

FINAL AWARD ALLOWING COMPENSATION

(After Mandate from the Court of Appeals
for the Southern District of Missouri)

Injury No.: 06-075121

Employee: Denise Pile
Employer: Lake Regional Health System
Insurer: Missouri Employers Mutual Insurance

Preliminaries

On September 1, 2010, the Missouri Court of Appeals for the Southern District issued an opinion reversing the October 6, 2009, award and decision of the Labor and Industrial Relations Commission (Commission). *Pile v. Lake Reg'l Health Sys.*, 321 S.W.3d 463 (Mo. App. 2010) (SD30153). By mandate dated October 28, 2010, the Court reversed the award of the Commission and remanded this matter to the Commission for further proceedings consistent with the opinion of the Court.

Pursuant to the Court's mandate, we issue this award. Having reviewed the evidence and considered the whole record in light of the opinion of the Court, we reverse the January 15, 2009, award of the administrative law judge and award benefits. The award and decision of Administrative Law Judge Henry T. Herschel, is attached and incorporated to the extent it is not inconsistent with our findings, conclusions, decision and award herein.

Reversal

Section 287.020.3(2) sets forth the "arising out of and in the course of employment" test:

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

In our October 6, 2009, award, we concluded that employee failed to establish she sustained a compensable injury because employee did not show that her employment exposed her to a risk to which she would not otherwise be exposed in her everyday life. The Court ruled that we misapplied § 287.020.2(b) RSMo. The Court set out the proper application of that subsection.

[T]he application of this subsection of the statute involves a two-step analysis. The first step is to determine whether the hazard or risk is related or unrelated to the employment. Where the activity giving rise to the accident and injury is integral to the performance of a worker's job, the risk of

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the activity is related to employment. In such a case, there is a clear nexus between the work and the injury. Where the work nexus is clear, there is no need to consider whether the worker would have been equally exposed to the risk in normal non-employment life. Only if the hazard or risk is unrelated to the employment does the second step of the analysis apply.

Id. at 463.

As to this claim, the Court concluded, “the work nexus is clear: [employee] was injured because of her exposure to the excess walking at work and it should not have been necessary to consider whether she would have been equally exposed to the risk in her normal non-employment life.”

Arising out of and in the course of

The Court held:

The Commission in this case, in fact, found that the accident arose out of and in the course of employment. As the Commission found, the twisting of [employee’s] right foot as she turned the corner to go into the medicine room was the accidental event that was the prevailing factor that caused the injury. That is to say, the twisting of the ankle shattered the calcified bone which had developed by excess walking at her workplace.

We conclude employee’s injury arose out of and in the course of her employment.

Medical Treatment

Employee treated conservatively with Dr. Hoeft for several months. Dr. Hoeft ordered x-rays and diagnosed employee with fractures in her right foot. Employee’s foot was not healing sufficiently, so Dr. Hoeft put employee’s foot in a cast. Dr. Hoeft eventually referred her to Dr. Helfrey. Employee underwent an MRI and physical therapy. Dr. Helfrey performed surgery on February 13, 2007, during which he removed some accessory bones and debrided an infection. For 8 weeks, employee used a wheelchair, then a walker to ambulate. Employee then participated in 6 weeks of physical therapy during which time she weaned herself from the walker.

Dr. Helfrey last saw employee on July 2007 at which time he recommended a calf flexibility protocol to address employee’s tight calf. Dr. Helfrey released employee to work with no restrictions on September 21, 2007.

Past medical expenses

Employee offered Exhibits I through O, which consist of medical billing statements. Employee claims past medical expenses in the amount of \$20,648.76, as detailed in the table at the end of this section.

We have reviewed the bills and compared them to the medical records in evidence. We have considered employee’s testimony regarding her treatment. Finally, we have reviewed medical records and physician opinions pertaining to the treatment.

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Exhibits J and K are account summaries for St. Peters Bone & Joint Surgery. The exhibits reflect charges of \$667.00 and \$873.00, respectively. The record contains medical records evidencing the treatment corresponding with each charge. We award to employee past medical expenses of \$1540.00 relating to medical care provided her by St. Peters Bone and Joint Surgery. We have found no bills or statements reflecting that St. Peters Bone & Joint Surgery billed employee other charges totaling \$8,028.00 as claimed by employee in her medical expense summary.

We find that Exhibit N, the medical bills from Lake Regional Hospital, contains a charge of \$89.00 incurred on February 9, 2007, for a routine screening. The underlying medical record confirms the charge is for a routine screening. We disallow this charge.

