

FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 99-183530

Employee: Joseph Moore  
Employer: Jefferson Keller Printing  
Insurer: Missouri Printing Industries Trust  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)  
Date of Accident: December 23, 1999  
Place and County of Accident: N/A

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated June 26, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Karla Ogrodnik Boresi, issued June 26, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 6<sup>th</sup> day of October 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Joseph Moore

Injury No.: 99-183530

Dependents: N/A  
Employer: Jefferson Keller Printing  
Additional Party: Second Injury Fund (Dismissed)  
Insurer: Missouri Printing Industries Trust  
Hearing Date: April 3, 2006

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: KOB:tr

**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: December 23, 1999
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? No.
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? No.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was on the way home from the company party when he was in a car accident.
12. Did accident or occupational disease cause 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: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

Employee: Joseph Moore Injury No.: 99-183530

17. Value necessary medical aid not furnished by employer/insurer? 0
18. Employee's average weekly wages: \$741.00
19. Weekly compensation rate: \$494.00 / \$303.01
20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

21. Amount of compensation payable: \$ 0.00
22. Second Injury Fund liability: Dismissed

TOTAL: \$ 0.00

23. Future requirements awarded: None.

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

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Joseph Moore	Injury No.:	99-183530
Dependents:	N/A	Before the	
		<b>Division of Workers'</b>	
Employer:	Jefferson Keeler Printing	<b>Compensation</b>	
Additional Party:	Second Injury Fund (Dismissed)	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Missouri Printing Industries Trust	Checked by:	KOB

### PRELIMINARIES

The matter of Joseph Moore ("Claimant") proceeded to hearing on April 3, 2006, to determine whether Claimant sustained an accidental injury arising out of and in the course of his employment. Attorney Lynn Barnett represented Claimant. Attorney Mark Anson represented Jefferson Keeler Printing ("Employer") and its Insurer, Missouri Printing Industries Trust. Claimant dismissed the Second Injury Fund claim at the start of the hearing.

The parties agreed that on December 23, 1999, Claimant was in a motor vehicle accident that resulted in injury to him and others. On that date, Claimant was an employee of Employer, and earned an average weekly wage of \$741.00, with corresponding compensation rates of \$494.00 for total disability benefits and \$303.01 for permanent partial disability benefits. Employer paid no benefits.

The issues to be determined are: 1) is Claimant's claim barred by the statute of limitations; 2) did Claimant provide proper notice that he had a work related accident; 3) did Claimant's accidental injury arise out of and in the course of his employment; 4) is Employer liable to pay past medical benefits in the amount of \$13,679.50; 5) is Employer responsible for providing future medical care; 6) is Claimant entitled to recover temporary total disability benefits from December 23, 1999, to May 15, 2000, and from January 15, 2001, to October 22, 2002; 7) what is the nature and extent of Claimant's disability; and 8) is Claimant barred from recovery due to the intoxication defense. <sup>[1]</sup>

The parties stipulated that Employer ceased doing business on October 28, 2002. The parties further agreed that Claimant's Claim for Compensation was stamped as received by the Division of Workers' Compensation on December 12, 2002, and acknowledged by the Jefferson City office on December 18, 2002. Neither Employer nor Insurer filed an answer until after Claimant amended his claim in 2005. Employer did not raise the intoxication defense until it filed an amended answer in 2006.

### SUMMARY OF THE EVIDENCE

Claimant is a 32-year-old project supervisor who resides in Chicago, Illinois, where he currently is supervising the

rebuilding of a warehouse. Employer hired Claimant on October 26, 1995, and in late 1999, employed Claimant as a shipping and receiving supervisor. His job involved handling freight, loading and unloading packages, and arranging for package transport.

On December 23, 1999, Employer held its annual Christmas party for all employees. Claimant testified Employer posted a flier announcing the party that indicated attendance was required. Claimant testified that two shifts were operating that day and both started at 7:00. Claimant testified that most of the workers worked until noon or 1:00, and many prepared for the social event by leaving work early. Claimant testified he was still doing work in shipping with a co-worker, even though the presses were not running that day. He explained that the work was left over from the previous day.

Despite the work he said he had in shipping, Claimant testified that he was also assigned to pick up items in preparation for the party. He initially testified that he left around noon to retrieve tables and a bar stored in a rented warehouse down the street from the plant. Claimant also testified that between 1:00 and 2:00, Employer sent him to Walgreens with money to purchase ice and beverages, both alcoholic and non-alcoholic.

Claimant said that he did not hear the president's traditional award speech at the start of the party because he was back in shipping. He gave conflicting statements regarding when the party started and the food was served. Although Claimant walked through the party on occasion, he said he did not actively join the party until 4:30 or 5:00. Claimant testified he drank about four beers before he left the party around 6:30. He denied there was a bartender. He did not take advantage of Employer's standing offer to arrange for a taxi ride.

Claimant testified that when he left, he had one more package to deliver to UPS. Claimant testified that because of the party there was no regular 7:00 UPS pick-up that day. Claimant had the options of delivering the UPS package to the local UPS facility or, if he missed that shipment, to the airport. Rather than exercise these options, or leave it for later since next day delivery was not required, Claimant said he decided to take the package to the UPS drop box located near his house. Claimant testified that he left the Employer's location near Manchester and Kingshighway, and was driving on Highway 55 near Gasconade when he was in a motor vehicle accident.

Claimant was traveling on the highway towards home when he came upon four disabled cars, which he claimed were located on the downside of a poorly lit, hilly curve. Claimant's car struck the vehicles, killing one and hurting others, including himself. Claimant was initially taken to Alexian Brothers for treatment, and then transferred to St. Anthony's, where he was admitted for what would prove to be the first of many surgeries for his right ankle. He also broke ribs, fractured his nose, bruised his kidneys, lacerated his mouth, and sprained his left ankle. He admitted his blood alcohol levels were tested at the hospital. Claimant testified that the UPS package he was transporting at the time of his accident was "handled by his wife".

Claimant did not receive a ticket at the scene for operation of the vehicle under the influence of alcohol, however, nineteen months after the accident, Claimant was brought to trial on a criminal matter associated with the accident. He was convicted of involuntary vehicular manslaughter and two counts of vehicular assault. The conviction is currently on appeal, although he has served the time originally assigned to the conviction.

Claimant returned to work on May 15, 2000, and worked until January 15, 2001. He received short-term disability through his union when he was unable to return to work after the accident. He incurred medical expenses for treatment associated with his accident and for nothing else in a total amount of \$13,679.50. Claimant's current problems include limited mobility of the foot, a permanent limp, and an aggravated neck. His foot is sensitive, and he cannot walk without shoes. Weakness in his leg has caused problems with the knee and atrophy of the calf muscle. At his current job, he has pain every day from walking.

**Dr. Christopher Long** is a board certified forensic toxicologist who performs testing, teaches, and lectures on many subjects, including blood alcohol levels. He is well qualified by virtue of his education and experience to testify regarding the effect of alcohol on the human brain.

Dr. Long testified that he reviewed records, including a police report, hospital records, and transcript from the criminal trial. Dr. Long testified that the blood sample drawn at the hospital and tested in the course of Claimant's medical treatment showed that Claimant had a blood alcohol level of .203 gram percent. When presented with a hypothetical question and asked to assume the effect of such a blood alcohol level on a man of Claimant's size and weight, Dr. Long testified that the alcohol would affect an individual by reducing his reaction time, limiting his visual acuity, and limiting his fine and gross motor skills. It would have a significant effect on one's ability to operate a motor vehicle.

Presented with facts regarding the timing of the accident, the subsequent testing, and the assumption that the individual stopped drinking approximately one-half an hour to forty-five minutes before the accident, Dr. Long explained that an individual with a blood alcohol level of Claimant's after the accident would have had significantly more than four drinks in him. Dr. Long testified that given the blood alcohol of .203 gram percent, alcohol was a causative factor with respect to the portion of the accident which Claimant was involved.

**Patricia McGlassion** is a corporate claim manager for CCMI, which administers claims for the Missouri Printing Industries Trust. She testified that she did not receive any claims involving Claimant before July 2005. The first notice she had regarding any workers' compensation claim involving Claimant and Employer was the notice of hearing she received in late July 2005.

