

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

Injury No.: 06-075121

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

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 15, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Henry T. Herschel, issued January 15, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 6<sup>th</sup> day of October 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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DISSENTING OPINION FILED  
John J. Hickey, Member

Attest:

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Secretary

Employee: Denise Pile

### **DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

The administrative law judge misapplied the law when he determined employee's injury did not arise out of and in the course of employment. 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 life.

The administrative law judge changed the test by ignoring the word "equally." "I believe the claimant must show that his/her employment exposed her to a risk that she would otherwise not be exposed in her everyday life." Award p. 7. The administrative law judge applied the statute as if it read, "it does not come from a hazard or risk unrelated to employment to which workers would have not been exposed outside of and unrelated to the employment in normal nonemployment life."

#### **Strict Construction of § 287.020.3(2) RSMo**

Section 287.800 RSMo mandates that we strictly construe the Law.

"[A] strict construction of a statute presumes nothing that is not expressed." 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008). The rule of strict construction does not mean that the statute shall be construed in a narrow or stingy manner, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used. 82 C.J.S. Statutes § 376 (1999). Moreover, a strict construction confines the operation of the statute to matters affirmatively pointed out by its terms, and to cases which fall fairly within its letter. 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008). The clear, plain, obvious, or natural import of the language should be used, and the statutes should not be applied to situations or parties not fairly or clearly within its provisions. 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008).

*Allcorn v. Tap Enters.*, 277 S.W.3d 823, 828 (Mo. App. 2009).

Employee: Denise Pile

- 2 -

“It is presumed that the legislature intended that every word, clause, sentence, and provision of a statute have effect. Conversely, it will be presumed that the legislature did not insert idle verbiage or superfluous language in a statute.” *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 252 (Mo.banc 2003), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

At first blush, the language of § 287.020.3(2)(a) is straightforward. It seems I can easily apply the subsection to the facts after I substitute the definition of "the prevailing factor" from § 287.020(3) (1). After I substitute the definition, I discover the matters to be proven are unclear: "It is reasonably apparent, upon consideration of all the circumstances, that the accident is *the primary factor, in relation to any other factor, causing both the resulting medical condition and disability*, in causing the injury." In the instant case, employee established causation as to condition, disability, and injury so the lack of clarity is not an issue.

The language of § 287.020.3(2) (b) is confusing from the jump. It is clear that the section is intended to limit workers' compensation recovery to injuries that result from some hazard connected with work. The difficult job is determining how unique or specific to work a hazard must be to support compensation. The legislature made the difficult job even harder. Rather than affirmatively stating the attributes of hazards that will support compensation, the legislature described attributes of hazards that will not support compensation. To further complicate things, the legislature described most of the attributes in the negative. An injury is only deemed to arise out of and in the course of employment if the injury "does **not** come from a hazard or risk **un**related to the employment to which workers would have been equally exposed outside of and **un**related to the employment in normal **non**employment life."

Upon analyzing § 287.020.3(2) (b), I find it contemplates four categories of hazards:

1. Hazards or risks related to employment with an equal degree of exposure<sup>1</sup>
2. Hazards or risks related to employment with an unequal degree of exposure
3. Hazards or risks unrelated to employment with an equal degree of exposure
4. Hazards or risks unrelated to employment with an unequal degree of exposure

Only injuries resultant from #3 – a hazard or risk unrelated to employment to which workers have equal exposure in nonemployment life – are denied compensability based upon subsection (b) of the ‘arising out of and in the course of employment test.’

### **Missouri Supreme Court holding regarding § 287.020.3(2) RSMo**

The Missouri Supreme Court recently interpreted § 287.020.3(2) to mean that "[a]n injury will not be deemed to arise out of employment if it merely happened to occur while working but work was not a prevailing factor and the risk involved – here, walking – is one to which the worker would have been exposed equally in normal non-

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<sup>1</sup> Comparison of employee's work-related exposure to a hazard or risk against the exposure to the same hazard or risk of workers in general in their nonemployment life.

Employee: Denise Pile

- 3 -

employment life." *Miller v. Mo. Highway & Transp. Comm'n*, 287 S.W.3d 671 (Mo. 2009).

The observant reader will note that in reaching the above conclusion, the Supreme Court changed the test of § 287.020.3(2) (a) from whether the "accident" was the prevailing factor in causing the injury to whether the "work" was the prevailing factor in causing the injury. The Court's holding creates a dilemma for our application of the law.

On the one hand, we are bound to strictly construe the language of the statute meaning we shall "presume nothing that is not expressed" and we must confine "the operation of the statute to matters affirmatively pointed out by its terms." See *Allcorn*, supra. On the other hand, we are bound to follow the most recent pronouncement of the Supreme Court even where, as here, the Supreme Court has substituted language in the most important statutory test in the Missouri Workers' Compensation Law. Following the most recent precedent of the court and using the definition of prevailing factor provided by the legislature, I will apply § 287.020.3(2) (a) as if it reads: "It is reasonably apparent, upon consideration of all the circumstances, that the work is the primary factor in relation to any other factor, in causing the resulting medical condition and disability, in causing the injury."

#### **Present Application of § 287.020.3(2) RSMo**

Employee testified that she worked approximately 50 hours per week in the period immediately preceding the work injury. She estimated that she spent 80% of her work time on her feet either standing or walking. Employee was sitting or lying down more than 50% of her non-work time. At the time of the injury, employee was walking quickly. Employee testified that she was hurrying because it was a busy day. Employee testified that she does not walk at a fast pace outside of work.

Employee's testimony that she was rushing at the time of the incident is supported by the testimony of Dr. Komes and the report of Dr. Swaim. Dr. Komes said employee told him she was injured when she turned quickly. Dr. Swaim noted that employee told him she injured her foot while quickly going to the medicine room. The administrative law judge disregarded the consistent and unimpeached evidence that employee was moving quickly or at a fast pace at the time of the injury. He found that there was "no credible story of 'rushing' to the medicine room" and employee was not "doing anymore at the hospital than she would do in her everyday life." The administrative law judge's findings are contrary to the overwhelming weight of the evidence described above.

Dr. Komes testified that at the time of the primary injury, employee had chronic tendonitis of the peroneal tendon and that the tendonitis was consistent with prolonged walking. He explained that the existence of calcification along the tendon led him to conclude that employee had a significant amount of irritation of her peroneal tendon over a prolonged period of time. He believed employee's walking caused the tendon to scrape against the calcification and the scraping caused the calcification to break off the bone. Dr. Komes testified that walking quickly is more likely to cause a calcification to fracture.

Employee: Denise Pile

- 4 -

Dr. Komes testified that employee's calcification was caused by employee standing for extended periods of time. Employee testified that she only stood for extended periods of time at work. At the time of the injury, employee was walking quickly to fulfill a work duty – dispensing medication to a patient. Dr. Komes testified that it was the mechanism of walking that caused the calcification to fracture. Dr. Komes was not asked – and did not offer – an opinion about whether employee's ankle injury was work-related.

Dr. Swaim offered an opinion that employee's ankle injury was related to her work. He opined that the August 6, 2006, incident was the prevailing factor in causing employee to develop chronic right foot tendonitis and fragmentation of the os peroneum.

In the instant case, employee's work duties of walking and standing caused both the chronic asymptomatic calcification on her peroneal tendon, the traumatic symptomatic fracture of the calcification or fragmentation of the os peroneum, and the resulting irritation of the tendon. No other causative factors have been identified. Since work duties are the only factors shown to have contributed to employee's ankle condition, ankle disability, and ankle injury, it is undeniable that work was the prevailing factor in causing the condition, disability and injury.

Employee proved that her injury came from hazards or risks related to employment – prolonged standing and walking and walking briskly to care for patients. Such injuries are never denied compensability under § 287.020.3(2) (b). Of course, by proving that her injury came from a hazard or risk related to employment, employee necessarily proved that her injury did not come from a hazard or risk unrelated to employment. This case is distinguishable from *Miller*, supra, in that employee was injured at work and she was injured by a hazard – walking quickly – to which she was not equally exposed outside of work.

Employee has satisfied her burden under each prong of § 287.020.3(2). Her injury must be deemed to have arisen out of and in the course of employment. I would reverse the award of the administrative law judge and grant compensation in this matter. For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

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John J. Hickey, Member

## FINAL AWARD

Employee: Denise Pile

Injury No. 06-075121

Dependents: N/A

Employer: Lake Regional Health System

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

Additional Party: None

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.

Employee: Denise Pile

Injury No. 06-075121

- 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.

Employee: Denise Pile

Injury No. 06-075121

## **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

Injury No. 06-075121

### **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 reasonably made its findings and reached its result upon consideration of all the evidence that was before it. *Id.* at 7-8.

Employee: Denise Pile

Injury No. 06-075121

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)

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

Employee: Denise Pile

Injury No. 06-075121

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*