

TEMPORARY OR PARTIAL AWARD
(Reversing Award and Decision of Administrative Law Judge)

Injury No.: 06-001823

Employee: Kristen Norman
Employer: Phelps County Regional Medical Center
Insurer: Liberty Mutual Insurance Company
Date of Accident: January 8, 2006
Place and County of Accident: Phelps County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, heard oral argument and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated January 4, 2007. The award and decision of Chief Administrative Law Judge Victorine R. Mahon, is attached hereto solely for reference.

I. Issue

The sole issue presented to the Commission is whether or not employee sustained injury by accident arising out of and in the course of her employment on January 8, 2006. Since the date of accident is January 8, 2006, the workers' compensation law as amended in 2005 governs this case.

II. Facts

On January 8, 2006, employee was performing her housekeeping work duties for her employer. Employer assigned employee the duty of cleaning a sink in the operating room of the employer. Pursuant to the rules of the employer, prior to an employee performing such a duty, it was required for employee to put scrubs on over her clothes as well as booties over her shoes. At the time of the accident employee had put scrubs on over her clothes and was preparing to put on booties over her shoes.

Employee's testimony concerning her attempt to put booties on over her shoes was as follows: she was standing in the doorway between the locker room and the operating room. While standing in the doorway and holding the bootie, she shifted her entire weight to her right lower extremity with her right side/right shoulder leaning against the doorway for support. Employee then lifted her left leg anteriorly crossing her right knee attempting to slip the bootie over her left shoe. In that instant her left knee popped and dislocated. The subsequent events and circumstances surrounding the injury and employee's eventual medical care and treatment are not relevant to the instant appeal, other than the testimony of the medical experts concerning medical causation.

The employee's treating physician for her left knee dislocation was Dr. Bradley Walz, a board certified orthopedic surgeon. Dr. Walz diagnosed and treated the employee for a left knee dislocation. Dr. Walz testified that employee's left knee dislocation was related to her injury at work. Dr. Walz further was of the opinion that employee's left knee injury at work was the primary factor leading to employee's left knee dislocation. Dr. Walz testified that the left knee dislocation occurred while employee was attempting to put on the surgical bootie over her left shoe.

The Commission reviewed all of the treating medical records placed in evidence as well as the deposition testimony of Dr. Robert Pearson proffered by employer/insurer.

III. Findings of Fact and Rulings of Law

As of the date of this accident § 286.120.1 RSMo, as amended in 2005, provided, in pertinent part, as follows:

Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment,

The definitions of both accident and injury were significantly changed in the 2005 legislation. The definitions are set forth in § 287.020.2 RSMo and § 287.020.3 RSMo, and are as follows:

2. 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.

3. (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 in normal nonemployment 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;

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

In addition to these definitions the legislature also provided the following additional legislation contained in § 287.020.10 which is as follows:

In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W. 3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

Construing these statutory sections, in order for an employee to prove a compensable case, the employee must prove he or she sustained an injury due to an accident arising out of and in the course of employment. In the instant case, the employee described the occurrence of the accident and injury sustained. There was no evidence proffered to impeach or contradict her testimony and accordingly the Commission finds her description of the accident and injury sustained to be credible and worthy of belief.

Pursuant to the statutory changes enacted in 2005, accident 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. Furthermore, an injury is not compensable because work was a triggering or precipitating factor.

The definition of "trauma" includes (1) "an injury (as a wound) to living tissue caused by an extrinsic agent" as well as (2) "an agent, force or mechanism that causes trauma" (Merriam-Webster Collegiate Dictionary, 10th Ed.).

The occurrence, as described by the employee, consisted of the presence of some agent, force, mechanism or circumstance that subjected her body to unusual and unexpected forces which resulted in injury.

Applying the plain meaning of this language to the facts in the instant case, employee satisfied her burden of proof as to the existence of an accident. Employee testified that while standing on her right leg, and lifting her left leg anteriorly across her right knee, while attempting to put a bootie over her shoe, her left knee popped and dislocated, causing her to fall. This described activity constitutes a traumatic stimulus or unexpected traumatic event clearly identifiable by time and place of occurrence and clearly producing at the time objective symptoms of an injury caused by a specific event during a single work shift. There is no evidence contra and employee's description satisfies the statutory definition of an accident.

The Commission further concludes that the statutory definition of injury was proven by the employee. There was violence to the physical structure of employee's body, i.e., a left knee dislocation. The Commission finds the testimony of Dr. Walz credible, reliable and worthy of belief, in that employee's left knee dislocation was directly related to her attempt to affix a surgical bootie over her left foot, and this injury at work was the primary factor leading to her left knee dislocation. The activity of employee affixing a surgical bootie over her left foot was a hazard or risk related to her employment, in that, it was the act of employee complying with the employer's rule.

The Commission further finds that the injury was due to an accident which arose out of and in the course of her employment.

Employer had a mandatory rule that an employee must wear plastic booties over an employee's shoes while cleaning the sink in the operating room. At the time of the injury employee was attempting to conform to the rule imposed by the employer. Accordingly, it is reasonably apparent that the injury sustained arose out of the employee's employment as a causal connection existed between the conditions under which the employee was performing her work, and the resultant injury, i.e., her left knee dislocation.

