

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

Injury No.: 10-058693

Employee: Joanna Mayo
Employer: Sprint Corporation
Insurer: American Casualty Company

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 allowing 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

Injury arising out of and in the course of employment

The parties dispute whether employee sustained an injury arising out of and in the course of employment when on July 22, 2010, her shoe stuck to the floor in employer's break room, causing her to fall.

As a preliminary matter, we note employer's argument that employee's foot didn't actually stick to the floor, but instead it was just her shoe that made her fall. Employer cites testimony from Julie Rengel, who was there when employee fell, and who testified that employee said, "It could have been [my] shoes." *Transcript*, page 812. Employer also cites testimony from Dora Helm, who assisted employee in the moments after the fall, and who testified, "[Employee] told me that her shoes skidded on the floor." *Transcript*, page 775.

Employee testified at the hearing that her shoe stuck to the floor, and the administrative law judge found employee's testimony to be "highly credible." *Award*, page 6. We discern no compelling reason to overturn the administrative law judge's specific finding with regard to employee's testimony, and adopt it as our own.

Turning to the question whether employee's injury arose out of and in the course of employment, we note that the courts have interpreted § 287.020.3(2)(b) RSMo to involve a "causal connection" test. *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504, 510-11 (Mo. 2012), quoting *Miller v. Mo. Highway & Transp. Comm'n*, 287 S.W.3d 671, 674 (Mo. 2009). In specifically contrasting a "work-related risk" versus a "risk to which the employee was equally exposed" outside of work, the *Johme* court seemed to indicate that our analysis under § 287.020.3(2)(b) should begin with an identification of the risk or hazard that resulted in the employee's injuries, followed by a quantitative comparison whether this employee was equally exposed to that risk in normal nonemployment life. *Id.* at 512. Following the court's reasoning, the result of this

Employee: Joanna Mayo

- 2 -

quantitative comparison should reveal whether employee's injuries resulted from a risk unrelated to the employment.

Here, we find that the risk or hazard that resulted in employee's injuries was a sticky floor in employer's break room. Employee cannot reasonably be expected, and is not required to identify what caused the floor to be sticky.

We conclude that employee's injuries did 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, because employee has demonstrated that her accidental injuries were caused by an abnormal and hazardous condition specific to her workplace. We conclude that employee's injuries arose out of and in the course of her employment.

Conclusion

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Lisa Meiners, issued May 11, 2012, is attached and incorporated by this reference.

We approve and affirm the administrative law judge's allowance of attorney's fee 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 28th day of June 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD

Employee: JOANNA MAYO Injury No. 10-058693
Dependents: N/A
Employer: SPRINT CORPORATION
Insurer: American Casualty Company
Additional Party: N/A
Hearing Date: April 6, 2012 Checked by: LM/cy

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: July 22, 2010
5. State location where accident occurred or occupational disease was contracted:
Independence, Jackson County, Missouri
6. Was above Employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law: Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
While working in the course and scope of employment, Employee tripped and fell, resulting in right shoulder injury.
12. Did accident or occupational disease cause death? No

13. Part(s) of the body injured by accident or occupational disease: Right upper extremity.
14. Nature and extent of any permanent disability: 22.5 percent of right upper extremity.
15. Compensation paid to date for temporary disability: \$ -0-.
16. Value necessary medical aid paid to date by employer/insurer? \$ -0-
17. Value necessary medical aid not furnished by employer/insurer? \$22,977.38
18. Employee's average weekly wages: \$489.30 (using 30 hour rule).
19. Weekly compensation rate: \$241.40/\$326.20.
20. Method wage computation: By stipulation.

ISSUES

The issues to be resolved by this hearing are as follows:

- 1) Whether the Employee sustained an injury arising out of the course of her employment; and
- 2) Whether Employee is in need of future medical care and treatment.

FINDINGS OF FACT AND RULINGS OF LAW

The Employee, Joanna Mayo, testified in person and offered the following exhibits, all of which were admitted into evidence without objection:

- | | | |
|----------------------|---|---|
| Claimant's Exhibit A | - | Medical records from Centerpoint Medical Center |
| Claimant's Exhibit B | - | Medical records of Village of Jackson Creek |
| Claimant's Exhibit C | - | Independent medical examination, James Stuckmeyer, M.D. |
| Claimant's Exhibit D | - | Independent medical examination of Allen Parmet, M.D. |

The Employer called its witness, Mary Ann Dry, and offered the following exhibits, all of which were admitted into evidence without objection except those made at the time of said deposition:

- | | | |
|----------------------|---|--------------------------------------|
| Employer's Exhibit 1 | - | Deposition of Dora Helm |
| Employer's Exhibit 2 | - | Deposition of Julie Rangle |
| Employer's Exhibit 3 | - | Medical records, Rockhill Orthpedics |

Based on the above exhibits and the testimony of the witnesses, this Court makes the following rulings:

FINDINGS OF FACT AND RULINGS OF LAW:

Employee: JOANNA MAYO Injury No. 10-058693
Dependents: N/A
Employer: SPRINT CORPORATION
Insurer: American Casualty Company
Additional Party: N/A
Hearing Date: April 6, 2012 Checked by: LM/cy

On July 22, 2010 at approximately 7:30 a.m., Employee, Joanna Mayo, reported to work at her employer's place of business. Ms. Mayo works part time at Sprint (approximately 20 hours per week) assisting individuals who are hard of hearing making telephone calls and has done so for twenty years. Ms. Mayo testified that she had parked in the company parking lot, entered the Sprint building and took an elevator to her work area on the 2nd floor. She then went to her desk to set down her bag and purse. Ms. Mayo then went to her locker to get her coffee and water cups. From there, she went to the break room, furnished by Sprint for its employees' use, to place her snack in the refrigerator. As she entered the break room, she was carrying her snack and water and coffee cups in her hands.

It is to be noted that the employees' work area is secured from the public and only Sprint employees are allowed in the work area. One must enter a special code via keypad to gain entrance to the Sprint building, which is completely controlled by Sprint.

There was a rubber mat on the floor as one entered the break room. As Ms. Mayo stepped off the rubber mat onto the linoleum floor, her foot stuck, causing her to fall. Employee had on capri pants and tennis shoes with ribbed bottoms at the time of her accident. The break room had several mats placed in front of various appliances. As a result of the Employee's foot sticking, she lost her balance and fell, sustaining severe injuries to her right shoulder.

After Ms. Mayo's supervisor was called, she was transferred to the Centerpoint Medical Center in Independence, Missouri. She was there for several days, then moved to the Village of Jackson Creek for extensive rehabilitation and therapy. Employee stated that her primary injury was a broken right shoulder and a torn rotator cuff. She returned to work on February 17, 2012, but has continued problems with her right upper extremity, it now being weak, painful, and restricted in movement. Employee also testified that she did not desire surgery to treat her work injury until it became necessary; stating that once the pain became intolerable, she would seek additional medical care and treatment.

Extensive medical records were introduced by Employee from the above treating institutions, showing in detail the nature and extent of her injuries and the treatment rendered. Employee additionally

submitted the independent medical examination from James Stuckmeyer, M.D., who saw Ms. Mayo on April 11, 2011. Dr. Stuckmeyer, who had the complete records from Centerpoint Medical Center and Village of Jackson Creek found that, while at work, Employee, when walking into the Sprint break room, had her foot stuck on the floor causing her to fall. Claimant sustained a fractured right shoulder and a torn right rotator cuff.

Employee indicated to Dr. Stuckmeyer that she wanted to delay treatment of the right shoulder as long as possible, even though it had been recommended. The doctor additionally found that all the medical treatment that preceded Ms. Mayo's visit to him was necessary, just and reasonable to treat her condition from the fall at work. The doctor indicated that as a direct result of the injury Ms. Mayo had suffered a 25% permanent partial disability to her right upper extremity.

Throughout Ms. Mayo's testimony, Ms. Mayo was consistent that she had entered the break room and while stepping off the rubber mat, her foot stuck, causing her to fall. She also stated that the accident occurred at approximately 7:30 a.m., which was the time she was due to start working. Ms. Mayo agreed that she had not officially clocked in before her injury.

She additionally testified as to her prior medical history, which included a fall while working for the government years before and also an additional fall which occurred in 2009 when she was attending church. Additionally, mention was made of allegations of nerve problems with her feet, which were adamantly denied by Employee.

The Employer offered the testimony of Mary Ann Dry, the Sprint office supervisor. Ms. Dry stated that she was notified of the Employee's injury and immediately went to the accident scene, arriving there in approximately one minute. There she found Ms. Mayo on the floor and in obvious pain. 911 was contacted and she directed the Employee to be transferred to Centerpoint Medical Center for treatment.

Ms. Dry additionally stated that Ms. Mayo had not clocked in at the time of her injury and further she had made an inspection of the floor in the break room, solely by visual means, and did not see any problems. She also testified that the floor is cleaned twice daily. Upon cross examination, Ms. Dry indicated that the break room was open to employees on the day in question at 5:30 a.m. and up to eleven employees had access to it before Ms. Mayo fell. She further stated that the break room was in a secured area, totally controlled by Sprint, in which only employees were allowed. When questioned about her inspection, Ms. Dry admitted it was a visual inspection only and she had not examined the area where Ms. Mayo's foot had stuck. She also admitted that there had been a history of problems in the break room before with liquid spills and food dropping upon the floor.

Employer also offered the testimony of Dora Helm and Julie Rangle. Ms. Helm was Ms. Mayo's immediate supervisor and did not witness the accident itself. She arrived shortly after the accident and rendered assistance to the Employee. When she saw Ms. Mayo, the Employee was on the floor between the ice machine and a table. Ms. Mayo stated to her that she wasn't sure exactly what happened. Ms. Helm also stated that she made a visual inspection, saw nothing, but again did not exam the area where Ms. Mayo fell. It is to be noted that in the injury questionnaire completed by Ms. Helm and introduced by Employer as an exhibit, it is stated, in reference to the injury, "How is the injury work related?" reads "fell on Sprint property during work time."

Ms. Rangle, who partially witnessed the accident and also gave testimony on behalf of the Employer. She indicated that she saw the accident out of the corner of her eye and became aware when she saw Ms. Mayo falling. Ms. Rangle further stated that Ms. Mayo told her that it was probably her tennis shoes that caused her to trip. Ms. Rangle stated the floor was not wet, i.e., the fall had taken place near the ice machine and a table. Upon cross examination, Ms. Rangle stated that, again, her inspection was cursory and only visual. She never checked the area where Employee tripped (coming from the mat onto the linoleum floor). Neither she nor Ms. Helm checked the Employee's shoes or clothing for any sticky substances.

The Employer also had introduced the records by Allen Parmet, M.D., who performed an independent medical exam on behalf of the Employer. Dr. Parmet went into a detailed discussion of the Employee's medical history. Dr. Parmet had been provided extensive medical records, all of which have been introduced as evidence. He additionally read Ms. Mayo's deposition before his examination. He then opined that based upon the facts, the fall and injuries to the Employee in this instance were "occupational" related. He also stated that although Ms. Mayo had suffered a torn rotator cuff injury from the July 22, 2010 fall along with a shoulder fracture, that she did not want surgery due to her age. He felt that the medical treatment rendered to Employee for her work injury was just and appropriate, rating the right shoulder injury at 20% permanent partial disability.

The parties stipulated that should this award find Claimant sustained an accident that arose out of and in the course of her employment, that the degree of disability is 22.5% percent permanent partial disability of the shoulder. They have further agreed that Medicare would be reimbursed for medical costs paid relating to the July 2010 accident. Both experts opine Claimant sustained an accident on July 22, 2010 that arose out of and in the course of her employment.

All the evidence reveals Claimant fell in the break room. Indeed, medical records generated close in time to the date of injury corroborate Claimant's testimony that her shoe stuck when she walked from carpet to tile flooring. I find based on the evidence that Claimant sustained an accident by injury when she fell at work on July 22, 2010.

Employer cites *Hager v. Syberb's Westport*, 304 SW3d 771 (2010) to support their contention that Employee's injury is not compensable. However, Mr. Hager was injured when he slipped and fell on black ice, in a parking lot, when leaving work and walking to his car. The evidence in *Hager* expressly shows that the parking lot where the employee was injured was not owned or under the exclusive control of the employer. A third party owned and managed the parking lot in question. We do not have that situation before us at present, as Ms. Mayo was in an environment controlled by the Employer. She had entered the Employer's secured building; using her entrance code and had gone to her work area on the second floor where only Sprint employees were allowed. This fact situation is clearly distinguishable and the extended premise doctrine is not applicable in the present situation.

Employer additionally argues that the Employee's accident and resulting injury did not arise out of her course of employment. Although the 2005 amendments made dramatic changes in the Workers' Compensation Act, it did not overrule all existing case law. The rule in Missouri is that any injury said to have occurred "in the course of employment" if it "occurs within the period of employment, at a place where the employee originally would be" and "while he is originally fulfilling the duties of his employment or engaged in doing something incidental thereto." *Williams v. Transportation International, Inc.* 752 S.W.2d 501 (Mo. App. 1988). Further, "incidental activities include the inevitable acts of human beings in

administering to their personal comforts while at work, such as warmth and shelter, heeding a call of nature, satisfying thirst and hunger, washing, resting, sleeping and preparing to begin their work.” *Moore v. St. Joe Lead Company, Inc.* 817 S.W.2d 542 (Mo. App. 1988). When examining the new standards mandated by the 2005 statutory amendments, the term “accident” as used in Section 287.020.2 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. In the present situation, there can be no question at all that Ms. Mayo fell (the accident) while at work and directly suffered serious injuries to her right upper extremity. This is the very meaning of accident.

Section 287.020.3 defines the term “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. The term injury is further defined by Section 287.020.3(2) as being compensable only if arising out of the course of employment if, (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor causing the injury; and (b) It does not come from a hazard or risk unrelated to the employment to which the worker would have been equally exposed outside of and unrelated to the employment in normal unemployment life; (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

The facts situation is undisputed in the present matter. Ms. Mayo, while in a secure and controlled company area stepped from a rubber mat to a linoleum floor and fell when her shoe stuck to the linoleum floor. The fall was the prevailing factor leading to her severe right extremity injury. The Section 287.020.3(b) is not applicable inasmuch as that the hazard that Ms. Mayo was exposed was unique to the work place; i.e., stepping off a rubber mat onto a linoleum floor, in a restricted area, where her foot stuck. Section 287.020.3(2)(3) is not applicable because there is no medical expert testimony presented that the injury resulted from an idiopathic cause.

The Court finds Ms. Mayo’s testimony to be highly credible, which is further reinforced by Employer’s statement at the close of trial that she was a highly prized and valuable employee of Employer. As noted at *Big Boy, supra*, a claimant’s credible testimony as to a work related function can constitute competent and substantial evidence in support of an award. Additionally, to be successful in establishing the elements for a successful award, a claimant need not establish the elements of a claim with absolute certainty, but it is sufficient to show a reasonable probability. *Sharon DeLong v. Shop ‘N Save*, 972 S.W.2d 495 (1998). In this case along with the overwhelming weight of evidence presented supports the finding that a compensable injury occurred on July 22, 2010.

The court finds therefore that Employee has suffered an injury arising out of and in the course of her employment. Further, that the prevailing cause of the injury was Employee’s fall at work when her foot stuck stepping from the rubber mat in the Sprint break room onto a linoleum floor. Employee was at a place that she should be, incidental to her work, when injured.

Dr. Stuckmeyer found Ms. Mayo will need future medical care of her right shoulder as a result of the July 2010 fall. The court finds the Employee met her burden of proof that she is in need of future medical benefits to treat her work related injury. Additionally, the court finds the medical care rendered to Ms. Mayo to be reasonable and necessary to care and treat her work related injury.

The court finds that the Employer is liable to Employee the following: 22.5% of the right upper extremity at the rate of \$326.20, or \$17,027.64 (stipulated to by the parties); 24 weeks of temporary total partial disability at the rate of \$241.40, or \$5,793.60 (stipulated to by the parties); \$22,977.38 in medical expenses (stipulated to by the parties).

Further, the court finds that Employee is in need of future care in order to cure and relieve the effects of the July 22, 2010 accident.

This award is subject to an attorney's lien of 25% percent of all benefits awarded for T.K. Thompson.

Lisa Meiners,
Administrative Law Judge