As to all other medical expenses claimed, we find that the record contains the medical records underlying the claimed expenses and that employee's testimony and the opinion of Dr. Swaim establish that each treatment flowed from the injury and was reasonably necessary to cure and relieve employee of the effects of her work injury.

Employer/insurer put employee to proof as to her medical expenses but employer/insurer does not specifically contest the reasonableness of any charges. Rather, employer/insurer argues that any medical expenses found to be proven should be paid directly to the health care providers or employee's health care insurer so that employee does not receive a windfall due to discounts accepted by health care providers.

Below is a summary of expenses claimed and allowed:

Provider	Evidence of Charges	Expenses Claimed	Expenses Allowed
Lake Orthopedic Group	Exhibits I and O ¹	\$ 1,026.00	\$ 1,026.00
St. Peters Bone & Joint Surgery	Exhibits J and K	9,568.00	1,540.00
Capital Region Medical Center	Exhibit L	2,086.00	2,086.00
Barnes-Jewish Hospital	Exhibit M	5,475.06	5,475.06
Lake Regional Hospital	Exhibit N	2,493.70	2,404.00
		\$20,648.76	\$12,531.06

Employee had the burden and has produced documentation detailing the past medical expenses summarized above and has testified to the relationship of such expenses to her compensable workplace injury. *Farmer-Cummings v. Pers. Pool of Platte County*, 110 S.W.3d 818 (Mo. banc 2003). She has done so in this case. It is a defense of employer to establish that employee was not required to pay the billed amounts, that her liability for the disputed amounts was extinguished, and that the reason that her liability was extinguished does not otherwise fall within the provisions of § 287.270. *Id.* Employer has not done so.

¹ The billing summary included in Exhibit O is a duplicate of the billing summary included in Exhibit I.

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Based upon the foregoing, we award to employee \$12,531.06 for her past medical expenses.

Temporary total disability

The parties stipulated that employee's temporary total disability rate is \$718.87. On August 13, 2006, Dr. Hoeft sent employee for an x-ray and recommended she stay off her foot. Dr. Hoeft saw employee on August 16, 2006, at which time he restricted her from work. Employee testified she was unable to perform her regular duties because she could not walk. Employee asked her boss if employer had light duty she could perform and her boss told her employer did not.

Employee was still restricted from work when her care was transferred to Dr. Helfrey. Dr. Helfrey last saw employee on July 2007, at which time he recommended an additional treatment protocol. Dr. Helfrey ultimately released employee to work with no restrictions on September 21, 2007. Employee is entitled to temporary total disability benefits from August 14, 2006 through September 21, 2007.

Permanent partial disability

The parties stipulated that employee's permanent partial disability rate is \$376.55. Employee testified she continues to have pain and swelling in her ankle if she is on her feet. She has difficulty walking stairs and walking for long distances. Employee can no longer work in her yard. On October 8, 2007, employee returned to work as a nurse in the post-operative unit of a hospital. Employee testified that her work requires her to spend significant time on her feet but that she sits down whenever she can while working to alleviate the pain. Employee takes Motrin for pain.

Dr. Swaim believes employee sustained a 22.5% permanent partial disability at the level of the ankle. He attributes the disability to chronic pain, swelling and loss of range of motion.

Dr. Komes assigned a 7% impairment rating based upon the AMA guidelines. Employer/insurer did not offer the guidelines into evidence. Dr. Komes did not describe the guidelines, identify the medical criteria he used in reaching his impairment conclusion, or otherwise explain how he arrived at his impairment conclusion. Employer/insurer offered no evidence to indicate that the AMA impairment guidelines provide a rating that is equivalent to an appropriate permanent partial disability rating. Accordingly, Dr. Komes' medical opinion does not persuade us on the issue of permanent partial disability.

Based upon employee's description of her continued ankle problems and Dr. Swaim's explanation of his disability conclusion, we are persuaded by the opinion of Dr. Swaim that employee sustained a permanent partial disability of 22.5% at the level of the ankle (155-week level). Employee is entitled to 34.875 weeks of permanent partial disability benefits.

Future medical care

Dr. Swaim believes employee will need orthotic inserts for her shoes and that the need flows from the work injury. We accept Dr. Swaim's opinion. Employee is entitled to future medical care in the form of orthotic inserts.

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Award

We reverse the award of the administrative law judge and award compensation in this matter.

We direct the employer/insurer to pay to employee the sum of \$12,531.06 for employee's past medical expenses.

We direct employer/insurer to provide future medical care in the form of orthotic inserts.

We direct the employer to pay to employee \$41,386.37 for past due temporary total disability benefits ($\$718.87 \times 57\text{-}4/7 \text{ weeks} = \$41,386.37$).

We direct the employer to pay to employee \$13,132.18 for permanent partial disability benefits ($\$376.55 \times 34.875 = \$13,132.18$).

Randy C. Alberhasky, Attorney at Law, is allowed of fee of 25% of the compensation awarded herein for reasonable and necessary legal services, which shall constitute a lien on compensation.

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

Given at Jefferson City, State of Missouri, this 17th day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Denise Pile

Injury No. 06-075121

Dependents: N/A

Employer: Lake Regional Health System

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: None

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Insurer: Missouri Employers Mutual Insurance

Hearing Date: October 14, 2008

Checked by: HTH/scb

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: August 6, 2006.
5. State location where accident occurred or occupational disease was contracted: Camden 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: At the request of a patient, the claimant went to obtain some medication and while en route twisted her foot and ankle.
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: Right ankle and foot.
14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to-date for temporary disability: \$718.87.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? N/A.

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- 18. Employee's average weekly wages: \$718.87.
- 19. Weekly compensation rate: \$376.55.
- 20. Method wages computation: By agreement.

COMPENSATION PAYABLE

- 21. Amount of compensation payable: N/A.

TOTAL:

- 22. Second Injury Fund liability: N/A.
- 23. Future Requirements Awarded: None.

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Denise Pile

Injury No: 06-075121

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Lake Regional Health System

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: None

Insurer: Missouri Employers Mutual Insurance

Checked by: HTH/scb

PRELIMINARIES

The parties appeared before the undersigned administrative law judge on October 14, 2008. The Division has jurisdiction to hear this case pursuant to §287.110 RSMo 2005. The parties provided briefs on the relevant issues on approximately November 4, 2008.

STIPULATIONS

1. The employee and the employer were operating under the provisions of the Missouri Workers' Compensation Law on or about August 6, 2006;
2. The employer's liability was insured by Missouri Employers Mutual Insurance;
3. The employer had notice of the alleged accident and a claim for compensation was timely filed;
4. The employee's average weekly wage was \$718.87;
5. The rate of compensation for temporary total disability (TTD) was \$376.55 and \$376.55 for permanent partial disability (PPD); and
6. The employer has paid \$718.87 in TTD, and has paid no medical benefits.

DISPUTED ISSUES

1. Is claimant's injury compensable under Chapter 287 RSMo 2005;
2. Is the employer/insurer liable to claimant for her medical care; and

3. Is the employer/insurer liable for TTD or for PPD since the foot and ankle were injured while walking to obtain medicine?

EVIDENCE

EMPLOYEE'S EXHIBITS:

- Exhibit A: Medical Records for Lake Regional Health Systems (25 pages)
- Exhibit B: Medical Records for Lake Regional Health Systems (26 pages)
- Exhibit C: Medical Records from Lake Orthopedic Group (30 pages)
- Exhibit D: Medical Records from St. Peter's Bone and Joint (27 pages)
- Exhibit E: Medical Records from St. Peter's Bone and joint (20 pages)
- Exhibit F: Medical Records from Barnes Jewish (24 pages)
- Exhibit G: Medical Records from Barnes Jewish (14 pages)
- Exhibit H: Medical Records from Capital Regional (3 pages)
- Exhibit I: Medical Records of Lake Orthopedic Group (9 pages)
- Exhibit J: Medical Bills from St. Peter's Bone and Joint (1 page)
- Exhibit K: Medical Bills from St. Peter's Bone and Joint (2 pages)
- Exhibit L: Medical Bills from Capital Regional (1 page)
- Exhibit M: Medical Bills from Barnes Jewish (4 pages)
- Exhibit N: Medical Bills from Lake Regional Hospital (4 pages)
- Exhibit O: Medical Bills from Lake Orthopedic Group (2 pages)
- Exhibit P: Report of Dr. T. Swain (10 pages)
- Exhibit Q: Lien letter (2 pages)
- Exhibit R: Workers' Compensation Claim (1 page)
- Exhibit S: Answer Filed with Workers' Compensation (4 pages)
- Exhibit T: Amended Answer (4 pages)
- Exhibit U: Injury Number
- Exhibit V: Cover Letter
- Exhibit W: Cover Letter
- Exhibit X: Cover Letter
- Exhibit Y: Cover Letter
- Exhibit Z: Cover Letter
- Exhibit AA: Cover Letter
- Exhibit BB: Cover Letter
- Exhibit CC: Summary of Medical Expenses

EMPLOYER/INSURER EXHIBITS:

- Exhibit 1: Medical Report of Dr. Kevin Komes
- Exhibit 2: Deposition of Dr. Kevin Komes (September 30, 2008)

Employee: Denise Pile

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FINDINGS OF FACT

Denise Pile (Claimant) is 49 years old and has been employed as a nurse for approximately 10 years.

On August 6, 2006, Claimant was employed by Lake Regional Hospital. She was the supervising nurse on the orthopedic floor of the hospital. She was on her feet and attending to patients approximately 80 percent of her shift. Her shift was normally 12 hours in length three or four days a week.

On the day of her accident, she was supervisor of the floor. It was a very busy day. She was attending to a patient, when the patient requested pain medicine. Claimant moved quickly from the room, turned the corner on the carpeted hallway, stumbled, turned her ankle and foot. Claimant did not fall to the ground, but momentarily regained her balance and continued to the medicine storage area.

After the accident her foot hurt. She had sharp burning pain on the outside of her foot, but the day was busy and she continued her duties. Limping slightly she finished her day.

After a few days and when swelling of her foot did not subside, she consulted with Dr. T. Hoeft. He sent her for x-rays. It was determined that she had sustained a number of small fractures to her right foot. Her recuperation from this injury was a problem. In the fall of 2006, the foot was not healing sufficiently and it was put in a cast. Although the bone fractures were healing, the soft tissue was not. By February 2007 she went to St. Peter's Bone and Joint and the foot was put in a splint and bedrest was prescribed.

Finally, she had a MRI and had surgery on her foot in February 2007 by Dr. R. Helfrey.

The foot slowly began to heal and after consultation with other specialists, her foot healed and she returned to work in October 2007 in a hospital in St. Louis.

Dr. T. Swain examined Claimant and opined that her work at the hospital was the prevailing factor of her injury. (Emp./Ins. Exh. 1 and 2.)

CONCLUSIONS OF LAW

Claimant bears the burden of proof to demonstrate that her injury was caused by her occupational activities. The Eastern District Court of Appeals noted:

Claimant has the burden of proving all the essential elements of the claim and must establish a causal connection between the accident

and injury. Cook v. Sunnen Products Corp., 973 S.W.2d 221, 223 (Mo.App.E.D. 1996) citing: Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute, 793 S.W.2d 195 (Mo.App.E.D. 1990) overruled on other grounds Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 223 (Mo. Banc 2003).

Claimant was injured while she was performing the duties of her job. As a supervising nurse, she was asked by a patient to go get some pain medicine. She hurried away and left the room. As she turned from the door she twisted her foot. This resulted in a fracture, which was treated by a number of doctors with various conservative treatments, and finally with surgery. The Employer/Insurer denied her claim because her employment was not primarily the cause of her injury.

The changes to Chapter 287 in the 2005 legislative session are well documented. In part, the legislature amended subsections 287.020.2 RSMo and 287.020.3 RSMo, narrowing the meaning of the term “accident” to:

...as used in this chapter (accident) 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 legislature also modified the explanation for what is an occupational injury. Subsection 287.020.3(2) RSMo notes:

- (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.

The legislature also specifically overruled three cases which had been decided by the Supreme and Appellate Courts of this state that directly affected the interpretation of the workers’ compensation statutes.

10. 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.

Those cases basically allowed recovery under workers’ compensation for injuries that happened at work but were only tangentially related to the claimant’s employment. In Bennett v. Columbia Health Care, 80 S.W.3d 524 (Mo.App.W.D. 2002), a nurses’ aide was making a bed and heard a “pop” in her knee. *Id.* at 525. In Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo. Banc 1999), an employee’s foot fell asleep after sitting for an extended length of time and she fell and broke her ankle. *Id.* at 852. Finally, in Drewes v. TWA, 984 S.W.2d 512 (Mo. Banc 1999) the claimant fell while carrying her lunch to the employer’s cafeteria. *Id.* at 513.

In the cases that have followed the 2005 amendments to the chapter, there is an uncertainty as to what constitutes an injury. I believe the claimant must show that his/her employment exposed her to a risk that she would otherwise not be exposed to in her everyday life. Bivins v. St. Johns Reg. Health Center, et al., No. 28838 p5 (Mo.App.S.D. 12.1.08). As noted in Bivins:

Here, like the employee in Drewes, claimant was not performing assigned duties at the time of her unexplained fall. Rather, she was walking down a common hallway intending to clock in for purposes of commencing work. Had the law remained as it existed at the time of Drewes, arguably claimant’s injury could have been declared as having been incidental to her employment; that under those circumstances, her employment would have been considered a triggering or precipitating factor. Present law does not allow recovery on that basis.

