

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

Injury No.: 00-022311

Employee: Rocky Pointer  
Employer: Osage County , Missouri  
Insurer: Self-Insured  
c/o Missouri Association of Counties  
Date of Accident: March 3, 2000  
Place and County of Accident: Linn, Missouri

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. We have considered the briefs and supplemental memorandum submitted by the parties. We have reviewed the evidence and considered the whole record and we find 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, except as modified herein. Pursuant to section 286.090 RSMo, we issue this final award and decision modifying the November 30, 2005, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

While we agree with the conclusion of the administrative law judge, we respectfully disagree with her reasoning. <sup>[1]</sup> By this opinion, we substitute our reasoning to reach the same conclusion.

Employee was injured on March 3, 2000. Employer filed a written First Report of Injury on March 21, 2000. Employer concedes that it did not provide the Division of Workers' Compensation with notification of employee's injury within 10 days of learning of the injury. The last payment of compensation from employer to employee was a payment for medical treatment made September 9, 2000. Employee filed his claim for compensation on February 18, 2003. Employee urges that his claim filed more than two years, but less than three years, after the last payment of compensation is timely under § 287.430 RSMo, because employer did not notify the Division within 10 days of learning of his injury. Employer argues that it timely filed a report of injury and employee's claim is time-barred because it was not filed within two years of the last payment of compensation.

We start our analysis with the language of § 287.430 RSMo, which provides in relevant part:

[N]o proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death.

(emphasis added)

The question becomes *what language in § 287.380.1 describes "the report of the injury" referred 287.430?*

We are persuaded by the similarity in the language used (highlighted in bold) that the reference to "the report of the injury" 287.430 refers to the requirement in § 287.380.1 that the employer, "shall within one month from the date of filing the original notification of injury, file with the division under such rules and regulations and in such

form and detail as the division may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid....” This clause of § 287.380.1 was unchanged by the 2005 amendments to the Workers’ Compensation Act.

We conclude that under either version of § 287.380.1, employer timely filed the report of the injury for purposes of § 287.430. Employee is not entitled to the benefit of the three-year claim-filing period. Employee’s claim is barred.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued November 30, 2005, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 7<sup>th</sup> day of November 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

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

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

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

Attest:

\_\_\_\_\_  
Secretary

AWARD

Employee: Rocky Pointer

Injury No. 00-022311

Dependents:

Before the  
DIVISION OF WORKERS’  
COMPENSATION  
Department of Labor and Industrial  
Relations of Missouri  
N/a  
Jefferson City, Missouri

Employer: Osage County, Missouri

Additional Party:

Insurer: self-insured/Missouri Association of Counties

Hearing Date: November 7, 2005

Checked by: HDF/cs

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?
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: March 3, 2000.
5. State location where accident occurred or occupational disease was contracted: Linn, 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? No.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
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:
14. Nature and extent of any permanent disability: N/a.
15. Compensation paid to-date for temporary disability: \$2,553.46.
16. Value necessary medical aid paid to date by employer/insurer? \$3,904.52.
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages:
19. Weekly compensation rate: \$274.94 for all benefits.
20. Method wages computation: By agreement.

#### COMPENSATION PAYABLE

21. Amount of compensation payable: N/a.

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)

weeks of permanent partial disability from Employer

weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning , for  
Claimant's lifetime

22. Second Injury Fund liability: N/a.

TOTAL:

23. Future requirements awarded: N/a.

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Rocky Pointer

Injury No: 00-022311

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

Dependents:

Employer: Osage County, Missouri

Additional Party N/a

Insurer: Self-insured/Missouri Association of Counties

Checked by: HDF/cs

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on November 7, 2005. Memoranda were due by November 21, 2005.

The parties stipulated that on or about the 3<sup>rd</sup> day of March, 2000, the claimant was in the employment of Osage County, Missouri; the claimant sustained an injury by accident; the accident arose out of and in the course of employment; the employer was operating under the provisions of the Missouri workers' compensation law; the employer's liability was self-insured through the Missouri Association of Counties; the employer had notice of the injury; the rate of compensation on the date of accident was \$274.94 per week for all benefits; temporary disability benefits have been paid to the claimant to date in the amount of \$2,553.46, those payments representing 9 and 2/7 weeks of benefits paid through May 7, 2000; medical aid has been provided in the amount of \$3,904.52.

The issues to be resolved by hearing include 1) the nature and extent of permanent disability, and 2) the bar of the statute of limitations.

## FINDINGS OF FACT

Judicial notice was taken of the following: 1) no notice to the Division of Workers' Compensation of an accident within ten days of knowledge thereof was provided by the employer or insurer pursuant to Section 287.380.1, 2) a First Report of Injury was provided to the Division of Workers' Compensation on March 21, 2000, 3) a Claim for Compensation was filed with the Division of Workers' Compensation on February 18, 2003, and 4) an Answer to the Claim for Compensation was filed with the Division of Workers' Compensation more than 30 days after the notification to the employer/insurer of the filing of the Claim for Compensation.

The claimant, Rocky Pointer, was injured on March 3, 2000. A Report of Injury was filed with the Division of Workers' Compensation on March 21, 2000. Mr. Pointer received temporary total disability benefits for 9 and 2/7<sup>th</sup> weeks. All payments were made prior to September of 2000. The last payment for medical treatment was issued by the employer/insurer on September 9, 2000. The Claim for Compensation in this matter was filed with the Division of Workers' Compensation on February 18, 2003.

## APPLICABLE LAW

Section 287.430 pertaining to the statute of limitations provides as follows:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the periods of limitation provided in this section. The filing of the report of injury or death three years or more after the date of injury, death, or last payment made under this chapter on account of the injury or death, shall not toll the running of the periods of limitation provided in this section, nor shall such filing reactivate or revive the period of time in which a claim may be filed. A claim against the second injury fund shall be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a conservator shall be deemed the termination of the legal disability from minority or disability as defined in chapter 475, RSMo. The statute of limitations contained in this section is one of extinction and not of repose.

Section 287.380.1 in effect on March 3, 2000, provides as follows:

Every employer or his insurer in this state, whether he has accepted or rejected the provisions of this chapter, shall within ten days after knowledge of an accident resulting in personal injury to any employee notify the division thereof, and shall within one month from the date of filing the original notification of injury, file with the division under such rules and regulations and in such form and detail as the division may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid which does not result in further medical treatment or lost time from work, or compensation hereunder had he accepted this chapter, and every employer or insurer shall also furnish the division with such supplemental reports in regard thereto as the division shall require. All reports submitted under this subsection shall include the name, address, date of birth and wages of the deceased or

injured employee, the time and cause of the accident, the nature and extent of the injury, the name and address of the employee's and the employer's or insurer's attorney of record, if any, the medical cost incurred in treating the injured employee, the amount of lost work time of the employee as a result of the injury and such other information as the director may reasonably require in order to maintain in the division, accurate and complete data on the impact of work-related injuries on the workers' compensation system. The division shall collect and maintain such data in such a form as to be readily retrieved and available for analysis by the division. Employers shall report all injuries to their insurance carrier, or third-party administrators, if applicable, within five days of the date of the injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later. Where an employer reports injuries covered pursuant to this chapter to his insurer or third-party administrator, the insurer or third-party administrator shall be responsible for filing the report prescribed in this section.

Section 287.380.1 in effect on November 7, 2005, provides as follows:

Every employer or his insurer in this state, whether he has accepted or rejected the provisions of this chapter, shall within thirty days after knowledge of the injury, file with the division under such rules and regulations and in such form and detail as the division may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid which does not result in further medical treatment or lost time from work, or compensation hereunder had he accepted this chapter, and every employer or insurer shall also furnish the division with such supplemental reports in regard thereto as the division shall require. All reports submitted under this subsection shall include the name, address, date of birth and wages of the deceased or injured employee, the time and cause of the accident, the nature and extent of the injury, the name and address of the employee's and the employer's or insurer's attorney of record, if any, the medical cost incurred in treating the injured employee, the amount of lost work time of the employee as a result of the injury and such other information as the director may reasonably require in order to maintain in the division, accurate and complete data on the impact of work-related injuries on the workers' compensation system. The division shall collect and maintain such data in such a form as to be readily retrieved and available for analysis by the division. Employers shall report all injuries to their insurance carrier, or third-party administrators, if applicable, within five days of the date of the injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later. Where an employer reports injuries covered pursuant to this chapter to his insurer or third-party administrator, the insurer or third-party administrator shall be responsible for filing the report prescribed in this section.

The issue is whether Section 287.380.1 in effect at the time of the injury or Section 287.380.1 in effect at the time of the hearing applies. If Section 287.380.1 is determined to be substantive law, then it is not retroactive and the version of the law in effect at the time of Mr. Pointer's injury applies. If, however, Section 287.380.1 is found to be procedural, the version in effect at the time of hearing is applicable.

Under Missouri law, the distinction between substantive law and procedural law is that "substantive law" relates to rights and duties giving rise to a cause of action, while "procedural law" is the machinery used for carrying on a lawsuit. In re Heaper, 214 B. R. 576 (8<sup>th</sup> Cir. Ct. App. 1997). A procedural statute operates retrospectively unless a contrary intent appears from the terms of the enactment. Hunt vs. Director of Revenue, 10 S.W. 3d 144 (E.D. 1999). Procedural statutes and administrative rules apply retrospectively unless enactment reveals a contrary intent. Declue vs. Director of Revenue, State of Missouri, 945 S.W.2d 684 (E. D. 1997).

In Missouri, statutes of limitations are procedural in nature. See e.g.

AWARD

The employer/insurer has sustained its burden of proof that the statute of limitations bars the claim brought by the claimant in this case. Mr. Pointer filed his Claim for Compensation more than two years “after the date of injury or death, or the last payment made under this chapter.” Mr. Pointer did, however, file his claim within three years “after the date of injury, death, or last payment made under this chapter” and posits that his claim is timely because the employer failed to file the Report of Injury as required by Section 287.380. Section 287.380 in effect at the time of the injury required the employer’s notification to the Division of Workers’ Compensation of an injury within ten days of the employer’s knowledge of the injury followed by a full Report of Injury within thirty days thereafter. Failure of the employer to report as required resulted in a three-year rather than two-year time period in which the employee could file a claim. The employer in this case failed to provide the notification of injury within ten days but did provide a written notification to the Division of Workers’ Compensation within thirty days, as required by the version of Section 287.380 in effect at the time of the hearing.

Section 287.380.1, effective August 28, 2005, is the appropriate version of Section 287.380 to look to where the section is part and parcel of “the machinery used for carrying on a lawsuit” in that it sets forth the employer’s responsibility to report an injury and is an integral part of the process of filing a timely Claim for Compensation. Section 287.380.1, effective August 28, 2005, is a procedural statute and operates retroactively to bar Mr. Pointer’s Claim for Compensation herein.

All other issues raised for resolution are hereby rendered moot.

Date: November 29, 2005

Made by: /s/Hannelore D. Fischer  
HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/Patricia “Pat” Secret  
Patricia “Pat” Secret, *Director*  
*Division of Workers' Compensation*

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[\[1\]](#) The administrative law judge focused upon whether §287.380.1 RSMo (2000) or §287.380.1 RSMo (2005) applies in the instant case. As will be seen, whether the new version or the old version of §287.380.1 applies will only become relevant if we determine that employer’s failure to comply with the 10-day notification provision of old 287.380.1 amounts to a failure to file a “report of the injury” for purposes of §287.430.