

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

Injury No. 11-062949

Employee: Ronald Malam  
Employer: State of Missouri/Dept. of Corrections  
Insurer: C A R O  
Healthcare Provider: L. E. Cox Medical Center

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

Accident

On August 12, 2011, employee, who worked as a prison guard for employer, was required to "take down" an uncooperative inmate. The administrative law judge, at page 10 of her award, acknowledged that this incident was "arguably an unexpected traumatic event or unusual strain occur[ing] at a specific time and place," but concluded the incident did not meet the definition of "accident" because "work was a triggering or precipitating factor." We disagree. 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

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“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

The administrative law judge determined that employee failed to meet his burden of proof with respect to the issue of medical causation, based on an (implied) finding that employer’s expert, Dr. Puricelli, provided the more persuasive theory regarding what happened to employee on August 12, 2011. We agree that employee failed to meet his burden of proof with respect to this issue, but for different reasons. Section 287.020.3(1) RSMo 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.

We cannot adopt the administrative law judge’s determination that Dr. Puricelli provided the more persuasive testimony regarding the cause of employee’s hypertensive crisis following the accident of August 12, 2011. This is because Dr. Puricelli did not have the correct facts; she believed, for instance, that employee did not fall to the ground during the take down of the inmate. She also based her opinion, in part, on her determination that employee’s preexisting hypertension was inadequately treated before August 12, 2011, but we find no clear indication in the record that this was the case, and Dr. Puricelli does not explain how or why she believed employee’s hypertension to have been inadequately treated. Employee’s unimpeached and credible testimony suggests (and we so find) that he was taking medications for hypertension and was regularly seeing a physician for checkups regarding his high blood pressure before August 12, 2011.

We do agree, however, that employee failed to meet his burden of proof with respect to the issue of medical causation. This is because the only expert medical opinion employee supplied to support his claim is that of Dr. Koprivica 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). Dr. Koprivica does not explain, in his report, what he meant by the foregoing phraseology, and he was not deposed, so we are left with a causation opinion that is, at best, equivocal with regard to whether the accident was the prevailing factor causing both the resulting hypertensive crisis and disability. Above, we have noted the legislative direction in § 287.020.2 that “[a]n injury is not compensable because work was a triggering or precipitating factor.” While we believe an accident may be both a precipitating *and* the prevailing factor causing a compensable injury, this does not appear to be Dr. Koprivica’s opinion in this case. Rather,

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Dr. Koprivica says the accident was the prevailing factor that *precipitated* employee's hypertensive crisis.

We acknowledge that medical causation issues do not turn exclusively upon an expert's usage of (or failure to use) the "magic language" contained in the statute. See *Mayfield v. Brown Shoe Co.*, 941 S.W.2d 31, 36 (Mo. App. 1997). But here, Dr. Koprivica's choice of words raises serious questions regarding his impression of the degree of causation involved. Dr. Koprivica's report fails to provide any further explanation or discussion of causation, and his relevant opinion is rendered in the purely conclusory fashion set forth above. Even if we were to credit this opinion from Dr. Koprivica,<sup>1</sup> absent further explanation as to what Dr. Koprivica meant by choosing those specific words, we simply are unable to conclude that employee has proven the requisite degree of causation to satisfy the requirements of the statute. For this reason, we affirm the award of the administrative law judge denying employee's claim for compensation.

### **Conclusion**

We affirm and adopt the award of the administrative law judge to the extent it is not inconsistent with our supplemental findings, analysis, and conclusions herein.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued February 13, 2014, is attached and incorporated by this reference

Given at Jefferson City, State of Missouri, this 10<sup>th</sup> day of October 2014.

### LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

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<sup>1</sup> 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.

## 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

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- 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  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 claimant 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*