**Mr. Robert Havrilla**, the president and sole owner of Employer, testified. He explained that Employer closed in October 2002 when Universal Printing Company bought them out. He testified that he received no notice or claim by mail or in person between October 2002 and July 2005. Mr. Havrilla testified that although he was not present in 1999 due to an illness, he had attended thirty-four parties prior to that held on December 23, 1999, and the parties were essentially the same every year. Employees performed limited work on the day of the Christmas party, finishing jobs from the day before. Thus, by 11:30 the employees were free to prepare for the party, snack and socialize while they waited for the food, which the caterer served between 1:00 and 2:15. Attendance was not mandatory, although he paid each employee for the whole shift even if they did not attend the party. At noon, he would traditionally begin the party with a speech, although his son covered that in 1999. He testified that a bartender was employed to serve alcohol between 12:00 and 4:00. After 4:00, he started to see the people out. Exhibit 7, a copy of the 1999 Annual Christmas Luncheon notice, and Exhibit 8, the catering bill, support Mr. Havrilla's testimony.

As they did in 1999, Mr. Havrilla testified that the company traditionally bought alcohol two weeks prior to the party because some of the alcohol was given to customers as a holiday gift. The alcohol was stored in a locked conference room. Because they stocked up before the party, there was no reason for any employee to go to Walgreens to buy drinks for the party. He disagrees that Claimant would have gone to the warehouse to get tables or the bar because he was no longer leasing the warehouse in 1999. Although the company did have a bar that they set up for various events including the party, it was kept in the boiler room.

Regarding the UPS pick up, Mr. Havrilla testified that there was a scheduled pick up at 7:00. If a package missed the scheduled pick up, the normal course would be for an employee to take it to the UPS distribution center just down Manchester on Jefferson, or to the airport after 9:00. Mr. Havrilla found out about the accident two to three weeks afterwards, and testified that Claimant did not tell him the accident was related to work.

**Mr. Robert Havrilla, Jr.**, Employer's vice president and plant manager in 1999, testified by telephonic deposition (Exhibit 1). He testified the holiday party was optional and casual, employees performed plant clean up work until about noon, and the party started by 1:00. In 1999, Mr. Havrilla, Jr. made sure everyone in the plant was present to hear his speech, which would have included Claimant. He stayed at the plant to clean up after the party, and knows Claimant left before him because he was stuck in traffic caused by Claimant's accident, although he did not know it was Claimant at the time. He testified that the shipping company drop boxes were very unreliable, and it was the practice to deliver out going packages to the main terminal or airport if the scheduled pick up was not an option.

In addition to the live witnesses, the parties submitted exhibits that documented Claimant's medical treatment and expenses, and explained his disability. In lieu of the admission of numerous photographs, the parties agreed that the police department records, including photographs of the accident scene, did not show a UPS package present in Claimant's vehicle.

### **FINDINGS OF FACT**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I make the following findings of fact:

Claimant's credibility is highly suspect, and his testimony on numerous critical points is not worthy of belief. I find Claimant's description of his activities prior to and during the party to be questionable. It makes sense that there would be work in the shipping department on the day of the office party, even if production were shut down, because there could have been left over product to ship from the previous day. So, it is conceivable Claimant performed some work on December 23, 1999. However, given the credible testimony of the Havrillas regarding the long-established party traditions and warehouse rental history, I do not accept as true Claimant's timeline, or his testimony that he bought party supplies and picked up tables at the warehouse. Furthermore, it seems unlikely that Claimant joined the party some four or more hours after it started, and after the bartender left. As to the number of drinks he consumed, the scientific evidence of intoxication explained by Dr. Long invalidates Claimant's testimony that he merely had four drinks.

Although it is the keystone of his claim for compensation, Claimant's testimony regarding the UPS package he was allegedly delivering to the drop box is implausible. Assuming there was a shipment that had to go out the day of the party, Claimant could have sent it with the scheduled pick up, delivered to the local UPS office, taken it to the airport, or waited for the next business day. Drop boxes had proven to be unreliable. If Claimant chose to use the drop box on his way home, it was not an option endorsed by Employer. There was no evidence of the package at the scene of the accident, and Claimant did not explain how the package was "handled by his wife" after the accident. I find that Claimant was not in the process of delivering a package to the UPS drop box when he was involved in a multiple car accident on December 23, 1999.

As for the accident itself, Claimant was under the influence of alcohol at the time of the collision, but I cannot

conclude that his mind was a total blank. The severe injuries Claimant sustained were, incurred while Claimant was journeying home from work. I find Employer knew Claimant was in a car accident on December 23, 1999 even though Claimant did not provide written notice of the accident. However, Claimant did not inform Employer that he was alleging the accident was work related until he filed his claim for compensation on December 12, 2002. Due to unexplained problems regarding service of the claim, Employer did not learn of the claim until 2005, at which time it filed an answer. Even if Employer had received the claim as soon as it was filed, this would not have given Employer a timely opportunity to investigate the facts surrounding the accident. Employer did not file a timely report of injury.

### **RULINGS OF LAW**

Based on the findings of fact, and the applicable law of the State of Missouri, I find that Claimant did not meet his burden of proof, and is not entitled to compensation. Specifically, I make the following rulings of law:

1. Claimant did not provide proper notice that he sustained injuries in an alleged work related accident, nor did he file his claim within the applicable statute of limitation.

In order to maintain a claim, a claimant must give the employer proper notice that he or she has a potential claim. Section 287.420 provides that an employee who suffers a compensable injury must give written notice of the time, place and nature of injury, and the name and address of the person injured, to the employer no later than thirty days after the occurrence. *Hall v. G.W. Fiberglass*, 873 S.W.2d 297, 298 (Mo.App. E.D. 1994).<sup>[2]</sup> The purpose of the notice requirement is to enable the employer to minimize injury by providing medical diagnosis and to facilitate timely investigation of facts surrounding the injury. *Hannick v. Kelly Temporary Servs.*, 855 S.W.2d 497, 499 (Mo.App.E.D. 1993)\*. The lack of timely written notice is excused when there is actual notice to the employer. *Hall* at 298. The claimant has the burden of showing that the employer was not prejudiced from not receiving notice within thirty days. *Willis v. Jewish Hosp.*, 854 S.W.2d 82, 85 (Mo.App.E.D. 1993)\*. A prima facie case of no prejudice to the employer is made if the claimant demonstrates that the employer had actual notice of the injury. *Hall* at 298. The issue of whether the claimant has provided the employer with actual notice of a compensable injury is a question of fact to be determined by the finder of fact. *Weniger v. Pulitzer Publishing Co.*, 860 S.W.2d 359, 361 (Mo.App.E.D. 1993)\*.

I find Employer did not have actual notice that Claimant was alleging his injuries were connected to his employment, even though Employer knew he was involved in a car accident after he left the office party. It is not enough that the employer is aware of a physical malady, but there “must in addition be some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the cause might involve a potential compensation claim.” 2B A. Larson, *The Law of Workmen's Compensation* § 78.31(a)(2). The facts presented in the instant case closely parallel those in *Gander v. Shelby County*, 933 S.W.2d 892 (Mo.App. E.D. 1996)\*, where the county/employer knew a sheriff had a heart attack after work, but the employer did not know the sheriff claimed the heart attack was connected to his employment until he filed a claim nearly three years later. The *Gander* court found that his employer’s knowledge of the heart attack did not excuse the sheriff’s obligation to provide written notice because there were no accompanying facts indicating the sheriff had a potential workers’ compensation claim. In addition to failing to provide written or actual notice, the sheriff failed to show that the employer was not prejudiced by the lack of notice. Since the sheriff did not provide notice, employer was not given a chance to timely investigate his heart attack and was thereby prejudiced. *Id.* at 896 -897. Here, too, Employer was denied the opportunity to investigate, and was thereby prejudiced. I find Employer’s knowledge of Claimant’s car accident is not tantamount to actual knowledge of a compensable injury. Therefore, Claimant did not provide the required notice of his claim.

Given the finding on notice, I am compelled to find Claimant’s claim barred by the statute of limitations. Generally, a workers' compensation claim must be filed within two years after the injury date. § 287.430. An employer is required to notify the division “within ten days after knowledge of an accident resulting in personal injury to any employee” and file with the division a report of injury within one month. § 287.380. If an employer fails to file the injury report as mandated by § 287.380, the time to file a workers' compensation claim is extended to three years after the date of the injury. § 287.430. However, §287.380 states that the employer's duty to file a report of injury is activated only after the employer acquires knowledge of the personal injury. Therefore, the two-year statute of limitations, rather than the three-year statute of limitations, applies where the employer did not have notice of employee's (work-related) injury. *Weniger v. Pulitzer Pub. Co.*, 860 S.W.2d 359, 361 (Mo.App. E.D. 1993). Since Employer did not have notice that Claimant’s car accident was a potentially compensable injury, the two-year statute of limitations under §287.430 applies, and his claim was filed out of time.<sup>[3]</sup>

2. Claimant did not sustain a accidental injury arising out of and in the course of employment.

To be compensable under Workers’ Compensation Law, an employee’s injury must arise out of and in the course of his employment. *Roberts v. Parker-Banks Chevrolet*, 58 S.W.3d 66, 69 (Mo.App. E.D. 2001)\*. The burden is on claimant to prove his injury arose out of and in the course of employment. *McClain v. Welsh Co.*, 748 S.W.2d 720, 724 (Mo.App. E.D.1988). “Arising out of” means that a causal connection exists between an employee's job duties and the injury. *Automobile Club Inter-Insurance Exchange v. Bevel*, 663 S.W.2d 242, 245 (Mo. banc 1984). “In the course of employment”

refers to the time, place and circumstances of an employee's injury. *Id.* Generally, injuries sustained by an employee while traveling to or returning from his or her place of employment do not arise out of and in the course and scope of employment. *McClain* at 724. A trip to or from work is considered an inevitable circumstance with which every employee is confronted and which normally bears no immediate relation to the actual services to be performed. *Id.* at 725; *Johnson v. Evans & Dixon*, 861 S.W.2d 633, 635 (Mo.App. E.D.1993).

Certain exceptions to the general coming/going rule have been clearly delineated by the Courts that permit a worker to recover compensation, including the "journey" and "special errand" exceptions. *See, i.e., Graham v. La-Z-Boy Chair Co.*, 117 S.W.3d 182,184-185 (Mo.App. S.D. 2000) and *Delozier v. Munlake Construction Co.*, 657 S.W.2d 53, 55-56 (Mo.App.S.D. 1983). The exceptions generally recognize that the time and place of employment can be extended if the employee is performing a task that benefits his employer in some way. In order for any of the exceptions to apply in the instant case, I would have to find that Claimant was in the process of completing the work-related task of delivering a package to the UPS drop box. However, the evidence shows, and I have found, that Claimant was not delivering a package or in any way benefiting Employer, but rather was on his way home after attending the company party when he had a tragic car accident. He was not in the course and scope of his employment, and did not have a compensable accident.

3. The remaining issues of past and future medical care, temporary total disability, permanent partial disability and the intoxication defense are moot because Claimant did not have a compensable accident.

The medical, temporary and permanent benefits Claimant seeks are all dependent on his establishing a viable claim for compensation. The claimant in a workers' compensation proceeding has the burden of proving all elements of the claim to a reasonable probability. *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App. W.D.1997)\*. Claimant has not established he has a compensable case, and therefore is not entitled to any benefits. Employer's defense is moot.

### CONCLUSION

Claimant failed to meet the prerequisites of a viable claim for compensation by failing to give Employer timely notice, and by failing to file his claim within the time required by law. Claimant also failed to establish his accidental injury arose out of and in the course of employment. Claimant did not sustain a compensable accident, and his claim is hereby denied.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Karla Ogrodnik Boresi  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
Director  
Division of Workers' Compensation

[1] Claimant's objections to the admission of the blood alcohol studies contained in Employer's Exhibit 3 and the testimony of Dr. Christopher Long concerning Claimant's intoxication are overruled. *See State v. Moore*, 128 S.W.3d 115 (Mo. App. E.D. 2004).

[2] This, and other cases marked with an "\*" have been overruled on other grounds in *Hamptom v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003).

[3] Claimant's Motion to Strike Employer/Insurer's pleading is denied.