The Commission also finds that at the time the injury and accident occurred, employee was within her period of employment where she might reasonably be and where she was fulfilling the duties of her employment or she was engaged in the performance of some task incidental thereto, i.e., attempting to affix a bootie over her foot as required by her employer. Accordingly, employee was in the course of her employment.

IV. Conclusion

In conclusion, the Commission finds the employee sustained an injury due to an accident arising out of and in the course of her employment, and is entitled to workers' compensation benefits as provided by law.

No other issue was presented either to the administrative law judge or the Commission on appeal.

This case is remanded to the Division of Workers' Compensation with the employer/insurer being responsible to provide workers' compensation benefits as appropriate pursuant to the provisions of the Workers' Compensation Act due to the occurrence of this compensable accident.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The award and decision of Chief Administrative Law Judge Victorine R. Mahon issued January 4, 2007, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 3rd day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

DISSENTING OPINION FILED

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the award and decision of the administrative law judge should be affirmed. The award of the administrative law judge is well written, well reasoned, and well supported.

Under the 2005 amendments, the Commission is required to apply a strict interpretation of the statutory language. In order to be compensable, employee's injury must have been caused by an accident. I agree with the conclusion of the administrative law judge that employee's injury was not caused by an accident because there was no traumatic event or unusual strain as required by § 287.020.2, RSMo. Cum. Supp. 2006. Employee's left knee simply became dislocated as she was lifting her left leg. Such an action is a common everyday occurrence and in no way traumatic or unusual. As such, there was no accident and therefore no injury caused by an accident as is required under Missouri's amended workers' compensation law.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission to deny compensation.

Alice A. Bartlett, Member

FINAL AWARD

Employee: Kristen Norman

Injury No. 06-001823

Dependents: N/A

Employer: Phelps County Regional Medical Center

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Liberty Mutual Insurance Company

Hearing Date: October 27, 2006

Checked by: VRM/meb

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 January 8, 2006.
5. State location where accident occurred or occupational disease was contracted: Alleged Phelps County.
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: Claimant was placing a bootie over her shoes when her left knee popped and dislocated.
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: Alleged left knee.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$258.00
19. Weekly compensation rate: \$172.00
20. Method wages computation: By agreement of the parties.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: N/A.

TOTAL: NONE.

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kristen Norman

Injury No. 06-001823

Dependents: N/A

Employer: Phelps County Regional Medical Center

Additional Party: N/A

Insurer: Liberty Mutual Insurance Company

Hearing Date: October 27, 2006

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: VRM/meb

INTRODUCTION

The employee requested a temporary award after the employer and its insurer denied any liability for medical treatment or temporary total disability. The parties appeared for a hardship hearing before the undersigned Administrative Law Judge on October 27, 2006, in Rolla, Missouri. Gregory D. Groves represented the employee/claimant, Kristen Norman. John F. Sander appeared on behalf of the employer, Phelps County Regional Medical Center, and its insurer, Liberty Mutual. The initial issues for determination are whether the claimant sustained an accident and whether the injury occurred within the course and scope of employment. If so, then the issues are whether the employer and its insurer are responsible for past and future medical care and temporary total disability. The employer and its insurer deny all compensation.

EXHIBITS

Exhibits by Claimant

Exhibit A -- Deposition -- Dr. Bradley H. Walz

Exhibits by Employer/Insurer

Exhibit 1 -- X-ray report dated July 15, 2004

Exhibit 2 -- Phelps County Regional -- medical record

Exhibit 3 -- X-ray report dated October 31, 2002

Exhibit 4 -- Report of Injury dated 7/14/04

Exhibit 5 -- St. John's medical records

Exhibit 6 -- Medical record dated August 2, 2005 -- admitted for the limited purpose of showing that employee had sought treatment for being overweight.

Exhibit 7 -- Phelps County Regional record dated November 29, 2005 -- sleep apnea

Exhibit 9 -- Phelps County Regional record dated July 14, 2004

Exhibit 10 -- St. John's record dated January 8, 2006 -- history/examination

Exhibit 11 -- St. John's record dated January 8, 2006 -- consultation report

Exhibit 12 -- St. John's record dated January 8, 2006 -- operative note

Exhibit 13 -- Phelps County Regional record dated December 13, 2005 -- sleep apnea

Exhibit 14 -- Podiatric Medicine & Surgery, Bond Clinic, Inc. -- medical records

Exhibit 15 -- Deposition -- Dr. Robert Pearson

FINDINGS OF FACT

Claimant is a 31-year-old woman who worked for Phelps County Regional Medical Center as a custodian. On January 8, 2006, she was instructed to clean an operating room. Prior to beginning that task, the claimant was required to don surgical booties over her shoes. She leaned against a door frame in order to lift her left leg. While standing on her right foot, the claimant lifted her left leg and heard a "snap, crackle, and pop." She immediately felt pain in her left knee, and she went to the ground. The claimant is adamant that she did not slip, stumble, or trip. She was not pushed to the ground. She was not startled. She did not fall because of exhaustion. And, even though she worked three jobs and had been treated for sleep apnea, she did not fall asleep.

The claimant had prior injuries to her right foot and ankle. She also had been treated for a large plantar calcaneus spur on her right foot. But, there is no evidence that her right ankle gave out. The fact that she has had no treatment to her right foot or ankle subsequent to the knee dislocation in January 2006 substantiates this fact. Her knee simply dislocated when she raised her knee.

The claimant was unable to "get up" after she fell to the floor. Two security guards picked up the claimant, placed her in a wheelchair, and transported her to the employer's emergency room. She was diagnosed with a posterior knee dislocation, transported to St. John's Regional Health Center in Springfield, admitted to that hospital, and treated for the dislocation with an external fixator device and revascularization of the left lower limb. After months of treatment, Dr. Bradley W. Walz, the orthopedic surgeon, released the claimant from care and returned her to work on July 27, 2006. The claimant was treated separately by other physicians for the resulting vascular injury.

The treating orthopedic physician, Dr. Walz, testified that work was the primary cause of the dislocation. But he gave little elaboration on this opinion. He also admitted that the claimant did not slip, nor was she startled. Dr. Walz agreed that the claimant simply told him that she felt a snap, crackle, and pop sensation in her knee, had an immediate onset of pain, and went to the ground (Ex. A, p. 24). Dr. Walz admitted he did not have all of the claimant's medical records. Although the claimant is obese (5 foot 5 inches and 275 pounds), Dr. Walz did not believe the claimant's size, alone, caused the dislocation in her knee or the resulting vascular injury. She had reported no prior dislocations to the left knee.

CONCLUSIONS OF LAW

The seminal issue in this case is whether the claimant suffered an accident within the meaning of the Workers' Compensation Act. In a similar case - *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo. App. W.D. 2002) - a nurse aide heard a "pop" in her knee while she was making a patient's bed and again the same day while

traversing the stairs at work. As in the instant case, the nurse aide “had not sustained any fall, loss of balance, slip, or unusual twisting or straining immediately prior to those times when her knee ‘popped’ or gave way.” 80 S.W.3d 526. She subsequently underwent a surgical debridement of her knee. She returned to work, but suffered additional problems, and eventually required a knee replacement. The Administrative Law Judge and the Labor and Industrial Relations Commission (Commission) denied compensation, ruling that walking and climbing stairs were normal activities of daily life to which the claimant was equally exposed outside of her employment.

The Missouri Court of Appeals, Western District, reversed that decision, holding that the Commission erroneously applied the law in requiring some unusual or abnormal precipitating event for Bennett’s injury to be compensable. The appellate court held that Bennett sustained an injury as a result of an accident and the act of walking or traversing stairs were an integral part of Bennett’s job activities and incidental to her employment. The appellate court remanded for further proceedings, however, the issue of whether work was anything more than a triggering or precipitating factor, as was required by § 287.020.2, RSMo Supp.1993.

In an apparent response to *Bennett*, the General Assembly amended the definition of “accident” to require a traumatic event or unusual strain:

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.

§ 287.020.2, RSMo Cum Supp. 2005.^[1] The General Assembly also expressed its intention that earlier case law interpretations of “accident” be rejected, specifically citing *Bennett*, and any of its progeny. § 287.020.10, RSMo Cum. Supp. 2005. Moreover, the General Assembly amended § 287.800 RSMo, which now admonishes Administrative Law Judges, the Commission, and all reviewing courts to construe strictly the provisions of the Workers’ Compensation Act.

Strictly construing the amended statutory definition of the term “accident,” and considering the General Assembly’s express intention to reject the holding in *Bennett*, I conclude that the claimant’s dislocation did not occur as a result of a work accident. There is no evidence of an unexpected traumatic event or unusual strain that occurred at the time of or immediately prior to the claimant’s knee dislocation. Claimant did not slip, trip, fall, lose her balance; and no one pushed or startled her before she dislocated her left knee. Claimant could not explain why she dislocated her left knee. The claimant’s knee simply dislocated when she raised it to place a bootie over her shoe. Raising one’s knee to place something on one’s foot -- such as a sock, shoe, or bootie -- is not an unusual strain or traumatic event. There was no accident within the meaning of the 2005 amendment to § 287.020.10, RSMo. Because the incident occurred subsequent to August 28, 2005, the amendment applies to this case. Compensation is denied.

Moreover, under the amended statute §287.020.2, RSMo Cum Supp. 2005, “An injury is not compensable because work was a triggering or precipitating factor.” The legislature removed the word “merely” from this sentence. I further conclude, based on all the evidence, that work was a triggering or precipitating factor. For that reason also, compensation is

denied.

Date: January 4, 2007

Made by: /s/ Victorine R. Mahon
Victorine R. Mahon
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret
Patricia "Pat" Secret
Director
Division of Workers' Compensation

[\[1\]](#) The earlier statutory definition of "accident" read as follow: "The word "**accident**" as used in this chapter shall...mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor." 287.020.2, RSMo 2000.