FINAL AWARD ALLOWING COMPENSATION
(After Mandate from the Supreme Court of Missouri)

Injury No.: 11-062949
Medical Fee No.: 11-00127

Employee: Ronald Malam

Employer: State of Missouri/Dept. of Corrections

Insurer: C A R O

Healthcare Provider: Lester E. Cox Medical Centers

Introduction
On June 28, 2016, the Supreme Court of Missouri issued an opinion reversing the October 10, 2014, award and decision of the Labor and Industrial Relations Commission (Commission) in this workers' compensation case. See *Malam v. Dep't of Corr.*, SC95170 (June 28, 2016). By mandate issued August 16, 2016, the Court confirmed its decision to reverse the Commission's award and remanded this matter to the Commission for further proceedings in conformity with the opinion of the Court.

Pursuant to the Court's mandate, we issue this award.

Findings of Fact
In March 2005, employee suffered at the age of 43 a period of rapid weight gain (30 pounds in 2 weeks) accompanied by shortness of breath and generalized body swelling, resulting in a four-day hospitalization and diagnosis of congestive heart failure, hypertension, primary cardiomyopathy, pulmonary hypertension, left ventricular dysfunction, biventricular failure, and morbid obesity. Following a four-day September 2009 hospitalization for gallstone pancreatitis with both acute and chronic cholecystitis, doctors diagnosed employee with diabetes mellitus. In March 2010, employee was again hospitalized for eleven days, this time for acute pancreatitis, acute renal failure, obesity, hypertension, hypophosphoremia, and uncontrolled diabetes mellitus.

Employee, a corrections officer for employer, seeks workers' compensation benefits in connection with a hypertensive crisis he suffered after an event at work on August 12, 2011, wherein employee took an uncooperative inmate to the ground. In the weeks leading up to this event, employee was drinking up to 10 liters of water per day.

The takedown event occurred as follows. The inmate was facing a wall, with employee behind him. In the course of the takedown, employee reached his right hand under the inmate's right armpit, lifted the inmate up, moved him to the left, and then took him down to the ground. Employee testified that he went down with the inmate such that he ended up lying with his stomach upon the inmate's back.

This was the first and only takedown of an inmate employee had ever performed. Employee felt the takedown took minimal exertion on his part, as he was working out a lot, and he also weighed about 100 pounds more than the inmate. Employee testified he didn't notice anything unusual immediately after the takedown. However, in

response to a question posed by his attorney, he agreed he may have experienced a bit of an adrenaline rush as a result of the event.

At some point after the takedown, employee experienced difficulty breathing.[1] Employee felt as if his lungs were filling up with fluid. Employee tried to get a drink of water from a sink, but spit up blood instead. An on-site nurse saw this and suggested employee go to the hospital. Someone with employer called an ambulance, which took employee to Texas County Memorial Hospital. Employee woke up a week later at Lester E. Cox Medical Centers, where he received treatment for a hypertensive crisis.

Employee missed about six weeks of work[2] but returned thereafter without any additional problems referable to the August 2011 takedown event. In fact, employee makes no claim for permanent partial disability benefits in this matter, as his medical expert, Dr. P. Brent Koprivica, specifically ruled out such in his evaluation. Instead, employee's sole claim for compensation is for unpaid past medical expenses.

Employee provided his unpaid medical bills and the treatment records corresponding to the bills, which suggest that he incurred $138,010.15 in unpaid past medical expenses. Employee provided his uncontested testimony identifying the bills as incurred in connection with his treatment following the August 2011 takedown event; we credit employee in this regard, and find he incurred $138,010.15 in unpaid past medical expenses for treatment reasonably required in connection with the August 2011 event.

Expert medical opinion evidence

Employer advances the expert medical opinion of Dr. Anne-Marie Puricelli, who believes employee's drinking excessive amounts of fluid per day exacerbated both his preexisting hypertension and his underlying cardiomyopathy, and that his hypertensive crisis of August 12, 2011, was the product of his severely compromised cardiopulmonary conditions, rather than his takedown of the inmate. In our award of October 10, 2014, we noted that Dr. Puricelli premised her causation opinion upon demonstrably incorrect facts with regard to the takedown event; she believed, for instance, that employee did not fall to the ground during the event, but instead remained standing.

Dr. Puricelli also based her opinion, in part, on a purely conclusory determination that employee's preexisting hypertension was inadequately treated before August 12, 2011, but we found no clear indication in the record that this was the case, and Dr. Puricelli failed to explain how or why she believed employee's hypertension was inadequately treated. For these reasons, we have already found that Dr. Puricelli's opinions lack persuasive force in this case.

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[1] Employee initially testified he experienced difficulty breathing less than 2 minutes after the takedown; on cross-examination, however, he conceded he was only guessing in this regard, and agreed it could have been any time within a 40 minute window after the event.

[2] The parties stipulated that employer paid temporary total disability benefits in the amount of $2,284.95 for the period August 13, 2011, through September 21, 2011.

Likewise, we noted in our award of October 10, 2014, that employee's medical expert, Dr. Koprivica, appeared to rely upon a somewhat inaccurate history with regard to the circumstances of the accident. However, we accept Dr. Koprivica's causation opinion in this case. We find that the accident of August 12, 2011, was the prevailing factor precipitating employee's hypertensive crisis.

Medical fee dispute

Lester E. Cox Medical Centers filed an Application for Direct Payment in this case alleging it is entitled under § 287.140.13(6) RSMo to direct payment of $130,575.15 for medical services provided to employee to cure and relieve the effects of the claimed work injury. On its Application, Lester E. Cox Medical Centers checked the box indicating "[a]uthorization potentially in dispute." On its Application, Lester E. Cox Medical Centers also left blank the portions wherein it was directed to provide the name and title of the person who authorized the services, and the date such authorization was given.

At the hearing before the administrative law judge, Lester E. Cox Medical Centers did not present any witnesses or documentary evidence to prove up its assertion that employer authorized in advance the medical treatment resulting in charges of $130,575.15. Instead, Lester E. Cox Medical Centers relied solely upon its cross-examination of employee, wherein he agreed that he did not call an ambulance for himself, and so someone with employer must have done this. Employee also testified, however, that employer never did or said anything that led him to believe employer would pay any of the bills he incurred for treatment provided by Lester E. Cox Medical Centers.

We acknowledge the parties' stipulation that employer did pay $6,085.46 in medical expenses; however, the parties did not specify to which providers or for what medical treatments or procedures these amounts were paid. Employer's payment of this amount would tend to suggest that employer authorized at least *some* treatment that employee underwent, but it is not clear which providers or which treatments were authorized.[3] Nor is it clear that such providers received authorization *in advance* of providing treatment to employee, in any event. Lester E. Cox Medical Centers has failed to present any evidence to clear up this ambiguity, or to otherwise demonstrate why employer's (apparent) authorization of some of employee's medical expenses should extend to the amount which it claims in its Application for Direct Payment.

What is clear is that employer has disputed employee's unpaid medical expenses in the amount of $138,010.15, which includes the charges from Lester E. Cox Medical Centers. We find that employer did not authorize, in advance, the treatment employee underwent with Lester E. Cox Medical Centers for which it seeks the claimed amount of $138,010.15 in its Application for Direct Payment.

[3] Employee also received initial treatment at Texas County Memorial Hospital, and he testified that he received a bill for the ambulance services that transported him there.

Conclusions of Law

Accident[4]

On August 12, 2011, employee, who worked as a prison guard for employer, took down an uncooperative inmate. Section 287.020.2 RSMo provides, in relevant part, as follows:

> The word "accident" as used in this chapter shall mean 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.

The first sentence of the foregoing section constitutes the exclusive definition of "accident" for purposes of Chapter 287. The second sentence is a legislative directive telling us what type of "injury" is compensable. We do not deem the second sentence to modify the definition of what constitutes an "accident," because the plain language of the statute provides no indication that we should do so.

We note that the term "injury" is separately defined in the next numbered paragraph of the statute at § 287.020.3(1) RSMo. It is, of course, somewhat unclear why the legislature chose to discuss the concept of "injury" in the numbered paragraph containing the definition of "accident," but we discern a need to avoid conflating the two concepts where the legislature has provided separate and specific definitions for each. Nor can we import a legislative directive regarding what "injuries" are compensable into the definition of "accident" where the legislature has mandated that we must strictly construe the provisions of Chapter 287. See § 287.800.1 RSMo.

We conclude that the incident on August 12, 2011, was (1) unexpected, (2) traumatic, (3) identifiable by time and place of occurrence, and (4) produced at the time objective symptoms of an injury caused by a specific event during a single work shift—namely, employee's difficulty breathing and his spitting up blood. We conclude, therefore, that employee suffered an accident.

Medical Causation

Section 287.020.3(1) RSMo sets forth the statutory test for medical causation applicable to this claim, and provides, in relevant part, as follows:

> 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.

[4] The parties did not challenge, before the Court, our determination with respect to the issue of "accident"; accordingly, for the convenience of the parties, our previous analysis and conclusions with respect to this issue are reproduced herein.

We have accepted Dr. Koprivica's causation opinion in this case. Accordingly, we have found that the accident of August 12, 2011, was the prevailing factor precipitating employee's hypertensive crisis. Pursuant to the Court's decision and mandate, we conclude that such is sufficient to satisfy employee's burden of proof under § 287.020.3(1).

Past medical expenses
Section 287.140 RSMo provides, in relevant part, as follows:

> In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

We have found employee incurred $138,010.15 in unpaid past medical expenses for treatment that was reasonably required to cure and relieve the effects of his hypertensive crisis, which we have determined to have constituted a compensable work injury. Accordingly, pursuant to the foregoing statutory provision, employer is hereby ordered to pay employee this amount.

Medical fee dispute
Our determination with regard to Lester E. Cox Medical Centers's Application for Direct Payment Section is governed by § 287.140.6(13) RSMo, which provides as follows:

> A hospital, physician or other health care provider whose services have been authorized in advance by the employer or insurer may give notice to the division of any claim for fees or other charges for services provided for a work-related injury that is covered by this chapter, with copies of the notice to the employee, employer and the employer's insurer. Where such notice has been filed, the administrative law judge may order direct payment from the proceeds of any settlement or award to the hospital, physician or other health care provider for such fees as are determined by the division. The notice shall be on a form prescribed by the division.

As the Missouri courts have recognized, because Chapter 287 does not define the term "authorized" as used in the foregoing provision, we must apply the plain, dictionary meaning of that term:

> Because chapter 287 does not define "authorized," this Court will rely on the plain and ordinary meaning of the word, as derived from the dictionary. "Authorize" means "to endorse, empower, justify, or permit by or as if by some recognized or proper authority (as custom, evidence, personal right, or regulating power)." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 146 (1986).

Curry v. Ozarks Elec. Corp., 39 S.W.3d 494, 496-497 (Mo. 2001).

We have noted that Lester E. Cox Medical Centers did not advance any witnesses or documentary evidence to prove that employer authorized, in advance, the treatment resulting in the charges claimed in its Application for Direct Payment. The record before us thus lacks sufficient evidence to show that employer endorsed, empowered, justified, or otherwise permitted the treatment employee underwent with Lester E. Cox Medical Centers. We conclude, therefore, that Lester E. Cox Medical Centers is not entitled to direct payment from the proceeds of our award herein, because its services were not authorized in advance by the employer, as required under the foregoing statutory provision.

Conclusion

We reverse the award of the administrative law judge.

The employer is liable to employee for $138,010.15 in past medical expenses.

Lester E. Cox Medical Centers is not entitled to direct payment under § 287.140.6(13) RSMo, because employer did not authorize in advance the medical services provided to employee.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued February 13, 2014, is attached solely for reference.

This award is subject to a lien in favor of Randy Alberhasky, Attorney at Law, in the amount of 25% for necessary legal services rendered.

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

Given at Jefferson City, State of Missouri, this ___28th___ day of September 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

_____
John J. Larsen, Jr., Chairman

DISSENTING OPINION FILED
James G. Avery, Jr., Member

_____
Curtis E. Chick, Jr., Member

Attest:

_____
Secretary

DISSENTING OPINION

Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I disagree with the majority's decision to award workers' compensation benefits to this employee.

As noted by the Commission majority, our award of October 10, 2014, specifically held that employee's medical expert, Dr. P. Brent Koprivica, relied upon incorrect facts in rendering his medical causation opinion in this case. In effect, this Commission has *already determined* that Dr. Koprivica's opinions in this matter lack persuasive value. Yet, for no other reason than that the Supreme Court of Missouri reversed our award on a purely legal issue, the Commission majority is now willing to "accept" Dr. Koprivica's medical causation theory in this case as a factual matter. I am convinced that the Commission majority has thus impermissibly abdicated its fact-finding duty in this case.

Some background is in order. As noted, on October 10, 2014, this Commission issued an award denying compensation to employee, finding (contrary to the administrative law judge below) that employer's expert Dr. Anne-Marie Puricelli relied on incorrect facts and thus did not persuasively rule out causation, but concluding that because employee's expert, Dr. Koprivica, opined that "the takedown of the offender on August 12, 2011, is felt to represent the direct, proximate and prevailing factor precipitating [employee's] hypertensive crisis," *Transcript,* page 721 (emphasis added), we could not conclude employee proved the requisite degree of causation to satisfy § 287.020.3(1), even if we were to credit that opinion. In a footnote, this Commission stated as follows:

> Dr. Koprivica also appears to have relied on incorrect facts when he suggested there was "extreme exertion" involved in taking down the inmate. *Transcript*, page 718. Employee has consistently testified that the event required only *minimal* exertion on his part, because he was in shape and physically bigger than the inmate.

Employee appealed to the Missouri Court of Appeals, Southern District, which affirmed our decision on June 29, 2015. Employee then filed an application for transfer to the Supreme Court of Missouri, which accepted the appeal, and on June 28, 2016, reversed our decision for the following reasons:

> [T]he precise, dispositive issue of causation was resolved by the commission's assessment of the testimony of Dr. Puricelli and Dr. Koprivica. As noted, the commission disputed Dr. Puricelli's conclusion because it was based on inaccurate facts. By discarding Dr. Puricelli's testimony, the commission was left with Mr. Malam's expert, Dr. Koprivica. The commission found that Dr. Koprivica did not testify unequivocally that Mr. Malam's workplace accident was the prevailing factor because he testified that the accident was the "prevailing factor precipitating" the hypertensive crisis.
>
> While this Court defers to the Commission's factual findings and recognizes that it is the Commission's function to determine credibility of witnesses, this is not a case in which the commission made a credibility determination as to

> competing medical experts. Instead, this case involves an overly technical and parsed analysis of Dr. Koprivica's testimony that overlooks the plain meaning of what he said. As Missouri courts have recognized, the words a medical expert uses are often important, not so much in and of themselves, but as a reflection of what impression such witness wishes to impart.
>
> The commission determined that Mr. Malam failed to sustain his burden of proof because Dr. Koprivica's testimony was equivocal. Dr. Koprivica's testimony was not equivocal. At no point did Dr. Koprivica state that Mr. Malam's accident was merely a "precipitating factor" in relation to another "prevailing factor." Rather, Dr. Koprivica emphasized the role of Mr. Malam's accident while minimizing the role of his preexisting conditions: "Clearly, Mr. Malam had an underlying hypertensive cardiomyopathy identified as far back as 2005. Nevertheless, the prevailing factor[s] precipitating the specific event were the unexpected emotional and physical stresses associated with restraining the offender." Read in context, the plain meaning of Dr. Koprivica's testimony was that the accident was the prevailing factor causing or, in his words, "precipitating" Mr. Malam's hypertensive crisis. The commission's decision to deny worker's compensation benefits to Mr. Malam is reversed, and the case is remanded.

Malam v. Dep't of Corr., SC95170 at pg. *6-8 (June 28, 2016)(citations omitted).

Clearly, the above-quoted analysis from the Court addresses a *purely legal issue*: whether Dr. Koprivica's medical causation opinion, as worded, is sufficient to meet employee's burden of proof. The Court did not purport, however, to pass upon the ultimate and controlling issue whether Dr. Koprivica's medical causation opinion is persuasive *as a factual matter*. Instead, that issue remains ripe for determination.

Thus, directly contrary to the Commission majority's reading of the Court's decision, we are not now required to enter an award of benefits in favor of employee. Instead, we must now determine whether we *believe* Dr. Koprivica's testimony, with the caveat that we are not permitted to conclude (as a matter of law) that his ultimate opinion, as worded, cannot meet employee's burden. As the Court specifically noted in its above-quoted analysis, the determination of Dr. Koprivica's credibility as a fact witness "is a function" of this Commission. I would go a step further and cite the longstanding Missouri precedent that it is in fact our duty to now resolve the question whether Dr. Koprivica's ultimate opinion is persuasive, as a factual matter. See *Stegman v. Grand River Reg'l Ambulance Dist.*, 274 S.W.3d 529 (Mo. App. 2008).

Turning to that question, it cannot now reasonably be ignored that Dr. Koprivica relied upon a demonstrably—and critically—incorrect history from employee with regard to the circumstances of the accident. Specifically, Dr. Koprivica believed that employee engaged in "extreme exertion" in "wrestling" the inmate to the ground, and he specifically relied upon this belief in rendering his opinion that the takedown was the prevailing factor precipitating employee's hypertensive crisis. *Transcript*, pages 718, 721. But at the

hearing before the administrative law judge, employee specifically admitted that Dr. Koprivica's opinion was premised upon an incorrect understanding of the takedown:

> Q. Okay. Now [Dr. Koprivica] says in his report, with respect to this incident, that you wrestled. I know he uses that term. I want to get it so I don't – okay. Here's the quote from Dr. Koprivica's report. I want to make sure I read it correctly. It's on page 7 of Dr. Koprivica's first report. He says in this event, in wrestling the individual and taking him to the ground, there was extreme exertion. You don't agree with that. You told me it was minimal exertion, right?
>
> A. Yes.

Transcript, page 33.

The foregoing is consistent with employee's deposition, wherein he testified: "I really don't think it took that much exertion. At the time I was working out pretty good and the inmate was not that big of an individual." *Transcript*, page 775. Employee also told Dr. Puricelli that the exertion involved in the entire incident was a 1 or 2 on a scale of 10. *Transcript*, page 787. There is also no indication from Dr. Koprivica's report whether he was aware of employee's history of drinking up to 10 liters of water per day in the weeks leading up to the August 2011 hypertensive crisis. It was Dr. Puricelli's opinion that employee's drinking excessive fluids exacerbated both his preexisting hypertension and his underlying cardiomyopathy, and played a significant role in causing the hypertensive crisis of August 12, 2011.

This Commission has always held that expert medical opinion evidence premised upon demonstrably incomplete and/or incorrect information (especially a materially incorrect version of the accident) lacks foundation and persuasive value. In fact, the Commission majority specifically relies upon Dr. Puricelli's incorrect understanding of the takedown event in declaring that *her* opinions are not persuasive in this case. If the Commission majority continues to reject Dr. Puricelli's opinion because she didn't understand what happened during the takedown event, how can it now "accept" Dr. Koprivica's *equally flawed* opinion with a straight face? Especially after having already noted, in our original award, that Dr. Koprivica relied upon incorrect facts in rendering his medical causation opinion?

The answer is that the Commission majority has abandoned its fact-finding duty owing to a patent misunderstanding of the decision from our Supreme Court. This is rather unfortunate, especially for the parties, who will now likely face additional appellate proceedings. Indeed, if I were counsel for the employer in this case, I would raise the argument that *res judicata* actually <u>prohibits</u> this Commission from now accepting Dr. Koprivica's opinion on remand, as it has already once determined (by necessary implication of the footnote in our original award) that Dr. Koprivica's opinion lacks persuasive force as a factual matter.

In sum, I have utmost respect for the decision from our Supreme Court, but I do not believe it requires me to abandon my fact-finding duty in this case. Further, I am not prepared to change my own opinion with regard to the persuasive force of Dr. Koprivica's opinions, as I discern no basis upon which I could reasonably do so based upon the record before me. I would affirm the award of the administrative law judge and find that employee is not entitled to workers' compensation benefits, because as he specifically agreed at trial, his sole expert relied upon materially incorrect facts in rendering his medical causation opinion.

Because the majority has determined otherwise, I respectfully dissent.

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James G. Avery, Jr., Member

Issued by DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Ronald Malam Injury No. 11-062949

Dependents: N/A

Employer: State of Missouri

Additional Party: N/A

Insurer: Central Accident Reporting Office (CARO)

Health Care Provider: L.E. Cox Medical Center

Hearing Date: 11/18/13 Checked by: MEH

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: ALLEGED 8/12/2011
5. State location where accident occurred or occupational disease was contracted: ALLEGED HOWELL 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: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: $2,284.95
16. Value necessary medical aid paid to date by employer/insurer? $6,085.46

17. Value necessary medical aid not furnished by employer/insurer? N/A

18. Employee's average weekly wages: N/A

19. Weekly compensation rate: $399.87

20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: NONE

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning, N/A for Claimant's lifetime

22. Second Injury Fund liability: Yes No X Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:
weekly differential (N/A) payable by SIF for 0 weeks, beginning N/A
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: N/A

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

RANDY ALBERHASKY

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ronald Malam Injury No. 11-062949

Dependents: N/A

Employer: State of Missouri

Additional Party: N/A

Insurer: Central Accident Reporting Office (CARO)

Health Care Provider: L.E. Cox Medical Center

Hearing Date: 11/18/13 Checked by: MEH

The parties appeared before the undersigned administrative law judge on November 18, 2013, for a final hearing. The claimant appeared in person represented by Randy Alberhasky. The employer and insurer appeared represented by Cara Harris. L.E. Cox Medical Centers appeared represented by Jason Shaffer.

The parties stipulated to the following facts: On or about August 12, 2011, the State of Missouri was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by CARO. On the alleged injury date of August 12, 2011, Ronald Malam was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. The employment occurred in Howell County, Missouri. The claimant notified the employer of his injury as required by Section 287.420 RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged accident, the claimant's average weekly wage was sufficient to allow a compensation rate of $399.87 for temporary total and permanent partial disability compensation. Temporary disability benefits have been paid to the claimant in the amount of $2,284.95, representing 5 5/7 weeks in disability benefits, from August 13, 2011, to September

21, 2011. The employer and insurer have paid medical benefits in the amount of $6,085.46. The attorney fee being sought is 25%.

ISSUES:

1. Whether the claimant sustained an accident which arose out of the course and scope of employment.

2. Whether the accident was the prevailing factor which caused the injuries and disabilities for which benefits are being claimed.

3. Whether the employer is obligated to pay past medical expenses.

4. Direct Pay Medical Fee Dispute filed by L.E. Cox Medical Centers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The claimant testified at the hearing and his deposition was admitted into evidence. He is 52 years old and is married with 2 children. He works as a Corrections Officer 1 at South Central Correctional Center (SCCC), a job he has held since 2008. As a Corrections Officer his duties are to monitor offenders and care for the safety and security of the facility. Claimant testified that in the weeks before August 12, 2011, he had been drinking large quantities of water, up to ten liters a day.

On August 12, 2011, he was asked to go to the dining hall and bring out an offender to be cuffed. The claimant was assisted by other correction officers, Lawrence Thompson and Scott Wofford. He asked the offender to put his hands against the wall and he refused his directives. The prisoner pulled back his right elbow and was making a fist. At this point the claimant put his right arm under the prisoner's right armpit and pulled him to the ground. In doing so he lifted the offender to the left and lay on top of him. Officer Thompson took control of the offender's upper torso and made sure his head would not hit the ground and Officer Wofford controlled his legs and feet. The claimant got his knee under him and raised the offender's right hand up and

handcuffed it and then handcuffed his left hand. Officer Thompson helped the claimant get the offender to his feet.

Lawrence Thompson testified by deposition. His testimony of this event is consistent with the claimant's. He said he did not notice anything wrong with the claimant at the time of the incident or while they were walking the offender. He saw the claimant about 20 minutes later and observed that he was standing very quietly.

Claimant testified that he estimated this all occurred in approximately a two minute time span. He also testified that he did not recall anyone landing on him during this altercation and those versions of this event that state someone did is wrong. Claimant said that the exertion necessary to take the offender down was minimal. He says that Dr. Koprivica's report that uses the term "wrestled" and refers to extreme exertion is incorrect.

The claimant said that he did not notice anything unusual physically at the time, although it did cause an adrenalin rush. The clamant and Officer Thompson were escorting the offender, one at each arm, to Housing Unit 2. As they were walking the claimant testified that he began to notice a shortness of breath. He said it felt like his lungs were filling up. When they reached the building they were going to Officer Thompson took over and went inside with the offender. The claimant stayed outside the door of the unit.

The claimant testified that he stayed outside trying to catch his breath. He went into the office to get a drink and began to spit up blood. A nurse then came to check on him and noticed what was happening. An ambulance was called and claimant was taken to Texas County Hospital. Claimant estimated this was about ten minutes after the incident.

Claimant testified that he recalls being at Texas County Hospital but then does not recall anything else until he awoke a week later at L.E. Cox Medical Center in Springfield, Missouri.

Claimant was admitted to L.E. Cox Medical Center where he was examined by several physicians that evening. In the report of Dr. Timothy Woods, dated August 12, 2011, at 10:34 p.m. Dr. Woods' history states: "It was reported that patient fell and someone actually fell on the patient's chest. He was taken to Texas County Memorial Hospital where he was evaluated. They felt the patient had chest trauma and was transferred to Cox South for further evaluation." Dr. Woods noted an abrasion to claimant's left knee, but "no other external trauma was noted." Dr. Woods found "It does not appear that the patient's disease process is related to trauma. It is likely that trauma precipitated the medical processes he has going on. Dr. Terrance Coulter from pulmonology and Dr. Mark Anderson from cardiology have been consulted with as well."

Dr. Terrance Coulter, from pulmonology, saw the claimant that evening. His report is dated August 12, 2011, 11:58 p.m. In his history, Dr. Coulter states that his understanding of the day's events was: "Earlier this afternoon there was a large altercation with many inmates and guards. By report, he fell onto the ground and a prisoner fell on top of him landing on his chest." Dr. Coulter's note also states that he talked with the wife of Employee who reported Employee had no subjective complaints in the last several days but had been tired and "was concerned about various stressful issues at work." Dr. Coulter's Impressions after his review and assessment were as follows: 1. Acute pulmonary edema, 2. Acute respiratory failure, 3. Suspect acute left ventricular systolic heart failure due to underlying coronary artery disease, 4. History of probable viral cardiomyopathy, 5. Hypertension, 6. Diabetes mellitus, 7. Obesity, 8. Probable obstructive sleep apnea syndrome, 9. Mild transaminitis, 10. Leukocytosis, likely due to demargination from stress.

Dr. Douglas Ham, in his report dated August 12, 2011 11:57 p.m., recited the history of the event as "He was in an altercation with a prison inmate who then fell on top of the patient." Dr Ham specifically noted that there was no bruising on Employee's chest. Dr. Ham's Clinical

Impression following his review and examination was as follows: "A 50-year-old male with significant congestive heart failure, pulmonary edema. It is unclear whether this was all related to a possible cardiac contusion tipping him into the congestive heart failure or whether he could have also had pulmonary contusion which worsened his respiratory and cardiac status or could have been secondary to the stress of the altercation." Dr. Ham also noted that Dr. Woods from Trauma Surgery had evaluated claimant and found "no traumatic injuries."

Dr. Mark Anderson, a cardiologist, issued a report dated the next morning, August 13, 2011, 9:01 a.m. Dr. Anderson's recitation of the events leading to claimant's hospitalization are: "The patient presented for further evaluation of trauma to the chest. The patient apparently was in an altercation. He is a prison guard. He had a prisoner fall on his chest." Dr. Anderson noted that a CT did not show any rib fracture or evidence of pulmonary contusion. He further notes that claimant's EKG was abnormal and he was asked to consult because of this and because claimant's blood pressure was 252/140. Following his review and examination, Dr. Anderson's Impressions were: "1. Hypertensive crisis, 2. History of a previous normal angiogram just 4 or 5 years ago, 3. Acute renal failure, 4. Respiratory failure, 5. Hypotensive and shock following a hypertensive crisis."

A heart catheterization was performed on August 22, 2011, by Dr. Anderson. It showed the presence of hypertensive cardiomyopathy, renal arteries were normal, and no obstructive coronary artery disease.

Dr. Stephen Clum discharged claimant on August 23, 2011. In his Discharge Summary, Dr. Clum's discharge diagnoses were: "1. Methicillin-sensitive Staphylococcus aureus (MSSA) bronchitis, 2. Nonischemic cardiomyopathy, 3.Diabetes, 4.Hypertensive emergency"

Claimant missed approximately six weeks of work. He returned to work at the Corrections Center doing the same job. He testified that he has not had any further problems and has no problem doing his job.

Approximately a month later, on September 22, 2011, Dr. Anne-Marie Puricelli, examined the claimant at the request of the employer. Her report of September 22, 2011 was entered into evidence.

Dr. Puricelli's history of the events of August 12, 2011 states that claimant was attempting to put cuffs on the offender when "the inmate was not cooperating; he was moving slightly and using foul language, but the inmate was not being combative. He had 2 other officers present. He states when the inmate was resisting, Mr. Malam took one arm and spun the inmate to the ground and placed the handcuffs on his wrists. He states that the inmate was initially face down, had turned over on his own, sat up, and then was assisted by both Mr. Malam and another correctional officer to stand up. Mr. Malam states that during this entire event, he remained standing. He did not fall to the floor. He did not get hit by the inmate. He was not injured at all by the inmate. He states on a scale of 0-10, regarding the amount of effort it took to subdue the inmate and bring him down and then bring him back up, was a 1 to a 2/10."

The claimant told her he was feeling pretty good. He complained of some weakness, denied shortness of breath or chest pains, and occasional coughing spells. Dr. Puricelli also reviewed medical records from 2005, 2009 and 2010, as well as records from the August 12-23, 2011, hospitalization.

She found claimant to have a "history of hypertensive crisis with flash pulmonary edema which was cardiogenic in origin, congestive heart failure, and renal failure." She found that the work event of August 12, 2011, was not the prevailing factor in causing the claimant's past or current diagnosis. In her opinion, his current diagnoses were hypertension, nonischemic

cardiomyopathy, and diabetes mellitus. She further opined regarding the August 11, 2011 event: “It is my opinion that Mr. Malam went into acute hypertensive crisis and developed hemoptysis due to the elevated pulmonary capillary pressure that occurred due to his left ventricular failure secondary to the hypertensive crisis. He did not admittedly sustain any trauma. There was minimal exertion that occurred surrounding the subduing of the inmate. He had not been adequately treated for his hypertension or his cardiomyopathy and he was drinking, admittedly, excessive amounts of fluid per day, which in my opinion exacerbated both his hypertension and his underlying cardiomyopathy. It is my opinion that none of Mr. Malam's current diagnoses are related to any work event that occurred on August 12, 2011.”

She also stated, “it is my opinion that, currently, he is not adequately treated regarding his hypertension, and it is possible that another hypertensive crisis could occur at any time without adequate treatment."

On September 18, 2012, Dr. Brent Koprivica evaluated the claimant at the request of claimant’s attorney and his reports were admitted into evidence. Dr. Koprivica noted that claimant’s past medical history is "complex."

Dr. Koprivica in his history states that the claimant “was involved in an incident in which he had to take down an offender. In this event, in wrestling the individual and taking him to the ground, there was extreme exertion. He did suffer bruising.” His physical examination noted a 5’8” 278 pound, fifty-one year old male. Claimant’s blood pressure was 142/90, pulse rate 76, and respiratory rate 20.

Dr. Koprivica stated in his report: “Mr. Malam’s described work-related incident with the takedown of the offender on August 12, 2011, is felt to represent the direct, proximate and prevailing factor precipitating his hypertensive crisis. I would like to point out that but for the work injury, it would be impossible to predict that Mr. Malam would have developed the

hypertensive crisis that has necessitated the care and treatment that followed that event." He continued to state that "clearly, Mr. Malam had an underlying hypertensive cardiomyopathy identified as far back as 2005. Nevertheless, the prevailing factor precipitating the specific event were the unexpected emotional and physical stresses associated with restraining the offender."

Dr. Koprivica also found the treatment claimant had received for the underlying hypertensive crisis with the acute pulmonary failure and acute renal failure to be medically necessary and a direct necessity in an attempt to cure and relieve the claimant of the effects of the injury. He also found that the claimant had suffered no permanent disability as a result of this event.

Claimant is requesting reimbursement for medical expenses set forth in Exhibits G, H, and I, totaling $138,010.15. L.E. Cox Medical Center has filed a Medical Fee Dispute No. 11-00127.

After carefully considering all of the evidence, I make the following rulings:

1. Whether the claimant sustained an accident which arose out of the course and scope of employment.

> Section 287.020.2 states:
> The word **"accident"** as used in this chapter shall mean 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.

While there was an incident which occurred when the claimant participated in subduing an offender as part of his duties, I do not find that it meets the requirements set forth in the above definition to qualify as an accident under the Missouri Workers' Compensation Law.

While arguably an unexpected traumatic event or unusual strain occurred at a specific time and place, that alone is not sufficient to meet the definition of "accident." I find that claimant's injury is not compensable as his work was a triggering or precipitating factor. Dr.

Woods stated that he did not feel the claimant's disease process was related to trauma, rather he found "it is likely that trauma precipitated the medical processes he has going on." Dr. Koprivica found that "the prevailing factor precipitating the specific event were unexpected emotional and physical stresses associated with restraining the offender."

2. Whether the accident was the prevailing factor which caused the injuries and disabilities for which benefits are being claimed.

> Section 287.020.3 states:
> (1) In this chapter the term **"injury"** is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. **"The prevailing factor"** is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.
> (2) An injury shall be deemed to arise out of and in the course of the employment only if:
> (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
> (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment and normal non-employment life.
> (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.
> (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.

Dr. Puricelli concluded that the claimant's work on August 12, 2011, was not the prevailing factor in causing his diagnosis or condition. In her report she opines that claimant "went into acute hypertensive crisis and developed hemoptysis due to the elevated pulmonary capillary pressure that occurred due to his left ventricular failure secondary to the hypertensive crisis. He did not admittedly sustain any trauma. There was minimal exertion that occurred surrounding the subduing of the inmate. He had not been adequately treated for his hypertension or his cardiomyopathy and he was drinking, admittedly, excessive amounts of fluid per day, which in my opinion exacerbated both his hypertension and his underlying cardiomyopathy."

Based on the opinion of Dr. Puricelli, I find that even if claimant had met the requirements above to establish that an accident occurred, I do not find that it would meet the prevailing factor requirement. It is my opinion that none of Mr. Malam's current diagnoses are related to any work event that occurred on August 12, 2011.

3. Whether the employer is obligated to pay past medical expenses.

As a result of the above rulings this issue is moot.

4. Direct Pay Medical Fee Dispute filed by L.E. Cox Medical Centers.

Based upon my finding that claimant's injuries are not compensable under the Missouri Workers' Compensation Law, I hereby deny L.E. Cox Medical Centers' Application for Direct Payment No. 11-00127.

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation