

**FINAL AWARD DENYING COMPENSATION**

(Reversing Temporary Award and Decision  
of Administrative Law Judge)

Injury No.: 08-076671

Employee: Jeremy Sanfilippo  
Employer: Firestone Complete Auto Care  
Insurer: Old Republic Insurance Company c/o Gallagher Bassett  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

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, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated May 13, 2009.

**Preliminaries**

The issues stipulated at trial were whether employee sustained an accident arising out of and in the course of employment; whether employee's injuries were medically causally related to the alleged accident; whether employer was liable for past medical expenses; whether employee was entitled to additional medical treatment; and the nature and extent of temporary total disability, if any.

The administrative law judge determined and concluded that employee sustained an accident arising out of and in the course of employment. The administrative law judge further found that employee's treatment following his accident and his need for ongoing medical treatment were medically and causally related to his accident; that employer is liable for past medical expenses; that employer is responsible for future medical care; and that employee is entitled to past and future temporary total disability benefits.

A timely Application for Review with the Commission was submitted by employer alleging that the award issued by the administrative law judge was erroneous because § 287.020.5 RSMo abrogates liability for accidents occurring on property not owned or under the control of the employer. The employer further alleged that the administrative law judge failed to apply strict construction to § 287.020.5 as required, and that the employment was not the prevailing factor in employee's accident because the employee was off the clock, on his way home from work, and on private property not owned or controlled by the employer at the time of his accident.

For the reasons set forth in this award and decision, the Commission reverses the award of the administrative law judge.

**Findings of Fact**

Employer is one of several tenants that share a location and a common parking lot abutting the location. Employer's lease provides that employer's landlord retains exclusive control over the common parking lot. Employees, customers of tenants, and

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the general public may use the parking lot. Employer does not own the parking lot. Employer does not maintain the parking lot.

Employer's lease allows employer to place a storage shed in a designated area of the common parking lot. Employer's lease allows the exclusive use of such designated area for the storage of tires. Employer did in fact place a storage shed (container) on a portion of the common parking lot sometime during the spring of 2008.

The placement of the container was constrained by the existence of an overpass running over a portion of the common parking lot and because there were a number of cars already on the lot on the day that the container was delivered. Employer selected a placement of the container as near to employer's building as possible within the foregoing constraints. The container was situated approximately 150 feet from employer's building. The container was used solely for the purpose of storing employer's inventory. The container was not used by any of the other tenants who shared the common parking lot. Employer enjoyed exclusive access to the container.

Employee was informed on hire that he could park in the common parking area. Employer instructed employee not to park in the front section of the lot, which was reserved for employer's customers. Otherwise, employee was free to park wherever he chose. The back section of the lot is where the container was located. Employee and other employees of employer customarily parked in the back section of the lot. Employer did not provide transportation for employee, nor did employer pay for his gasoline or car insurance. Employee drove to and from work every day in his personal vehicle, although he was not required to do so.

On July 10, 2008, employee finished his work for employer, clocked out, and left employer's building after his normal shift was concluded at approximately 5:30 p.m. Employee then proceeded into the common parking area. Employee's car was parked in back near the container. Employee started his car, left his parking space, and drove his car west toward the parking lot's exit. His route out of the lot on that day took him towards the end of the container. At the same time, another car was heading north along the other side of the container. Employee could not see the other car because his sight was blocked by the container. As employee passed the end of the container, his car was struck by the other car on the rear drivers' side. The driver of the other car was in no way connected or related to employer or to employee. Employee seeks compensation for injuries sustained in this automobile collision, alleging they arose out of and in the course of his employment.

### **Conclusions of Law**

As a preliminary matter, we note that because employee's alleged injury occurred on July 10, 2008, this case falls under the purview of the 2005 amendments to the Missouri Workers' Compensation Law.

Section 287.120 RSMo "requires employers to furnish compensation according to the provisions of the Workers' Compensation Law for personal injuries of employees caused by accidents arising out of and in the course of the employee's employment." *Gordon v. City of Ellisville*, 268 S.W.3d 454, 458-59 (Mo. App. 2008). "The burden is on

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the employee and claimant in a workers' compensation proceeding to prove the basis of his claim, and the first essential is that the claimant must prove that the injuries were the result of an accident which arose out of and in the course of his employment." *McClain v. Welsh Co.*, 748 S.W.2d 720, 724 (Mo. App. 1988). Under § 287.020.2.3(2) RSMo: "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."

This case turns on the sole issue of whether employee carried his burden of demonstrating that his injuries were the result of an accident which arose out of and in the course of his employment. The administrative law judge concluded that the extension of premises doctrine, abrogated by the 2005 amendments to the Workers' Compensation Law, nevertheless applied in this case and that, by operation of that doctrine, employee's injuries arose out of and in the course of his employment. We disagree.

On July 10, 2008, employee was involved in an auto collision on his way home from work. Injuries sustained by an employee while traveling to or from work are not normally compensable under the Missouri Workers' Compensation Act. *Blades v. Commercial Transport, Inc.*, 30 S.W.3d 827, 829 (Mo. banc 2000). In *McClain v. Welsh Co.*, 748 S.W.2d 720 (Mo. App. 1988), the court stated that "[g]oing to or returning from employment is a personal act, akin to dressing, grooming and presenting oneself for work ... [and] bears no immediate relation to the actual services to be performed." *Id.* at 725. The court indicated that because it is not connected with the actual services, any injury sustained in that process is not compensable.

Missouri courts historically recognized an exception to the "going and coming" rule, whereby injuries sustained while going or coming from work were compensable if they happened either on the employer's actual premises or "extended premises." Under the extended premises doctrine, injuries sustained while going to or from work were compensable if the employee was injured on premises:

" ... owned or controlled by the employer, or not actually owned or controlled by the employer but which have been so appropriated by the employer or so situate, designed and used by the employer and his employees incidental to their work as to make them, for all practical intents and purposes, a part and parcel of the employer's premises and operation; and that portion of such premises is a part of the customary, expressly or impliedly approved, permitted, usual and acceptable route or means employed by workers to get to and depart from their places of labor and is being used for such purpose at the time of injury."

*Wells v. Brown*, 33 S.W.3d 190, 192 (Mo. 2000) (citations omitted).

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A recent case providing an example of the application of the extension of premises doctrine is *Huffmaster v. Am. Rec. Prods.*, 180 S.W.3d 525, 528 (Mo. App. 2006). In *Huffmaster*, the employee fell in a parking lot adjacent to employer's premises after she had clocked out for the day and was on her way to her personal vehicle to go home. *Id.* at 526. In finding that the employee's injury arose out of and in the course of her employment, the *Huffmaster* court held that the parking lot was part of employer's extended premises because employer directed employees to park there, the lot surrounded employer's premises, and was customarily used by employer's employees to talk, eat lunch, and smoke. *Id.* at 528.

However, the extension of premises doctrine was expressly abrogated by the 2005 amendments to the Missouri Workers' Compensation Law. Under § 287.020:

5. ... The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

Despite recognizing the abrogation of the extension of premises doctrine by the foregoing provision, the administrative law judge concluded that the doctrine remained viable and was applicable to the case at hand. In her award, the administrative law judge set forth two possible bases for applying the extension of premises doctrine in this case. First, the administrative law judge reasoned that the employer "appropriated" and "designated" a portion of the parking lot because the size and placement of the container was "guaranteed to obstruct the view of all drivers and cause an accident." Second, the administrative law judge reasoned that the employer had exclusive control over the area of the parking lot where employee was injured because of facts such as employer having the only key to the container and sole access to its contents, employees making multiple trips throughout the work day to the container, and the container's presence in the most convenient location for employer. The administrative law judge concluded that the extension of premises doctrine "as modified by the 2005 amendments to the law" applied to this case with the result that employee's injury arose out of and in the course of his employment.

We disagree with the administrative law judge's decision to apply the extension of premises doctrine in this case. As to the first basis for applying the doctrine, the administrative law judge's discussion of employer's creation of an increased risk might have been relevant in a civil proceeding, but we find it inapplicable to our analysis under the Workers' Compensation Law. As to the second basis, while it is clear that employer exercised control over the container itself, we point out that employee's alleged injury did not take place within the container itself. Nor did it take place while employee was working on or around the container or while employee was going to and from the container as part of his work duties for employer.

To the contrary, employee's alleged injury occurred while employer had no right to control the employee's activities. When the auto collision occurred on July 10, 2008, employee had completed his scheduled shift. He was clocked out. He was not being

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compensated by employer. He was in his personal vehicle on his way to wherever he chose to go. Employee was physically located off the employer's premises. He was located in the common parking lot. That common parking lot was under the exclusive ownership and control of employer's landlord. From both a physical and temporal standpoint, employee was outside the course of his employment when he was involved in the auto collision. Whatever may be left of the extension of premises doctrine after the 2005 amendments to the Missouri Workers' Compensation Law, we decline to apply it here.

Moreover, the plain language of the statute excludes injuries caused by hazards or risks unrelated to employment to which employee would have been equally exposed in his normal, nonemployment life. The very circumstances of the auto collision are evidence of the fact that employee would have been equally exposed to the risk presented by the obstructed views whether he had been working for employer or not. Indeed, the driver of the other car was not an employee of employer and was not in any way connected or related to employee or employer. Nonetheless, that driver was exposed to the hazard presented by obstructed lines of sight in the area, as would be the case for any other visitor to the parking lot. For the foregoing reasons, we conclude that employee's injuries did not arise out of or in the course of his employment.

Because we have concluded that employee failed to meet his threshold burden of demonstrating that his injuries were caused by an accident arising out of and in the course of his employment, all other issues are moot.

### **Conclusion**

Based on the foregoing, the Commission concludes and determines that employee failed to demonstrate that his injuries were caused by an accident arising out of and in the course of his employment. Accordingly, employee's claim for benefits is denied.

The temporary award and decision of Administrative Law Judge Kathleen M. Hart, issued May 13, 2009, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 13<sup>th</sup> day of November, 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: Jeremy Sanfilippo

**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.

Employee was injured when he was involved in an automobile collision caused by employer's placement of a large storage container in the common parking lot adjacent to employer's facility.

I believe the reasoning of the administrative law judge is sound in that the employer appropriated much more than the specific area within the container itself by placing the container in the common parking lot. I believe employer appropriated and controlled surrounding areas as well, to the extent that the placement of the container blocked the vision of traffic moving through the areas immediately surrounding the container.

It is not disputed that employer selected a placement of the container that was most convenient for employer within the constraints represented by the overpass crossing the parking lot. In fact, employer's witness Chris Crowell, who was present on the day the container was delivered and directed its placement, admitted in his testimony that even if the container had been delivered at a time when there were no cars on the lot, the container would have "gone to the same place just based on the convenience factor." Thus, employer admits that the placement of the storage container was motivated by convenience of use for employer and for ease of access for employer's employees, who made multiple trips to and from the storage container as part of their daily work activities. While employer could have chosen to place the container in an area of the lot where it did not pose such a risk to those around it, employer preferred its own convenience to safety.

I disagree with the majority's conclusion that employee was injured due to a hazard or risk unrelated to employment to which he would have been equally exposed in his normal, nonemployment life. In his normal, nonemployment life, would employee have been in the parking lot around the container on a daily basis? In his normal, nonemployment life, would employee have been exposed to the increased risk represented by the placement of the container multiple times each and every work day?

I would find that the hazard and risk presented by employer's placement of the container in a position most convenient for employer, without regard to the safety of employees in the immediate area, was unique and directly related to employee's employment.

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

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John J. Hickey, Member

## TEMPORARY OR PARTIAL AWARD

Employee: Jeremy Sanfilippo

Injury No.: 08-076671

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Firestone Complete Auto Care

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

Additional Party: SIF (open)

Insurer: Old Republic c/o Gallagher Bassett

Hearing Date: March 16, 2009

Checked by: KMH

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: July 10, 2008
5. State location where accident occurred or occupational disease contracted: St. Louis 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? 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 happened or occupational disease contracted:  
Claimant was injured in an automobile accident on Employer's premises while in the course and scope of his employment.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Parts of body injured by accident or occupational disease: low back and body as a whole
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? \$14,496.37

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- 17. Employee's average weekly wages: \$769.23
- 18. Weekly compensation rate: \$512.82/\$404.56
- 19. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

Unpaid medical expenses:	\$14,496.37
35 4/7 weeks of temporary total disability from July 11, 2008 through March 16, 2009	\$18,241.74
future temporary total disability benefits beginning March 17, 2009 and continuing until further order of the division	*
future medical care	**
<b>TOTAL:</b>	<b>\$32,738.11 * **</b>

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

**IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.**

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Kari Peterson

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jeremy Sanfilippo

Injury No.: 08-076671

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Firestone

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

Additional Party: SIF (open)

Insurer: Old Republic c/o Gallagher Bassett

Checked by: KMH

A hearing was held on the above captioned matter March 16, 2009. Jeremy Sanfilippo (Claimant) was represented by attorney Kari Peterson. Firestone (Employer) was represented by attorney Bill Lemp. Claimant alleges he was injured by accident during the course and scope of his employment and seeks a temporary award for TTD and medical treatment. The SIF was left open.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit.

### STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation laws on the alleged date of injury.
2. Employer's liability was fully insured by Old Republic.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was \$769.23 yielding rates of compensation of \$512.82 for temporary total disability and \$404.56 for permanent partial disability.
5. Employer has paid no benefits to date.

### ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Accident.
2. Arising out of and in the course of employment.

3. Medical causation.
4. Liability for past medical expenses of \$13,238.37.
5. Future medical care.
6. Temporary total disability.

### **FINDINGS OF FACT**

Based on the competent and substantial evidence, I find:

1. Claimant is a 37 year old male who began working for Employer June 9, 2008. He worked as a manager in training earning approximately \$40,000 a year.
2. Employer's building is located on Washington University's West Campus. Employer leases their building and adjoining parking facilities from Washington University. The lease specifies Employer leased the building at 7361 Forsyth Blvd and refers to Employer's building as the "Premises". The lease provides for parking on the West Campus in a nonexclusive, first come, first serve basis to Employer, its employees and patrons, and other authorized parkers. There are a number of tenants on the West Campus, and these common parking areas do not exclusively serve any individual tenant. Bali's is another West Campus tenant and uses the same common parking area as Employer's employees. Washington University retained exclusive control and management of the common parking areas.
3. The lease also provides Employer "shall have exclusive use of a portion of the common area (the "designated area") for the storage of tires." The lease describes this area as an 11' by 10' area located near Employer's premises in a location mutually acceptable to the landlord and Employer. The lease states Employer shall construct a storage shed on such area, and "So long as Tenant (Employer) shall make use of the designated area for such purpose, the same shall be deemed a portion of the Premises for all purposes hereof."
4. Claimant testified when he was hired, he was told to park in the common parking area, which is across the curb from Employer's store. Employer's store has eight parking spots adjacent to its building. These eight spots are designated for customers. Employees do not have designated parking spaces and can park anywhere in the common area of the lot. In order to get to the common area, the employees must enter the West Campus through a gated entrance. This gated entrance is staffed at the direction of Washington University.
5. Employer has exclusive control of the red tire storage bin referred to in the lease and depicted on the photo exhibits. The container is about 150 feet from Employer's building. It is approximately 40 feet long, 8 feet high, and 5 feet wide. Employer uses the container to store tires. Employer is the sole user of the container and has its only key. It is locked at all times.

6. On July 10, 2008, Claimant parked in the common parking area across the curb from Employer's store. He left work that evening driving his personal vehicle. Employer did not pay his car insurance or mileage expenses. Claimant began to drive out of the common parking area and approached the tire storage container on the left side of his car. His view was obstructed, so he paused to look for oncoming traffic. As he tried to pass the container, he was struck on the drivers' side of his vehicle by another car. Claimant estimates the other vehicle was traveling at 20 mph. Claimant was wearing his seat belt and the air bag did not deploy.
7. A police report dated July 10, 2008, indicates Claimant's car was struck on the driver's door and behind the driver's door. The police officer met with the other driver and noted that driver's view was obstructed by the storage container. The driver indicated his view was obstructed by the container and he did not see Claimant's car.
8. Claimant had immediate pain in his low back and his shoulder. He contacted his boss, Chris Crowell, told him about the accident, and advised him the police were on the way. Claimant was taken by ambulance to St. John's Emergency Room where he complained of low back pain radiating bilaterally. He was treated with pain medications and x-rays were taken and compared to his prior x-rays. The emergency room records indicate a comparison of the x-rays showed the screws were no longer intact. Claimant was advised he had a broken screw from his prior low back fusion, and he was sent to see Dr. Coyle.
9. Claimant's prior back injury involved a lumbar discectomy, iliac spine bone graft and anterior fusion to repair an L5-S1 disc herniation related to a 2004 work injury. He treated with Dr. Cohen and was released in 2005 without restrictions. He continued to have intermittent aches and pains in his back and occasionally took Motrin. Claimant testified he had no problems working and was able to stand, assist mechanics, lift tires weighing 25-30 pounds, lift heavy merchandise, and bend to lift. Before working for Employer, Claimant worked at Soccermaster as a district manager. He stocked shelves, pulled product, and set up tents for sales. He had no physical complaints doing this work. He settled this case for 33.7% PPD to his low back in July 2006.
10. The day after the 2008 accident, Claimant called Chuck Harrington, Employer's District Manager. Mr. Harrington advised Claimant he would get back to him. Claimant testified Employer later told him they couldn't do anything for him and did not offer treatment or light duty.
11. Claimant had a CT scan which confirmed the fracture of the screw, and he saw Dr. Coyle. Dr. Coyle noted Claimant had been doing well following his prior back surgery although he occasionally took Motrin for intermittent aches and pains. He had no treatment and no injuries to his back in the year before the 2008 accident. Dr. Coyle prescribed aquatherapy, and allowed Claimant to return to work with restrictions of no lifting over ten pounds and intermittent sitting, standing, and walking. Claimant testified he asked Employer if he could return to work, and they would not allow him to return until he was released to full duty.

12. Claimant's insurance would no longer cover Dr. Coyle, and he began treatment with Dr. Ahmad. Dr. Ahmad recommended the same work restrictions and treated Claimant with numerous injections. By October 2008, Dr. Ahmad opined Claimant would be unable to return to work without restrictions due to his level of pain. He increased Claimant's pain medications and recommended Claimant see a surgeon regarding long term restrictions, surgical options or a spinal cord stimulator.
13. Dr. Ahmad referred Claimant to Dr. Reinsel for a surgical consultation. Dr. Reinsel sent Claimant for an MRI and opined the only viable option to improve Claimant's pain is a posterior spinal fusion with instrumentation. In his February 19, 2009 report Dr. Reinsel opined had it not been for the July automobile accident, Claimant would not be having his current symptoms. He believes nothing will help Claimant except stabilization. Claimant asked Dr. Ahmad for another referral to get a second opinion on the need for surgery. Claimant was referred to Dr. Gornet and had an appointment to see him days after the hearing.
14. Claimant has incurred medical bills as outlined in Exhibit K. Although he has looked for another job, he has not returned to any work since the accident and has not received any TTD benefits. Claimant continues to have pain in his low back and intermittent pain in his left leg. He can not lift, sit, or stand for extended periods of time.
15. Claimant is credible.
16. Chris Crowell credibly testified for Employer. Mr. Crowell has been the General Manager at this Firestone location since 2004. He was Claimant's direct supervisor. He testified Washington University owns the parking lot where the accident occurred, Employer was not responsible for maintenance of the lot and did not pay for its use. Employer leases the premises for their building, but not for the parking lot.
17. Mr. Crowell testified he suggests employees park anywhere in the common parking area. He did not require employees to park in this lot and did not assign them parking spots.
18. Regarding the tire storage container, Mr. Crowell contacted his boss for permission to lease the container. His boss gave him the name of a company to call in order to lease the container. Mr. Crowell did not ask if he could call another company. Mr. Crowell contacted Washington University for permission to put the container on the lot. Employer did not pay Washington University for that space. An overpass cuts across the common parking lot, and limits options for location of the container. Ingress and egress of cars in the common parking area also limits options for location of the container. The container was put on the lot in the spring of 2008, and Mr. Crowell was not aware of any other accidents involving the container.
19. Mr. Crowell also parks in the common parking area where Claimant parked.

## **RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

**1. Claimant was injured by accident July 10, 2008.**

287.020.2 (RSMo2005) defines an accident 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. An injury is not compensable because work was a triggering or precipitating factor.”

Claimant has established he was injured by accident. His accident was an unexpected traumatic event, it was identifiable by time and place of occurrence, and it immediately produced objective symptoms, namely a fractured screw, in his low back.

**2. Claimant’s injury arose out of and in the course of his employment.**

In order for an injury to be compensable, it must arise out of and in the course of Claimant’s employment. 287.020.3(2)(RSMo2005) provides 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.”

While Claimant had a significant prior back injury, the medical records corroborate his testimony that he had been doing well following that surgery. He had returned to work full duty. He had occasional pain, and was able to get relief from over the counter medications. He had no treatment or additional back injuries in the year prior to his 2008 work injury. Claimant’s expert, Dr. Reinsel, opined had it not been for the July accident, Claimant would not be having his current symptoms. There is no medical evidence to the contrary. After consideration of all the circumstances, evidence and testimony, I find the July 2008 work accident was the prevailing factor in causing Claimant’s injury and need for treatment.

I further find Claimant’s injury did not come from a hazard or risk unrelated to the employment to which he would have been equally exposed outside of and unrelated to the employment in normal nonemployment life. His employment exponentially increased his risk of injury. Employer argues Claimant’s injury did not occur in the course and scope of his employment because they did not own the parking lot, and the extension of premises doctrine was abrogated in 2005.

287.020.5 (RSMo 2005) provides: “Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee’s home to the employer’s principal place of business or from the employer’s principal place of business to the employee’s home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer

even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.”

The extension of premises doctrine provides “If the employee is injured...while passing with the express or implied consent of the employer to or from work, by a way over the employer’s premises, the injury is one arising out of and in the course of employment, as if the accident had happened while the employee was engaged in his work at the place of employment. For purposes of this rule, the employer’s premises may extend by implication to property that is so appropriated by the employer or so situated, designated, and used by its employees incidental to their work that it becomes, for all practical purposes, a part of employer’s premises and operation. Property is sufficiently appropriated to become part of employer’s extended premises, if the employee uses it as a route of access to the employer’s premises and the employer knows about and acquiesces to such use by the employee.” *Davis v. McDonnell Douglas*, 868 S.W.2d 170 (Mo.App. E.D. 1994) *citations omitted*

In this case, Claimant was injured while leaving the parking lot Employer suggested employees use. Claimant was at a place Employer authorized him to be at the time of his injury. Claimant’s boss, Mr. Crowell, also parks in this lot. Normally these are facts that would be used to support a claim using the extension of premises doctrine, and may not be sufficient to extend liability to Employer under the amended law. A determination of whether the doctrine applies and extends liability is a case by case, fact intensive analysis. The 2005 changes in the law abrogated the doctrine to the extent it extends liability for accidents that occur on property **not owned or controlled** by employer.

In this case, the facts go further and one cannot stop the analysis by simply stating Employer did not own the property where the accident occurred. Here, Employer materially increased the chances of injury. The storage container was placed in the middle of a parking lot with traffic going in all directions around it. The size and placement of the container are guaranteed to obstruct the view of all drivers and cause an accident. But for the placement of the container by Employer, Claimant would not have been injured. Claimant’s injury occurred because his view and the other driver’s view were completely obstructed by Employer’s storage container. While Employer did not own the parking lot where Claimant’s accident occurred, by placing the large storage container in the lot and obstructing the view of traffic, Employer did something more than simply permit or allow employees to travel through that portion of the lot to get to and from work. Employer appropriated and designated and thereby controlled that portion of the parking lot.

Additional facts support the finding that the storage container was on Employer’s premises. The container stored tires for Employer’s store. The container was put on the lot in the most convenient location for Employer. Employees made multiple trips throughout the day through the parking lot to access the inventory in the container. Employer had the only key to the container and had sole access to its contents. Employer’s lease specifies so long as Employer uses the designated area for tire storage, that area is deemed a portion of Employer’s premises. Employer clearly had exclusive control over the area of the parking lot where Claimant was injured.

These facts are sufficient to demonstrate Employer’s total manifestation of control over that portion of the lot. This case presents a complete and total appropriation of nearby space

creating a huge risk of danger sufficient to require me to recognize the property at issue as part and parcel of Employer's premises leased from Washington University.

I find the extension of premises doctrine, as modified by the 2005 amendments to the law, does apply in this case because Employer extended its control over that portion of the parking lot where Claimant was injured. Claimant has established his injury arose out of and in the course of his employment due to Employer's control of the specific area where the accident happened.

**3. Claimant's treatment following his accident and his need for ongoing medical treatment are medically and causally related to his accident.**

"Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 [5] (Mo.App.1991). This requires Employee's medical expert to establish the probability Employee's injuries were caused by the work accident. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 [4] (Mo.App.1992)(overruled on other grounds by *Hampton v. Big Boy Steel Erection* 121 S.W.3d 220 (Mo. 2003) *McGrath v. Satellite Sprinkler Systems Inc.*, 877 S.W.2d 704, 708 (Mo.App. E.D. 1994)(overruled on other grounds by *Hampton V. Big Boy Steel Erection* 121 S.W.3d 220 (Mo.2003))

Claimant's expert, Dr. Reinsel, opined Claimant's current condition and need for treatment are the result of his July 2008 accident. The defense failed to raise any other causative factors. I find Claimant's injury and treatment thereafter are medically and causally related to his work accident.

**4. Employer is liable for past medical expenses as outlined in Exhibit K.**

If an employee's testimony is accompanied by the bills for the purchase of the relevant item which the employee identifies by testimony as being related to and the product of his injury and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists to award past medical expense compensation. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105, 111-112 (Mo. banc 1989). In this case, Claimant has satisfied this standard. Exhibit K indicates the past medical bills total \$13,238.37. I calculate a total of \$14,496.37. I find Employer must pay employee the past medical expenses outlined in Exhibit K totaling \$14,496.37.

**5. Employer is responsible for future medical care.**

Section 287.140.1 "entitles the worker to medical treatment as may reasonably be required to cure and relieve from the effects of the injury." *Ford v. Wal-Mart Associates, Inc.*, 155 S.W.3d 824, 828 (Mo.App. E.D. 2005) (citations omitted). It is sufficient to award future medical benefits if the claimant shows by reasonable probability that he is in need of additional

medical treatment by reason of his work-related accident. *Bock v. Broadway Ford Truck Sales, Inc.*, 55 S.W.3d 427, 437 (Mo.App. E.D. 2001).

Doctors Reinsel and Ahmad each opine Claimant needs additional treatment. Claimant continues to have significant pain and restrictions. I find Claimant has established his need for additional treatment. I find Employer is responsible to provide Claimant with medical treatment. Employer shall select a competent physician and authorize any treatment recommended by the physician including, but not limited to any tests and procedures, medications, braces or similar devices, diagnostic tests, hospitalizations, surgical procedures, post-operative and rehabilitative care as ordered and directed by the authorized treating physician.

**6. Claimant is entitled to past and future TTD.**

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part on other grounds).

Claimant’s job duties require heaving lifting. Claimant testified he has not been able to return to work since his July 2008 injury. An employee’s credible testimony regarding his ability to work can constitute competent and substantial evidence. *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 200, 223-224 (Mo.banc 2003)(citing *Jost v. Big Boys Steel Erection, Inc.*, 946 S.W.2d 777, 779 (Mo.App. 1997)). In addition, in August 2008, Dr. Coyle restricted Claimant to sedentary, light duty work with no lifting greater than 10 pounds and intermittent sitting, standing and walking. Claimant asked Employer for work within those restrictions, and Employer could not accommodate him. Dr. Ahmad later opined Claimant was unable to return to work without restrictions.

Pursuant to this award, Claimant will receive medical treatment. Employer is ordered to provide TTD benefits to cover the healing period associated with such treatment, if Claimant is unable to work during that period.

I find Claimant is entitled to TTD payments of \$512.82 from his date of injury until further order of the Division.

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

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

KATHLEEN M. HART  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
Division of Workers' Compensation