

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
by Supplemental Opinion)

Injury No.: 06-114884

Employee: Travis L. Lynn
Employer: Boone Electric Cooperative
Insurer: Self-insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ Having reviewed the evidence, read the briefs, 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 January 25, 2011, as supplemented herein.

The findings of fact and stipulations of the parties were accurately recounted in the award of the administrative law judge and are adopted by the Commission.

The purpose of this supplementation is to address employer's argument on appeal that employee's injury did not arise out of and in the course of his employment. In support of its position, employer argues that this case is analogous to *Miller v. Missouri Highway and Transportation Commission*, 287 S.W.3d 671 (Mo. 2009). In *Miller*, the Court concluded that the claimant's injury did not arise out of his employment because it found that nothing about the claimant's work caused his injury. The Court found that employee would have been equally exposed to the risk that caused the injury (walking) in normal non-employment life. Employer argues that in this case employee similarly would have been equally exposed to his type of knee injury and risk outside of his non-employment life. We find that employer's analysis is misguided.

The question we must consider is whether employee's injury came "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 non-employment life." § 287.020.3(2) (b) RSMo. The application of § 287.120.3(2) (b) RSMo, involves a two-step analysis. *Pile v. Lake Reg'l Health Systems*, 321 S.W.3d 463, 467 (Mo. App. 2010).

The first step is to determine whether the hazard or risk is related or unrelated to the employment. Where the activity giving rise to the accident and injury is integral to the performance of a worker's job, the risk of the activity is related to employment. In such a case, there is a clear nexus between the work and the injury. Where the work nexus is clear, there is no need to consider whether the worker would have been equally exposed to the risk in normal non-employment life. Only if the hazard or

¹ Statutory references are to the Revised Statutes of Missouri 2006 unless otherwise indicated.

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risk is unrelated to the employment does the second step of the analysis apply. In that event, it is necessary to determine whether the claimant is equally exposed to this hazard or risk in normal, non-employment life.

Id.

This case, like *Pile*, is distinguishable from *Miller*. Here, employee was injured while kneeling down in a squatted position and reaching behind himself, a necessary activity in the performance of servicing underground transformers. Because employee was performing an integral duty of his job of servicing transformers, there is a clear connection (nexus) between the injury and his work; that is, employee's injury came from a risk related to employment. Consequently, there is no need to consider whether employee is equally exposed to the risk of kneeling down in a squatted position and reaching behind himself in normal non-employment life.

For the foregoing reasons, the Commission agrees with the conclusions reached by the administrative law judge and affirms with supplementation as provided herein. The award and decision of Administrative Law Judge David L. Zerrer, issued January 25, 2011, is affirmed, and is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 4th day of August 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary