressing a bag of air in order to force air into the victim's lungs. The task was made more difficult in this instance because the air tubes were intermittently clogged with the victim's vomit.

The rescue personnel spent an unusually long time attempting to resuscitate the victim due to the difficulties involved. It may have been as long as thirty minutes that the rescue personnel, including employee, were working frantically around the victim. When it was determined that attempts at resuscitation were ultimately unsuccessful, employee assisted other rescue personnel in attaching the victim to a backboard and carrying him up the opposite hill to where an ambulance was waiting. This hill was not as steep as the embankment that employee and other rescue personnel descended initially, but was longer, and covered with the same tall, thick grass and mud. The size and weight of the victim combined with the slippery and unreliable footing caused considerable difficulty to the personnel involved in this task and employee slipped and fell at least once. After reaching the top of the hill, employee assisted in attaching the victim to a stretcher and then descended the hill into the ravine once again to collect his equipment. He then ascended the steep embankment on the opposite side of the ravine. Moments after reaching the top of the embankment, employee collapsed.

Employee: Alan Leake, Deceased

- 3 -

Resuscitation efforts were unsuccessful and employee ultimately died. Employee was 51 years old.

Autopsy and Pre-existing Coronary Artery Disease

Dr. Adelstein performed an autopsy on May 1, 2006. The autopsy revealed a 95% occlusion of the left anterior descending artery, 95% occlusion of the right coronary artery, and 30% occlusion of the circumflex. Dr. Adelstein noted calcification around the aortic orifices, marked left ventricular hypertrophy, and an extensive remote infarct involving the left ventricle posterior and lateral area extending into the apex.

Dr. Adelstein noted that Mr. Leake was 5'8" tall and weighed approximately 220 pounds. Dr. Adelstein opined that the cause of death was acute cardiac arrhythmia secondary to severe coronary artery disease.

Testimony of Ms. Leake

Employee is survived by his widow, Ms. Linda Ann Leake. She testified that she and employee were married August 8, 2005. She answered questions relating to whether employee had experienced any symptoms from his underlying coronary artery disease that caused difficulty in his activities at work or outside of work. We find her testimony to be credible.

Employee was not treating for any heart condition prior to his death. He experienced no symptoms that interfered with his work duties as a firefighter. Employee was physically active outside of work. His activities around the house included painting the trim, building a privacy fence, and cutting the grass. He also engaged in boating in his free time. Employee experienced no symptoms that interfered with his activities outside of work. The only medical issue was employee's high cholesterol. He was not taking any medication for this condition, but was advised to eat healthier.

Ms. Leake personally paid for employee's funeral and burial expenses. She was employee's sole dependent at the time of his death.

Opinion of Dr. Schuman

On behalf of the employee, Dr. Stephen Schuman reviewed the report of injury, police reports and eyewitness statements relating to the events of April 30, 2006, the employee's medical history as set forth in medical records going back as far as November 7, 1996, and the autopsy report of Dr. Adelstein.

Dr. Schuman noted that employee's medical history revealed that employee had no complaints of chest pain or other cardiac symptoms, and that he was not under any treatment for heart disease. Dr. Schuman noted employee smoked two packs of cigarettes per day for a period of approximately five or six years, that levels of employee's LDL cholesterol were high, and that employee was diagnosed as obese. Dr. Schuman's opinion after reviewing the autopsy report was that employee had severe double vessel coronary disease at the time of his death.

Dr. Schuman opined that the prevailing factor causing employee's death was the combination of physical exertion, emotional stress, and unfavorable environmental conditions stemming from employee's work activities of April 30, 2006. Dr. Schuman explained that the physical exertion required to reach the victim, perform resuscitation,

Employee: Alan Leake, Deceased

- 4 -

and carry the victim out of the ravine would have put an abnormal strain on employee's cardiovascular system. He further explained that the emotional stress involved in struggling to resuscitate a non-responsive victim of a car accident would add to the strain on the cardiovascular system. He further explained that the weather on that date put an additional extraordinary strain on employee's heart because when the weather is hot and humid, the body can't dissipate heat easily. As a result, more demand is placed on the heart because in addition to sending blood to the working muscles of the body, the heart also has to pump more blood to the skin to dissipate heat.

According to Dr. Schuman, all of these factors would have created a supply/demand imbalance. He explained that employee's heart was demanding more and more blood in order to allow employee to exert himself at the level required to respond to the work activities he was engaged in, but the supply of blood was not there due to employee's blocked arteries. This supply/demand imbalance led to the creation of an electrical instability that in turn led to the severe rhythm abnormality that directly caused employee's death.

Dr. Schuman testified that there are people with underlying coronary artery disease who never experience an acute cardiac event. Dr. Schuman opined that, were it not for the events of April 30, 2006, employee could have continued to go about the activities of normal living. He further opined that if employee could have stopped the work activities he was engaged in on that date, he would not have died.

Dr. Schuman agreed on cross-examination that individuals can die of sudden acute cardiac events without exertion. He further agreed that if employee's coronary arteries had not been blocked, and if his heart had been totally normal, employee would not have died of an acute cardiac event as a result of his work activities on April 30, 2006.

Dr. Schuman is board certified in cardiology and internal medicine and is currently engaged in the private practice of internal medicine and cardiology at St. Luke's Hospital in Chesterfield, Missouri.

Opinion of Dr. Kennett

On behalf of the employer/insurer, Dr. Jerry D. Kennett reviewed police reports and eyewitness statements relating to the events of April 30, 2006, the employee's medical history as set forth in medical records going back as far as November 7, 1996, the autopsy report of Dr. Adelstein, and the report authored by Dr. Schuman. Dr. Kennett noted that, according to his medical history, employee exhibited many of the risk factors for coronary artery disease, including mild obesity, borderline elevated blood pressure, levels of LDL cholesterol that were quite elevated, and smoking at the level of two packs a day at one point in employee's history. He agreed that the medical history demonstrated that employee had not been treated for symptoms related to coronary artery disease and that he was not on any medications for elevated blood pressure or high cholesterol.

Dr. Kennett noted that the autopsy revealed that employee had a prior significant heart attack. Dr. Kennett believed that the biggest factor putting employee at risk for a life-threatening arrhythmia was his prior heart attack. Dr. Kennett testified that employee's left ventricular hypertrophy was not a major factor in employee's death.

Employee: Alan Leake, Deceased

- 5 -

Dr. Kennett opined that employee died from ventricular fibrillation and not a heart attack. He explained that ventricular fibrillation was a life-threatening arrhythmia. This arrhythmia was caused by employee's structural heart disease and blocked arteries and valve problems, all of which prevented the amount of blood flow to the heart that was required to sustain the level of exertion employee put forth in response to his work activities on April 30, 2006.

Dr. Kennett opined that the prevailing factor causing employee's death was his underlying coronary artery disease. He further opined that the emotional and physical stress brought on by employee's work duties on April 30, 2006 may have been a contributing factor, but not the major or prevailing factor leading to employee's death. Dr. Kennett further opined that employee would likely have developed symptoms from his heart disease and been at risk for sudden death even if he had never participated in the events of April 30, 2006.

On cross-examination, Dr. Kennett did not discount the external factors at play in employee's death. He agreed that employee would have experienced a significant emotional overload as a result of responding to two accidents in a brief span of time, that the heat and humidity were a factor, that the physical demands of traversing the steep embankment and attempting to resuscitate someone who is badly hurt and dying, and ultimately helping to carry the victim uphill, were all factors that contributed to a high level of stress for employee. Nevertheless, Dr. Kennett opined that if not for employee's underlying heart condition, he would not have died from sudden cardiac death. He compared employee's death to a bridge accident, in which a structure gradually loses integrity over time and then collapses suddenly under a heavy load.

Dr. Kennett is board certified in internal medicine, cardiovascular diseases, and interventional cardiology. He practices at the Missouri Heart Center in Columbia, Missouri.

Conclusions of Law

As a preliminary matter, we note that because employee's injury occurred on April 30, 2006, this case falls under the purview of the 2005 amendments to the Missouri Workers' Compensation Law.

Section 287.120 RSMo Supp. (2008)¹ "requires employers to furnish compensation according to the provisions of the Workers' Compensation Law for personal injuries of employees caused by accidents arising out of and in the course of the employee's employment." *Gordon v. City of Ellisville*, 268 S.W.3d 454, 458-59 (Mo. App. 2008).

Section 287.020.2 RSMo defines "accident" as: "An unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift."

Pursuant to § 287.020.3(1) RSMo, an "injury" is defined to be "an injury which has arisen out of and in the course of employment." Section 287.020.3 RSMo further states that:

¹ Unless otherwise indicated, all statutory references are to RSMo Supp. (2008).

Employee: Alan Leake, Deceased

- 6 -

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.

Under § 287.020.2.3(2) RSMo: "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."

Finally, under § 287.020.3(4): "A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition ..."

We disagree with the conclusion of the administrative law judge that employee's death was not the result of a compensable injury arising out of and in the course of employment. To the contrary, we find that employee suffered an injury by accident arising out of and in the course of his employment on April 30, 2006, and that the accident was the prevailing factor, in relation to any other factor, including employee's pre-existing, non-disabling coronary disease, in causing the death of employee.

Under the Missouri Workers' Compensation Law, employee bears the burden of proving all the essential elements of his claim, including medical causation. *Roberts v. Mo. Highway & Trans. Comm.*, 222 S.W.3d 322, 331 (Mo. App. 2007). For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. *Id.* "Medical causation, which is not within common knowledge or experience, must be established by scientific or medical evidence showing the relationship between the complained of condition and the asserted cause." *Gordon v. City of Ellisville*, 268 S.W.3d 454, 461 (Mo. App. 2008) (citations omitted).

This case turns on the conflicting medical causation opinions offered by Dr. Schuman and Dr. Kennett. Dr. Schuman opined that employee's work activities of April 30, 2006 were the prevailing factor in causing his death. Dr. Kennett disagreed, opining that employee's underlying cardiovascular disease was the prevailing factor in causing his death.

The Commission may accept or reject medical evidence, and is free to accept one of two conflicting medical opinions. *Pavia v. Smitty's Supermarket*, 118 S.W.3d 228, 233-234 (Mo. App. 2003).

Dr. Schuman opined that employee's work activities on April 30, 2006 constituted the prevailing factor resulting in employee's death. Dr. Schuman testified that, prior to

Employee: Alan Leake, Deceased

- 7 -

April 30, 2006, employee was medically stable. Dr. Schuman further testified that, notwithstanding employee's pre-existing cardiovascular disease, if it weren't for the work activities on April 30, 2006, employee would not have died on that date and would have been able to continue going about the normal activities of his life. Dr. Schuman also testified that, if employee had been able to stop his work activities on April 30, 2006 and take a rest, he would not have died on that date. We disagree with the conclusion of the administrative law judge that Dr. Kennett's opinion is more credible than that of Dr. Schuman. To the contrary, we find Dr. Schuman's opinion to be more credible and persuasive than that of Dr. Kennett.

Our conclusion is supported by the medical testimony of both doctors that employee had not complained of, nor was he treating for any symptom related to coronary artery disease before his death. Both doctors further agreed that employee was able to go about his work activities and his normal activities outside of work without any apparent disability caused by underlying coronary disease. Finally, both doctors agreed that the work activities of April 30, 2006 would have put an unusual and extreme strain upon employee's cardiovascular system. We conclude that, as a result of this unusual strain, employee experienced a traumatic cardiovascular event that produced objective symptoms of injury, namely, an acute rhythm abnormality of his heart that, according to both Dr. Schuman and Dr. Kennett, directly caused the death of employee. Further, we conclude that the work activities were not merely a triggering or precipitating factor, but that they were the primary cause of employee's death when all other factors are considered.

Moreover, there was ample evidence on the record to demonstrate that on April 30, 2006, employee was exposed to hazards and risks related to his employment to which he would not have been equally exposed outside of and unrelated to his work as a firefighter for the City of Fulton. First, employee was exposed to the risks and hazards of extreme physical and emotional exertion on that date solely by virtue of employee's employment as a firefighter. Employee would not have been in the ravine at the side of Highway 54 on that date, attempting to resuscitate the victim of a car crash, were it not for his employment. Thus, the risks and hazards to which he was exposed were directly related to his employment. Second, normal, nonemployment life would not equally expose employee to the confluence of extraordinary stressors he faced on that date, namely, extreme weather conditions combined with the emotional and physical demands of a difficult rescue. Indeed, according to the firsthand testimony of Mr. Moses, the events of that day were not merely unusually stressful, but they constituted the most difficult and physically demanding rescue Mr. Moses had ever encountered during his twelve years in law enforcement. This is not a case akin to *Miller v. Mo. Highway & Transp. Comm.*, 287 S.W.3d 671 (Mo. 2009), where an injury "merely happened to occur while working." *Id.* at 674. Rather, it is highly unlikely that employee would have exerted himself in such an extraordinary fashion for such a prolonged period of time outside of his employment for the City of Fulton.

We do not discount the evidence demonstrating that employee exhibited certain risk factors related to cardiovascular disease, nor that the autopsy performed by Dr. Adelstein following employee's death revealed significant occlusion of employee's arteries. However, we find Dr. Schuman's opinion that the fatal cardiac arrhythmia

Employee: Alan Leake, Deceased

- 8 -

suffered by employee was a "demand-side" problem to be the most persuasive explanation of what occurred on April 30, 2006.

For the foregoing reasons, we conclude that employee's dependent satisfied her burden of demonstrating that employee's work activities on that date were the prevailing factor in causing the resulting medical condition, namely, employee's death.

Pursuant to § 287.240.4(a) RSMo, we conclude that Ms. Linda Ann Leake, as employee's sole and total dependent at the time of his death, is entitled to death benefits.

Award

Based on the foregoing, the Commission concludes and determines that employee's dependent has met her burden of demonstrating that employee died as a result of a compensable injury arising out of and in the course of his employment as defined by the Missouri Workers' Compensation Law. Accordingly, we reverse the award of the administrative law judge denying compensation in this case.

We direct the employer to pay to widow the sum of \$1,756.14 for funeral and burial expenses.

We direct the employer to pay to widow \$581.33 weekly from May 1, 2006, and continuing for her lifetime or her remarriage or until otherwise modified by law.

Clare R. Behrle, Attorney at Law, is allowed a fee of 25% of the benefits awarded for necessary legal services rendered to employee, which shall constitute a lien on said compensation.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 13th day of November 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

DISSENTING OPINION FILED

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

Employee: Alan Leake, Deceased

DISSENTING OPINION

I must respectfully dissent from the award and decision of the majority of this Commission reversing the award of the administrative law judge in this case. I agree with the reasoning and conclusions of the administrative law judge and I would affirm the award and decision of the administrative law judge without modification.

Alice A. Bartlett, Member

AWARD

Employee: Alan Leake, Deceased

Injury No. 06-040056

Dependents: Linda Leake

Employer: City of Fulton

Additional Party: N/A

Insurer: Missouri Intergovernmental Risk Management Association

Hearing Date: December 2, 2008

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

Checked by: RH:lw

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: April 30, 2006
5. State location where accident occurred or occupational disease was contracted: Fulton, Callaway 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? No
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: After assisting accident victim suffered cardiac event.
12. Did accident or occupational disease cause death? Yes Date of death? April 30, 2006

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: None
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: \$872.00
19. Weekly compensation rate: \$581.33 for death benefits
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None

TOTAL:

22. Future Requirements Awarded:

Said payments to begin immediately 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 all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

PRELIMINARIES

The above-referenced workers' compensation claim was heard by the undersigned Administrative Law Judge on December 2, 2008. Attorney Clare Behrle represented Linda Leake, widow of Alan Leake ("Employee"), and Susan Turner represented the City of Fulton ("Employer") and Missouri Intergovernmental Risk Management Association ("Insurer"). The parties entered into certain stipulations and agreements as to the contested issues and evidence to be presented at the hearing as follows:

STIPULATIONS

The parties stipulated that on or about April 30, 2006:

1. The employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation Law;
2. The employer's liability was insured by Missouri Intergovernmental Risk Management Association;
3. The employer had notice of the injury and a claim for compensation was filed within the time prescribed by law;
4. Employee's average weekly wage was \$872.00 which would equate to a compensation rate of \$581.33 for death benefits;
5. No temporary total disability or medical benefits had been paid to date.

ISSUES

The issues to be resolved in this proceeding are:

1. Whether the employee sustained a compensable injury by way of an accident arising out of and in the course of employment;
2. Whether there is a medical causal connection between employee's alleged accident and his death;
3. Whether the employee's widow is entitled to death benefits;
4. Whether employer and insurer are liable for any of employee's funeral expenses.

EXHIBITS

The following exhibits were entered into evidence on behalf of the Employee, without objection:

Employee Exhibit 1: Death Certificate

Employee Exhibit 2: Marriage Certificate of Alan Leake and Linda Meyers

Employee Exhibit 3: Dissolution of Marriage between Vicki Louise Leake and Alan Dale
Leake

- Employee Exhibit 4: Dissolution of Marriage between Linda A. Meyers and Terrance J. Meyers
Employee Exhibit 5: Dissolution of Marriage between W. Reid Wright and Linda Ann Wright
Judgment and Order of name change for Linda Ann Wright to Linda Ann Meyers
Employee Exhibit 6: Birth Certificate of Eric Dale Leake
Birth Certificate of Deborah Joann Leake
Birth Certificate of Stacey Ann Meyers
Birth Certificate of Brett William Meyers
Birth Certificate of Megan Marie Meyers
Employee Exhibit 7: Autopsy Report
Employee Exhibit 8: Medical Records of Dr. William Cravens
Employee Exhibit 9: Dr. Stephen Schuman Deposition
Employee Exhibit 10: Bills for Funeral Expenses
Employee Exhibit 11: Report of Injury
Employee Exhibit 12: Incident Report from Chief Buffington
Incident Report from firefighter Quintin Sample
Incident Report from police officer Mark Moses
Occurrence Report for Fire Department on 4/30/06
Topography of accident site of Alan Leake's last call
Letter from City of Fulton regarding weight of protective clothing
Accident report related to Alan Leake's last call
Employee Exhibit 13: Weather Report

Employer/Insurer, offered the following exhibit which was admitted into evidence:

Employer/Insurer Exhibit A: Dr. Jerry D. Kennett Deposition

Any objections not specifically addressed in this award are overruled. Any exhibits containing markings, highlighting, etc., were submitted in that manner. The undersigned has made no markings of any kind on any of the evidence. Only evidence necessary to support this award will be summarized.

FINDINGS OF FACT

Based upon the above exhibits, evidence and the testimony, I make the following findings.

Alan Leake worked for the Employer, the City of Fulton, for approximately twenty- four years as a firefighter. At the time of his death on April 30, 2006, he was serving as Captain of the fire department. On that date he responded to two motor vehicle accidents. The first was a

minor three car accident on Business 54 North in Fulton. Following that call he responded to a single car accident with an ejection on By-pass 54 near the North turn-a-round. At the second accident scene a pick up had flipped over the guard rail and rolled down an embankment. The driver had been ejected and was lying face up next to his truck in a concrete ditch bottom. Alan Leake, along with other rescue personnel, tried to resuscitate the victim. A medic unit arrived and took over care of the victim. Mr. Leake and others on the scene assisted the medics in their efforts to stabilize him and getting him out of the ditch and to the ambulance.

Mr. Leake then returned to where the victim had been to retrieve equipment and then walked back up the embankment to his vehicle. He stepped over the guardrail and asked someone to get him some alcohol to clean his hands. He then began speaking to Fire Chief Buffington, said he was feeling dizzy and then collapsed. Resuscitation efforts were begun and he regained a pulse for a short time but ultimately passed away.

Dr. Adelstein performed an autopsy on May 1, 2006. (Employee's Exhibit 7, pg.2). He noted Mr. Leake was 5'8" tall and weighed approximately 220 pounds. An examination of Mr. Leake's heart revealed 95% occlusion of the left anterior descending artery, 95% occlusion of the right coronary artery and 30% occlusion of the circumflex. He also noted there was "marked left ventricular hypertrophy" and that there was an "extensive remote infarct involving the left ventricle posterior and lateral area extending into the apex." (Employee's Exhibit 7, pg. 3). The death certificate listed the cause of death as acute cardiac arrhythmia and severe coronary artery disease.

Mark Moses testified at trial. Mr. Moses presently works as a fraud investigator for the Division of Workers' Compensation but at the time of Mr. Leake's death was working as a police officer for the City of Fulton.

That morning he worked as the investigating officer of the three car accident on Business 54. Alan Leake also responded to that call and together they pushed a disabled vehicle off the highway. There was a light rain that started while they were working that accident and then it started raining extremely hard, so much so, that the water ran down his coat and shorted out his radio. Mr. Moses testified that the rain stopped suddenly and the sun came out making it very hot and humid. While that accident was being concluded Mr. Moses was then dispatched to the second vehicle accident on Highway 54.

When he got to the scene he saw that a full size truck had flipped over the guardrail and rolled down an embankment. The driver had been ejected and was lying in a culvert and wedged against his vehicle making it difficult for the rescue workers to get to him. Mr. Moses memory of the victim was that he was about 6' 2" tall and weighed about 240 pounds. He estimated that it was about 75 yards to reach the victim. The ravine was steep and the rescuers had to travel through high grass about shin deep to reach him. The grass was wet and slippery from the recent rain.

Mr. Moses testified that they had a difficult time in treating and trying to stabilize the victim and everyone was working frantically to try to save him. Mr. Moses observed Alan Leake trying to resuscitate the victim. Mr. Leake was using a rescue breathing bag to breathe for the patient which involved physically holding and pumping the bag to try to force air into the lungs.

An ambulance came to take the accident victim to the hospital and Mr. Moses and others put the man on a board and carried him up the hill. It was unclear whether Mr. Leake actually assisted in carrying the man up the hill to the ambulance.

Mr. Moses testified that he had never felt fatigue at that level before. He was physically fit and was on the Swat Team as well as a bicycle cop. He had been in many physically demanding situations before but he testified that this rescue was the most physically and emotionally challenging that he had ever experienced.

Mr. Moses testified that he had the opportunity to work with Mr. Leake in the past and had observed him in physically demanding activities including fighting fires, pulling heavy hoses, and carrying equipment to cut apart vehicles. He never observed or knew Mr. Leake to have any trouble performing those activities.

Linda Leake testified. She and Alan were married on August 6, 2005. They did not have any children together. Both of them had adult children none of whom were dependent upon Alan Leake for support. Neither of Mr. Leake's children were in the military or enrolled in an accredited college or university. Neither of his children were mentally or physically incapable of self-support. She and Alan Leake were living together at the time of his death and no one else was living with them. She was the only person dependent upon him for support. She has not remarried nor does she have any plans or intention to remarry. (Employee's Exhibits 2-6).

Mrs. Leake incurred expenses for Alan Leake's funeral. These were to Maupin Funeral Home in the amount of \$964.51, Capital Monuments in the amount of \$726.63 and \$65.00 for a burial permit. The balance of the funeral expenses were paid by Maupin Funeral Home. (Employee's Exhibit 10).

Linda Leake testified that Alan Leake was not treating for any heart condition prior to his death. She was not aware of any medical condition limiting his ability to work. She testified that he was able to engage in his work as a firefighter without problems. She was not aware of any symptoms that interfered with his ability to do his work. He never had any problems when doing physical work around their home.

On behalf of the employer/insurer, Dr. Jerry Kennett, a physician specializing in cardiology, reviewed medical records, a report authored by Dr. Stephen Schuman and the

autopsy report. In his opinion Mr. Leake's death was primarily caused by his underlying cardiovascular disease and while the work he was doing on the day of his death may have been a contributing factor it was not the major factor that led to his death. (Employer/Insurer's Exhibit A, p. 7, 13).

He testified that Mr. Leake's autopsy revealed a thickened heart muscle and blockage in all three main coronary arteries, two of them being quite severe. It also showed that in the past Mr. Leake had a prior significant heart attack, although he apparently had not been aware of it. (Employer/Insurer's Exhibit A, pgs. 8-9). He analogized Mr. Leake's death to the Minneapolis bridge accident in which you have a bridge that has been there for years but has developed rust and all kinds of decay and then a heavy load comes across the bridge and it collapses. Had Mr. Leake had a structurally normal heart the chances of his having died on that particular day would have been extremely low. (Employer/Insurer's Exhibit A, p.13). The doctor opined it was the underlying heart disease that was the major factor leading to his death and the work event was merely a contributing or precipitating factor. (Employer/Insurer's Exhibit A, pgs. 13, 33).

Dr. Kennett concurred with Dr. Schuman that Mr. Leake died from an episode of ventricular fibrillation which is a rhythm abnormality caused by his heart condition rather than from a heart attack. (Employer/Insurer's Exhibit A, p. 22). He agreed on cross examination the rhythm abnormality can be caused by stresses put on the heart causing it to need more blood which can't get past because of the blocked arteries which creates a turbulence as the blood goes through the arteries. (Employer/Insurer's Exhibit A, pgs. 23, 27, 28). Dr. Kennett testified that Alan Leake's activities on the day in question may have been a precipitating or contributing factor to his sudden death because that activity and the adrenaline it would generate could be a precipitating factor in why he suddenly had the rhythm abnormality. (Employer/Insurer's Exhibit A, p.23).

Dr. Kennett testified that the work Mr. Leake was doing increased the work of the heart and increased the demand for more blood and oxygen but that he would not have had sudden death if he had not had the underlying heart condition. (Employer/Insurer's Exhibit A, pgs. 31-32). It was his opinion that Mr. Leake was going to either develop significant symptoms from his heart disease or would certainly be at an increased risk of sudden death even if he hadn't participated in those activities on that day in question. (Employer/Insurer's Exhibit A, p.36). However, he testified that if Mr. Leake had been able to stop the activities he was doing in time there would have been a chance he would not have died from an acute cardiac event. The doctor agreed that on that day in doing what he was doing trying to save the victim there was a greater demand on his heart because of the activities he was doing and the emotional and mental stress. It was Dr. Kennett's opinion that the heat, the activity, the emotional stress were precipitating or triggering factors but the prevailing factor for Mr. Leake's death was the underlying coronary artery disease. (Employer/Insurer's Exhibit A, p.40). The doctor testified that had Mr. Leake not had the underlying heart condition, he would not have experienced sudden death. (Employer/Insurer's Exhibit A, pgs.32, 38).

Dr. Schuman, a physician specializing in internal medicine and cardiology, reviewed medical records and the autopsy report on behalf of the Employee. (Employee's Exhibit 9). It was his opinion that, before his death, Mr. Leake was medically stable although not optimal because he had severe coronary artery disease to the vessels, a prior heart attack and ventricular hypertrophy. Even so he was apparently able to go about his business and work activities without symptoms and, in the doctor's opinion; he could have continued to do so were it not for this event. (Employee's Exhibit 9, pgs. 34-35).

Dr. Schuman testified that Mr. Leake had severe coronary artery disease in two of the three main arteries but no apparent prior symptoms with the exception of the autopsy report showing a prior heart attack. (Employee's Exhibit 9, p.17). In his opinion there were significant, unusual physical exertions on the day in question, emotional stress with a severe car accident and hot and humid weather in which the body cannot dissipate heat, and that all of those factors combined to increase demand on the cardiovascular system for increased cardiac output. (Employee's Exhibit 9, pgs. 19-20). Dr. Schuman explained that the heart muscle requires more blood flow to sustain the extra work and if there is any restriction of blood flow because of coronary artery blockage, that extra blood flow cannot increase to the level that the demand increases causing a supply, demand imbalance. (Employee's Exhibit 9, pgs. 21-22). This creates a serious arrhythmia, or irregular beating, the most severe type of rhythm abnormality. (Employee's Exhibit 9, pgs. 23, 25). It was Dr. Schuman's opinion that this electrical instability was the cause of death. In this case Mr. Leake suffered from primary ventricular fibrillation, which was all demand side. If the demand wasn't there, the electrical event would not have occurred. (Employee's Exhibit 9, pgs. 25-26). It was Dr. Schuman's opinion that Mr. Leake's fatal cardiac death was medically causally related to his work on that day. The physical exertion, the emotional stress and the environmental factors were all factors that caused the medical conditions, the ventricular fibrillation or rhythm abnormality, that caused his death. (Employee's Exhibit 9, p.27).

Dr. Schuman testified that Mr. Leake had hypertension, hyperlipidemia, and cigarette smoking which are risk factors for plaque buildup or atherosclerosis over the body but not risk factors to the cardiac event. He testified a lot of people have atherosclerosis or even severe coronary atherosclerosis and live with it for years or even decades. (Employee's Exhibit 9, p.28). Dr. Schuman testified that if Mr. Leake had been able to stop what he was doing early enough he would have had less damage to his heart. (Employee's Exhibit 9, p.33).

It was Dr. Schuman's opinion that the work activities of April 30, 2006, were the prevailing factor in the cause of Mr. Leake's death. With his preexisting medical conditions he was not optimal but was medically stable and was going about his business, work and leisure activities without symptoms. It was the doctor's opinion that Mr. Leake died an acute cardiac death due to an acute event. (Employee's Exhibit 9, p.52).

RULINGS OF LAW

Whether the employee suffered a compensable injury by way of an Accident Arising Out Of and In The Course Of Employment

Under Missouri Workers' Compensation law, an accident is defined as:

an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

Section 287.020.2 R.S.Mo. 2005

Injury is defined as:

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. *Section 287.020.3(1) R.S.Mo. 2005*

An injury is only deemed to arise out of and in the course of 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 287.020.3(2) (b) R.S.Mo. 2005

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition. *Section 287.020.3(4) R.S.Mo. 2005*

The legislative changes effective August 28, 2005, changed the standard for compensability from "a substantial factor" to "the prevailing factor". Further, Section 287.800 RSMo requires the provisions of the Workers' Compensation Law be strictly construed. The

employee has the burden of proving all the essential elements of the claim. *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271 (Mo. App. 1996).

Both Drs. Kennett and Schuman agreed that Alan Leake had preexisting underlying cardiovascular disease and had certain risk factors for that disease. It is Dr. Kennett's opinion that Mr. Leake's death was primarily caused by his underlying disease and his work on the date of his death may have been a contributing factor but it was not the major factor that led to his death. It was his opinion that Mr. Leake died from an episode of ventricular fibrillation which is a rhythm abnormality. The activities of that day may have resulted in an increased demand for blood flow but it was the underlying coronary disease, specifically the severe artery blockage that prevented the necessary blood flow from occurring. Dr. Kennett opined the activities of that day were not the prevailing factor and if Mr. Leake had not had the underlying heart disease he would not have experienced sudden death.

Dr. Schuman also testified that the demands put on Mr. Leake on April 30, 2006 all combined to increased the demand on the cardiovascular system creating a serious arrhythmia, the most severe type of rhythm abnormality. The doctor felt this instability was the cause of death not the underlying condition. It was his opinion that Alan Leake died an acute cardiac death due to an acute event. However, Dr. Schuman did admit had Mr. Leake had a normal heart and did not have the pre-existing coronary heart disease he would not have died as a result of the events of April 30, 2006.

Dr. Schuman's opinion was in part based upon Mr. Leake's apparent ability to perform his duties prior to April 30, 2006, without difficulty even though the autopsy report revealed a prior significant heart attack. However, even if that were so that alone is not sufficient to establish compensability under the Workers' Compensation Act. *See Gordon v. City of Ellisville*, 268 S.W.3d 454 (Mo. App. 2008).

Medical causation, which is not within common knowledge or experience, must be established by scientific or medical evidence showing the relationship between the complained of condition and the asserted cause. *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo. App. 1991). Where opinions of medical experts are in conflict, the finder of fact determines whose opinion is the most credible. *Townser v. First Data Corp.*, 215 S.W.3d 237 (Mo. App. 2007).

While I find Dr. Kennett's opinion to be the more credible I would note that Dr. Schuman's testimony is consistent with a conclusion that the events of April 30, 2006, may have been a "triggering", "precipitating" or arguably "a substantial factor" but that does not rise to the standard of the "prevailing factor". The Workers' Compensation Act defines "the prevailing factor" as "the primary factor, in relation to any other factor". Both doctors opined that absent either the underlying coronary artery disease or the work activities of April 30, 2006, Mr. Leake would not have died from a cardiac event on that day. Based upon the testimony and opinions of

the medical experts it cannot be said that the events of April 30, 2006, meet the statutory requirement of the primary factor when compared to the underlying heart disease as to the cause of Mr. Leake's death.

Applying strict construction requires a conclusion employee has failed to meet the required burden of proving the work activities of April 30, 2006, constituted "the prevailing factor" in causing Mr. Leake's death.

Consequently, having failed to prove Mr. Leake's death was the result of a compensable injury arising out of and in the course of employment as defined by statute; all other issues are moot and will not be addressed in this award.

CONCLUSION

Employee has failed to meet the burden of proving a compensable injury arising out of and in the course of employment as defined by law. Therefore, the claim for benefits is denied.

Date: _____

Made by: _____

Ronald Harris
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Peter Lyskowski
Acting *Director*
Division of Workers' Compensation