The current statute concisely states, “An injury is not compensable merely because work was a triggering or precipitating factor,” §287.020.2; that in order for an injury to be deemed to arise out of and in the course of employment, it cannot be the product of “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,” §287.202.3(2)(d). The commission found that there was no rational connection between claimant’s work and the injury that was sustained. Giving deference to the commission’s determination of the credibility of witnesses and its determination of the weight to be given conflicting evidence, and having examined the whole record, this court concludes that commission’s award denying compensation is supported by competent and substantial evidence. The commission could have

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reasonably made its findings and reached its result upon consideration of all the evidence that was before it.

Id. at 7-8.

In the instant case, Claimant was in the middle of a busy day and went to obtain medication for a patient. She testified at the hearing that she was moving at a fast pace, stumbled, and broke her foot. She also testified that she does not walk at this pace in her everyday life.

The Employer/Insurer cites to Johnson v. Town & Country Super Markets, Incorporated, Injury No. 06-78999. The claimant was walking in a hurried fashion on level ground and fell. The claimant produced no evidence that connected his quick pace to his injury. The key to Johnson is that there was no evidence that anything at the employment site, besides the claimant's clumsiness, caused the accident.

In the deposition of Dr. Komes, he testified that he asked Claimant about the circumstances of her injury. Claimant told Dr. Komes:

- A. I'm sorry. Are you talking about the location?
- Q. Correct.
- A. Being as she was a nurse and I see nurse's aides and nurses often, I asked her the usual questions, whether there was urine on the floor, whether she had slipped, whether she had tripped over an object, and she had denied all those mechanic – all those extenuating factors and, therefore, the record is written as it is.
- Q. Did Ms. Pile make any mention to you of any physical condition whatsoever in the vicinity of this injury that may have contributed to her suffering this injury?
- A. No, she did not.
- Q. Looking again at the same portion of your report that I quoted, it suggests that she had turned quickly. Are you able to recall anything else about the history that Ms. Pile gave you with regard to turning quickly or with regard to the circumstances of this ankle injury?
- A. She had mentioned that she had turned quickly, and I asked her why she turned quickly, and she just said that it was – basically there was no one that had called out or there wasn't any emergency of any sort, that she just happened to recall turning quickly. That was the only thing that she was able to give me.
(Emphasis added.) (Employer/Insurer Exh. 2, pp12-13)

Claimant did not tell Dr. Komes that she had any inciting event or condition which would explain her sudden stumble or "quick turn." *Id.* at 13. The reference in Dr. Swain's report that she injured her foot while "quickly" going to the medicine room does not persuade me that she was doing anymore at the hospital than she would do in her everyday life. (Cl. Exh. P, p1)

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The Commission also has the obligation to judge the credibility of the witness at a hearing. As noted in *Richardson Bros. Roofing*:

Commission is the sole judge of the credibility of the witnesses. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522, 525 (Mo.App. 1999). Additionally, the Commission has sole discretion to determine the weight given to expert opinions. *Id.* [T]he extent and percent of disability is a finding of fact within the Commission's discretion and the Commission is not bound by the expert's exact percentages. *Jones v. Jefferson City Sch. Dist.*, 801 S.W.2d 486, 490 (Mo.App. 1990). The Commission is free to find a disability rating higher or lower than that expressed in medical testimony. *Id.* Hence, 'when medical theories conflict, deciding which to accept is an issue peculiarly for determination of the Labor and Industrial Relations Commission.' *Grimes v. GAB Bus Servs., Inc.*, 988 S.W.2d 636, 641 (Mo.App. 1999) (quoting *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 877 (Mo.App. 1984)).
Smith v. Richardson Bros. Roofing, 32 S.W.3d 568, 575 (Mo.App.S.D. 2000).

Claimant's testimony of rushing to obtain medication for a patient is undercut by her description of events of that day to Dr. Komes. She specifically does not say she was hurrying to the medicine room. It was, rather, the act of turning that caused her injury. (Emp./Ins. Exh. 2, p13). I do not believe that Claimant suffered any more than a pedestrian stumble that could have happened anywhere, anytime, and to any person. I do not find her credible on this point.

I want to caution, however, that this is a close case. The fact that there is no credible story of "rushing" to the medicine room is a problem in light of the amendments to Chapter 287 and the legislative directive that the provisions of the workers' compensation law be strictly construed. In that light, I do not believe that Claimant has borne her burden of proof that this injury is covered by the workers' compensation law.

Date: _____

Made by: _____

Henry T. Herschel
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation