

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

Injury No. 12-105486

Employee: Alfred Savage  
Employer: Kaiser Electric  
Insurer: Cincinnati Casualty Company  
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 for review as provided by § 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated October 31, 2014.

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

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued October 31, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10<sup>th</sup> day of April 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Alfred Savage Injury No. 12-105486  
Dependents: N/A  
Employer: Kaiser Electric  
Additional Party: Treasurer of the State of Missouri,  
Custodian of the Second Injury Fund  
Insurer: Cincinnati Casualty Company  
Hearing Date: July 16, 2014

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

Checked by: HDF/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? N/A
3. Was there an accident or incident of occupational disease under the Law? N/A
4. Date of accident or onset of occupational disease: Alleged January 27, 2012
5. State location where accident occurred or occupational disease was contracted: Alleged Tipton, 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? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? N/A
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:  
See award
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Alleged right hand
14. Compensation paid to-date for temporary disability: - 0 -
15. Value necessary medical aid paid to date by employer/insurer? - 0 -
16. Value necessary medical aid not furnished by employer/insurer? - 0 -

Employee: Alfred Savage

Injury No. 12-105486

17. Employee's average weekly wages: N/A
18. Weekly compensation rate: N/A
19. Method wages computation: N/A

**COMPENSATION PAYABLE**

20. Amount of compensation payable: - 0 -

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 COPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

Employee: Alfred Savage

Injury No. 12-105486

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Alfred Savage

Injury No: 12-105486

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Kaiser Electric

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

Additional Party: Treasurer of the State of Missouri,  
Custodian of the Second Injury Fund

Insurer: Cincinnati Casualty Company

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on July 16, 2014. Memoranda were submitted by August 8, 2014. The parties requested a 26 day suspension in the preparation of this award.

The parties stipulated that on or about January 27, 2012, the claimant, Alfred Savage, was in the employment of Kaiser Electric. The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was insured by Cincinnati Insurance Group. No temporary disability benefits have been provided. No medical aid has been provided.

The issues to be determined by hearing include 1) the occurrence of an accident, 2) whether the alleged accident arose out of and in the course of employment, 3) the medical causation of the injuries alleged, 4) the liability of the employer/insurer for past medical care, 5) the liability of the employer/insurer for additional medical care, and 6) whether appropriate notice was given.

Notice is taken that the alleged injury date of January 27, 2012, was a Friday.

The parties stipulated at the inception of the hearing that medical treatment was requested and denied after the alleged accident.

A temporary award is sought.

### **FACTS**

The claimant, Alfred Savage, was working for Kaiser Electric as a journeyman electrician at the time of the alleged accident on January 27, 2012. Mr. Savage continued to work for Kaiser Electric through July of 2013. Mr. Savage testified that on January 27, 2012, he was working for Kaiser Electric at the University of Missouri power plant refurbishing the plant when he injured his right hand when a hammer drill bit got caught on a rebar and locked up, twisting his right hand and wrist. Mr. Savage said that he reported the injury to his foreman, John Leslie. Mr. Savage said that his foreman, John Leslie, took him to the Boone convenience clinic where his injury was diagnosed as a strain. Mr. Savage believes that he only went to the Boone clinic once, maybe twice, and that he received no bills for his care there. Mr. Savage saw his own

Employee: Alfred Savage

Injury No. 12-105486

physician, Dr. Kimlinger, who agreed that Mr. Savage had suffered a sprain of the right wrist and hand. Mr. Savage had pain in his right wrist when using a power drill or saw after this, but had no additional medical attention for the right hand and wrist until he reinjured it on February 28, 2013. Mr. Savage wore a brace thereafter, originally given to him by Boone convenience clinic and replaced by braces Mr. Savage purchased at Walgreens or Wal-Mart.

On February 28, 2013, Mr. Savage was working at the CoMo Electric jobsite refurbishing a warehouse and remodeling an office. Mr. Savage's workday was to begin at 7 am. Mr. Savage said that the ground was snow covered and that he went into the trailer in which he and his co-workers started the day by receiving assignments and work instructions. Mr. Savage had no trouble climbing the snow covered steps to get into the trailer. Mr. Savage said that the instructions for the day included a general admonition to be careful. After the meeting, according to Mr. Savage, he took the other set of steps to the trailer to exit the trailer and fell, reinjuring his right hand. Mr. Savage described the door to these steps to be in close proximity to where his foreman, Mike Gerling, was sitting when he exited the trailer. Mr. Savage said that someone helped him up and that his right wrist began hurting a lot more in the early afternoon after which he reported the injury. Mr. Savage testified that he went to Capital Region West at Mr. Gerling's direction the following day. Mr. Savage has received the bills for treatment at Capital Region west and has paid some of them. Mr. Savage had an MRI of the wrist and saw Dr. Cameron and Dr. Wilson. Dr. Wilson gave Mr. Savage an injection into the right wrist and prescribed hydrocodone for him. Mr. Savage also saw Dr. Schlafly on his own twice, once for a second opinion after the 2013 accident and then again as an evaluating physician.

Mr. Savage said that he cannot bend his right wrist without pain and that he wakes up at night with right wrist pain; the pain feels like a nail is being driven through the wrist. Mr. Savage cannot use vibratory tools or till his garden as the result of his right wrist injury. Mr. Savage wishes to have the recommended surgery to diminish his right wrist pain.

During cross examination Mr. Savage said that John Leslie was his supervisor at Kaiser Electric and that Ricky Clark was above Mr. Leslie.

John James testified by deposition that he was also an electrician with Kaiser Electric on February 28, 2013, and that after meeting in the trailer at the beginning of the work day they "were all going to get up and go out there, and there was --- being there was snow on the side we typically go in and out of, Al [Savage] had walked out first, [Mr. James] was directly behind him and I think Brandon was behind me." (James depo p9) Mr. James said that Mike Gerling had said that he was going to get some salt and warned people to stay off of the ice.

Brandon Peiter testified by deposition that he was at the February 28, 2013 meeting in the trailer at the start of the work day and that Mike Gerling had said to wait in the trailer until he put salt down. Mr. Peiter said that Mr. Gerling was going to get salt and that Mr. Savage walked out the door. According to Mr. Peiter, Mr. James walked out the door next when he heard Mr. Savage yell; Mr. Peiter was the next person to go out.

Dennis Palmer, owner of Coastal Electric, testified by deposition that Mr. Savage worked for him on the St. Mary's Hospital construction site in Jefferson City, from September 26, 2013, through

Employee: Alfred Savage

Injury No. 12-105486

the May 8, 2014 deposition. Mr. Savage worked a 40-hour week installing conduit and branch circuit wiring and installing light fixture hookups. Mr. Palmer described the gauge of the wire which Mr. Savage pulled as smaller branch circuit wiring. Mr. Palmer said that Mr. Savage's assignment to a crew doing rough in wiring rather than working with heavier wires was arbitrary.

Medical records of Dr. William Kimlinger reflect treatment of Mr. Savage on February 21, 2012, for right wrist pain beginning about a week and a half previously when he was using a hammer drill and "twisted his hands around." (clmt exh 2) Dr. Kimlinger recommended continued use of a splint as well as naprosyn. Dr. Kimlinger indicated that should Mr. Savage fail to improve, he would recommend further evaluation and a possible MRI. The next medical record for Dr. Kimlinger's treatment of Mr. Savage is dated March 18, 2013, and is for an unrelated condition, followed by a medical record of Dr. Wilson referring to Mr. Savage's right wrist dated May 12, 2013; this record refers to Mr. Savage's slip on the ice on March 7, 2013.

Dr. Bruce Schlafly, MD, testified by deposition that he saw Mr. Savage on April 29, 2013, and June 18, 2013, with regard to his right wrist complaints. Dr. Schlafly diagnosed a scapholunate ligament injury, possibly associated with a small fracture fragment, as well as arthritis, preexisting January of 2012. Dr. Schlafly opined that Mr. Savage is in need of surgery to excise the scaphoid and fuse the capitates, lunate, triquetrum and hamate bones to obtain pain relief. Dr. Schlafly admitted that in paperwork dated April 29, 2013, submitted to Mr. Savage's health insurance carrier, he stated that Mr. Savage's condition was not work related. Dr. Schlafly testified that the reason for Mr. Savage's recommended surgery is that he is in pain and that the pain began with the January 27, 2012 injury. Dr. Schlafly found the January 27, 2012 accident and the February 28, 2013 accident to be equally causative of Mr. Savage's need for surgery on the right wrist.

It appears that the only bill pertaining to Mr. Savage's treatment for his right wrist from the 2012 accident and injury is in the amount of \$104.00 for treatment by Dr. Kimlinger on February 21, 2012.

### **APPLICABLE LAW**

RSMo Section 287.140.1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the

Employee: Alfred Savage

Injury No. 12-105486

employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment.

### **AWARD**

The claimant, Alfred Savage, has failed to establish that the employer/insurer are liable for the medical costs he incurred with Dr. Kimlinger for treatment of his right wrist injury of January 27, 2012 or that the employer/insurer are responsible for additional medical treatment for the right wrist injury of January 27, 2012. According to Mr. Savage he received medical treatment from the employer/insurer at a convenience clinic where a strain was diagnosed. Mr. Savage admitted that he sought a second opinion from Dr. Kimlinger on his own and that no additional treatment was recommended by Dr. Kimlinger. Dr. Schlafly's opinion alone is insufficient to establish the need for additional medical treatment where Dr. Schlafly failed to identify anything beyond pain as the cause of Mr. Savage's complaints and need for additional medical treatment and Dr. Schlafly admitted that he identified Mr. Savage's complaints and need for medical treatment as non work related in paperwork submitted to Mr. Savage's health insurance carrier.

All other issues raised for resolution are hereby rendered moot.

Made by: \_\_\_\_\_  
HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

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

Injury No. 13-016943

Employee: Alfred Savage  
Employer: Kaiser Electric  
Insurer: Cincinnati Casualty Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

This workers' compensation case is pending before the Labor and Industrial Relations Commission on employer/insurer's application for review of the administrative law judge's temporary or partial award. We have read the briefs, reviewed the evidence, and considered the whole record. We find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo,<sup>1</sup> we affirm the award and decision of the administrative law judge by this supplemental opinion.

We offer this supplemental opinion to add legal authority in support of the administrative law judge's conclusions.

Employee sustained a wrist injury when he fell on ice after descending steps from employer's jobsite trailer. Employer argues that employee's claim is not compensable because "employee failed to establish that the 2/28/13 incident occurred during a single work shift." We disagree. We find employee established that his work shift began before he fell. The work shifts of employee and his co-workers began no later than when they reported to the jobsite trailer and received instructions for the day's work from their foreman, Mr. Gerling.

Employer argues that even if employee's shift had begun at the time of his fall, employee removed himself from his work shift when he exited the trailer, because employee intended to go to his vehicle (parked a mere ten feet from the trailer) to retrieve something. We disagree. Employee denied he intended to go to his vehicle when he exited the trailer and we find his testimony credible.

Even assuming, as employer argues, employee intended to go to his vehicle and by intending to do so, employee removed himself from his work shift, employee's injury would still be compensable. In the 2005 amendments to the Workers' Compensation Law, the legislature explicitly preserved the extension of premises doctrine as regards employee injuries sustained on property owned or controlled by employer. Inasmuch as such cases, by definition, involve injuries sustained prior or subsequent to the actual performance of job duties, the legislature clearly contemplated and accepted compensability of injuries sustained as a result of work-related risks even though employee was not at the time

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2012 (effective August 28, 2012), unless otherwise indicated.

Employee: Alfred Savage

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engaged in the performance of job duties (e.g. going to employer's worksite or coming from employer's worksite).

Recent Missouri cases have applied the retained extension of premises doctrine and confirmed that compensation is not limited to workers injured while actively engaged in their duties. In *Scholastic, Inc. v. Viley*, the Court held that “[p]ursuant to the plain language of section 287.020.5, the extended premises doctrine is not totally eliminated but is now limited to situations where the employer owns or controls the area where the accident occurs.”<sup>2</sup> The existing extension of premises doctrine permits recovery of workers’ compensation benefits for injuries sustained by workers going to or coming from work if (a) the injury-producing accident occurs on premises which are owned or controlled by the employer, **and** (b) that portion of such premises is a part of the customary, expressly or impliedly approved, permitted, usual and acceptable route or means employed by workmen to get to and depart from their places of labor and is being used for such purpose at the time of the injury. Mr. Viley was awarded compensation for an injury he sustained when he fell on ice on a parking lot controlled by employer while he was walking to his car at the conclusion of his work shift.

Like Mr. Viley, the employee in the instant case fell on ice on a portion of a parking lot controlled by his employer. Employee’s foreman, Mr. Gerling, testified that the day prior to employee’s fall, Mr. Gerling shoveled the snow from the section of concrete upon which employee fell. Ice formed upon the section of concrete Mr. Gerling cleared. Employee fell on that ice. For purposes of our application of the extension of premises doctrine, “control,” means “1. To exercise power or influence over.... 2. To regulate or govern.... 3. To have a controlling interest in.”<sup>3</sup> Employer, through Mr. Gerling, exercised power or influence over the section of concrete upon which employee fell when Mr. Gerling altered the condition of the concrete. Employer controlled the portion of the premises upon which employee fell. The trailer stairs and the adjacent cement to which they led are a customary and acceptable route employed by workers to depart from the jobsite trailer. If employee was going to his vehicle after exiting the trailer, as urged by employer, employee’s injury occurred in the course of his employment under the retained extension of premises doctrine.

Lastly, we address employer’s argument that employee was equally exposed to the hazard giving rise to his injury outside of and unrelated to his employment. Employer’s argument is contrary to decided cases. As noted by the *Viley* court, “[e]ven assuming *arguendo* that [employee] was equally exposed to the hazard of slipping and falling on an icy parking lot in his nonemployment life, his injury still arose out of his employment because there is nothing in the record to support a conclusion that he was equally exposed to the hazard of slipping on the icy parking lot at *that particular* work site in his nonemployment life.”<sup>4</sup>

We affirm the temporary or partial award. We attach the October 31, 2014, temporary or partial award and decision of Administrative Law Judge Hannelore D. Fischer, hereto and

<sup>2</sup> 452 S.W.3d 680, 684 (Mo. App. 2014).

<sup>3</sup> *Hager v. Syberg's Westport*, 304 S.W.3d 771, 776 (Mo. App. 2010), citing BLACK’S LAW DICTIONARY (8th ed. 2004).

<sup>4</sup> *Viley*, 452 S.W.3d at 687. See also, *Duever v. All Outdoors, Inc.*, 371 S.W.3d 863 (Mo. App. 2012); *Dorris v. Stoddard County*, 436 S.W.3d 586 (Mo. App. 2014).

Employee: Alfred Savage

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we incorporate and adopt its findings, conclusions, award and decision herein to the extent they are not inconsistent with this award.

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

Given at Jefferson City, State of Missouri, this 10<sup>th</sup> day of April 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Alfred Savage

Injury No. 13-016943

Dependents: N/A

Employer: Kaiser Electric

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: Treasurer of the State of Missouri,  
Custodian of the Second Injury Fund

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

Insurer: Cincinnati Casualty Company

Hearing Date: July 16, 2014

Checked by: HDF/scb

### 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: February 28, 2013
5. State location where accident occurred or occupational disease was contracted: Cole 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:  
See award
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 wrist
14. Compensation paid to-date for temporary disability: - 0 -
15. Value necessary medical aid paid to date by employer/insurer? - 0 -
16. Value necessary medical aid not furnished by employer/insurer? \$1,911.00

Employee: Alfred Savage

Injury No. 13-016943

17. Employee's average weekly wages: N/A
18. Weekly compensation rate: N/A
19. Method wages computation: N/A

**COMPENSATION PAYABLE**

20. Amount of compensation payable: Additional medical treatment as noted in award.

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 COPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

Employee: Alfred Savage

Injury No. 13-016943

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Alfred Savage

Injury No: 13-016943

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Kaiser Electric

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

Additional Party: Treasurer of the State of Missouri,  
Custodian of the Second Injury Fund

Insurer: Cincinnati Casualty Company

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on July 16, 2014. Memoranda were submitted by August 8, 2014. The parties requested a 26 day suspension in the preparation of this award.

The parties stipulated that on or about February 28, 2013, the claimant, Alfred Savage, was in the employment of Kaiser Electric. The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was insured by Cincinnati Insurance Group. No temporary disability benefits have been provided. No medical aid has been provided.

The issues to be determined by hearing include 1) the occurrence of an accident, 2) whether the alleged accident arose out of and in the course of employment, 3) the medical causation of the injuries alleged, 4) the liability of the employer/insurer for past medical care, 5) the liability of the employer/insurer for additional medical care, and 6) the application of a penalty provision as the result of an alleged safety violation.

Notice is taken that the alleged injury date of February 28, 2013, is a Thursday.

The parties stipulated at the inception of the hearing that medical treatment was requested and denied after the alleged accident.

A temporary award is sought.

### **FACTS**

The claimant, Alfred Savage, was working for Kaiser Electric as a journeyman electrician at the time of an alleged accident on January 27, 2012. Mr. Savage continued to work for Kaiser Electric through July of 2013. Mr. Savage testified that on January 27, 2012, he was working for Kaiser Electric at the University of Missouri power plant refurbishing the plant when he injured his right hand when a hammer drill bit got caught on a rebar and locked up, twisting his right hand and wrist. Mr. Savage said that he reported the injury to his foreman, John Leslie. Mr. Savage said that his foreman, John Leslie, took him to the Boone convenience clinic where his injury was diagnosed as a strain. Mr. Savage believes that he only went to the Boone clinic

Employee: Alfred Savage

Injury No. 13-016943

once, maybe twice, and that he received no bills for his care there. Mr. Savage saw his own physician, Dr. Kimlinger, who agreed that Mr. Savage had suffered a sprain of the right wrist and hand. Mr. Savage had pain in his right wrist when using a power drill or saw after this, but had no additional medical attention for the right hand and wrist until he reinjured it on February 28, 2013. Mr. Savage wore a brace thereafter, originally given to him by Boone convenience clinic and replaced by braces Mr. Savage purchased at Walgreens or Wal-Mart.

On February 28, 2013, Mr. Savage was working at the CoMo Electric jobsite refurbishing a warehouse and remodeling an office. Mr. Savage's workday was to begin at 7 am. Mr. Savage said that the ground was snow covered and that he went into the trailer in which he and his co-workers started the day by receiving assignments and work instructions. Mr. Savage had no trouble climbing the snow covered steps to get into the trailer. Mr. Savage said that the instructions for the day included a general admonition to be careful. After the meeting, according to Mr. Savage, he took the other set of steps to the trailer to exit the trailer and fell, reinjuring his right hand. Mr. Savage described the door to these steps to be in close proximity to where his foreman, Mike Gerling, was sitting when he exited the trailer. Mr. Savage said that someone helped him up and that his right wrist began hurting a lot more in the early afternoon after which he reported the injury. Mr. Savage testified that he went to Capital Region West at Mr. Gerling's direction the following day. Mr. Savage has received the bills for treatment at Capital Region west and has paid some of them. Mr. Savage had an MRI of the wrist and saw Dr. Cameron and Dr. Wilson. Dr. Wilson gave Mr. Savage an injection into the right wrist and prescribed hydrocodone for him. Mr. Savage also saw Dr. Schlafly on his own twice, once for a second opinion after the 2013 accident and then again as an evaluating physician.

Mr. Savage said that he cannot bend his right wrist without pain and that he wakes up at night with right wrist pain; the pain feels like a nail is being driven through the wrist. Mr. Savage cannot use vibratory tools or till his garden as the result of his right wrist injury. Mr. Savage wishes to have the recommended surgery to diminish his right wrist pain.

During cross examination Mr. Savage said that John Leslie was his supervisor at Kaiser Electric and that Ricky Clark was above Mr. Leslie.

John James testified by deposition that he was also an electrician with Kaiser Electric on February 28, 2013, and that after meeting in the trailer at the beginning of the work day they "were all going to get up and go out there, and there was --- being there was snow on the side we typically go in and out of, Al [Savage] had walked out first, [Mr. James] was directly behind him and I think Brandon was behind me." (James depo p9) Mr. James said that Mike Gerling had said that he was going to get some salt and warned people to stay off of the ice.

Brandon Peiter testified by deposition that he was at the February 28, 2013 meeting in the trailer at the start of the work day and that Mike Gerling had said to wait in the trailer until he put salt down. Mr. Peiter said that Mr. Gerling was going to get salt and that Mr. Savage walked out the door. According to Mr. Peiter, Mr. James walked out the door next when he heard Mr. Savage yell; Mr. Peiter was the next person to go out.

Employee: Alfred Savage

Injury No. 13-016943

Mike Gerling testified by deposition that he was Mr. Savage's foreman and supervisor on the COMO job on February 28, 2013. Mr. Gerling said that among other people working on the building on the COMO job were Al Savage, John James and Brandon Peiter. Mr. Gerling testified that the workday began at 7:00 am and that he and the workmen gathered in the trailer before work. On February 28, 2013, Mr. Gerling had shoveled a path through the snow to one of the trailer doors where he and his workmen gathered before work; the other door had not had a path shoveled to it. Mr. Gerling said there were no rules regarding which doors of the trailer were used by himself and his workmen. Mr. Gerling did not see Mr. Savage fall but heard a commotion and looked out the window and saw Mr. Savage standing. Mr. Gerling said the area where Mr. Savage fell was ice covered. Mr. Gerling testified at the hearing that he instructed all his workmen not to leave the trailer until he had salt to put down on the ice and that Mr. Savage left the trailer saying that he was getting something out of his car and was going to the building where he was working. Mr. Gerling said that he was sitting five feet from the door Mr. Savage used when he left the trailer and that Mr. Gerling did not specifically tell Mr. Savage not to leave the trailer. Mr. Gerling also said that he directed his workmen to exit the trailer using the door not used by Mr. Gerling when he exited the trailer because the door that he directed workers to use still had snow on it and was not as icy.

Dennis Palmer, owner of Coastal Electric, testified by deposition that Mr. Savage worked for him on the St. Mary's Hospital construction site in Jefferson City from September 26, 2013, through the May 8, 2014 deposition. Mr. Savage worked a 40-hour week installing conduit and branch circuit wiring and installing light fixture hookups. Mr. Palmer described the gauge of the wire which Mr. Savage pulled as smaller branch circuit wiring. Mr. Palmer said that Mr. Savage's assignment to a crew doing rough in wiring rather than working with heavier wires was arbitrary.

Medical records of Dr. William Kimlinger reflect treatment of Mr. Savage on February 21, 2012, for right wrist pain beginning about a week and a half previously when he was using a hammer drill and "twisted his hands around." (clmt exh 2) Dr. Kimlinger recommended continued use of a splint as well as naprosyn. Dr. Kimlinger indicated that should Mr. Savage fail to improve, he would recommend further evaluation and a possible MRI. The next medical record for Dr. Kimlinger's treatment of Mr. Savage is dated March 18, 2013, and is for an unrelated condition, followed by a medical record of Dr. Wilson referring to Mr. Savage's right wrist dated May 12, 2013; this record refers to Mr. Savage's slip on the ice on March 7, 2013. Dr. Wilson saw Mr. Savage again on June 13, 2013, at which time she found Mr. Savage to have a "scapholunate advanced collapse" of his right wrist and recommended surgery, specifically, a "scaphoid excision and 4 corner fusion." (clmt exh 2)

Dr. Bruce Schlafly, MD, testified by deposition that he saw Mr. Savage on April 29, 2013, and June 18, 2013, with regard to his right wrist complaints. Dr. Schlafly diagnosed a scapholunate ligament injury, possibly associated with a small fracture fragment, as well as arthritis, preexisting January of 2012. Dr. Schlafly opined that Mr. Savage is in need of surgery to excise the scaphoid and fuse the capitates, lunate, triquetrum, and hamate bones to obtain pain relief. Dr. Schlafly admitted that in paperwork dated April 29, 2013, submitted to Mr. Savage's health insurance carrier, he stated that Mr. Savage's condition was not work related. Dr. Schlafly testified that the reason for Mr. Savage's recommended surgery is that he is in pain and that the pain began with the January 27, 2012 injury. Dr. Schlafly found the January 27, 2012 accident

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and the February 28, 2013 accident to be equally causative of Mr. Savage's need for surgery on the right wrist.

Records of the Capital Region Medical Center include Mr. Savage's treatment records with Dr. Kimlinger as well as an MRI performed on March 12, 2013. Dr. Macfarlane's "impression" of the MRI includes "1. One osteoarthritic changes of the right wrist ... Carpal bone marrow edema is probably degenerative, but given the history of recent fall, superimposed bone contusions cannot be excluded. 2. Evidence of remote prior wrist injury, with 7.3 mm ossified, corticated fracture fragment at the dorsum of the wrist. 3. Slight widening of the scapholunate interval, with evidence of scapholunate ligament injury. 4. Ganglion formation at the radial volar aspect of the radiocarpal joint. 5. Mild extensor carpi radialis tenosynovitis. 6. Probable synovial cyst formation associated with the triquetral pisiform recess."

Dr. Michelle Koo testified by deposition that she saw Mr. Savage and issued a report dated October 21, 2013, reflecting her assessment of Mr. Savage. Dr. Koo found Mr. Savage to have a significant amount of pain and tenderness along the right scapholunate interval, which she described as boggy or swelling. Dr. Koo opined that the arthritis and widening of the scapholunate seen on an x-ray taken on January 30, 2012, would probably be preexisting the January 27, 2012 accident. With regard to the February 28, 2013 fall on the ice, Dr. Koo described Mr. Savage's fall on an outstretched hand as "yet another aggravating or precipitating or triggering event that perhaps will send a non-symptomatic wrist into one that becomes symptomatic and then ultimately needing perhaps surgical intervention or some type of intervention." (Koo depo p17) Dr. Koo went on to say that the February 28, 2013 fall could have caused a significant widening of the of the scapholunate interval with an increased scapholunate angle. Dr. Koo said that "the fall on an outstretched hand is much more likely--much more likely the scenario to be a precipitating factor for creating a scapholunate tear than a torque." (Koo depo p33) Dr. Koo admitted that the phraseology in her report was that the fall of February 28, 2013 went on to completely tear the scapholunate ligament, but that she had no evidence of that actually happening. Dr. Koo recommended additional treatment for Mr. Savage in the form of a partial or total right wrist fusion.

It appears that the only bill pertaining to Mr. Savage's treatment for his right wrist from the 2012 accident and injury is in the amount of \$111.00 for treatment by Dr. Kimlinger on February 21, 2012.

Payment of medical bills for treatment for the February 28, 2013 accident and injury at Jefferson City Medical Group is sought in the amount of \$455.00, with Dr. Cameron is sought in the amount of \$170.00, at Capital Region Medical Center for an MRI is sought in the amount of \$1386.00 and with Dr. Schlafly is sought in the amount of \$425.00.

### **APPLICABLE LAW**

RSMo Section 287.020.2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at

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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.

RSMo Section 287.020.3. 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

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

RSMo Section 287.140.1. 287.140. 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or

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metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment.

RSMo Section 287.120.5. Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a reasonable effort to cause his or her employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

### **AWARD**

The claimant, Alfred Savage, has sustained his burden of proof that he sustained a compensable accident and injury on February 28, 2013, when he fell on snow covered steps injuring his right hand when he fell on the outstretched hand. Dr. Koo testified that she believed that the fall on February 28, 2013 caused the widening of the scapholunate ligament interval to the point where it was painful and required surgery. Both Dr. Schlafly and Dr. Koo recognized that Mr. Savage had preexisting problems with his right wrist. However, both doctors found the 2013 fall to have caused the condition of the wrist to deteriorate to the point where surgery is recommended. While Dr. Koo's language in her deposition testimony is that of precipitation and triggering, her testimony is also that of a probable change in the structure of the wrist itself to the point where surgery is required. Dr. Schlafly stated that Mr. Savage's scapholunate ligament injury, possibly associated with a small fracture fragment, as well as arthritis, preexisted both the January 27, 2012 and February 28, 2013 injuries and that it is the occurrence of pain which has caused the need for additional treatment. Mr. Savage has proven that his need for surgery to the right wrist is medically caused by the accident and injury of February 28, 2013.

The employer/insurer has failed to prove a safety violation where there is inconsistent testimony regarding whether Mr. Gerling had instructed the workmen to stay in the trailer until he had purchased and spread salt and Mr. Gerling himself testified that he both told his workmen to stay in the trailer and told them to use the door with the steps that still had snow rather than the shoveled icy steps to exit the trailer.

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Finally, Mr. Savage has sustained his burden of proof that he is entitled to payment of the medical bills incurred with treatment by Dr. Wilson at JCMG on April 22, 2013 and June 10, 2013, in the amount of \$355.00, the bills of Dr. Cameron for treatment on March 27, 2013 and April 17, 2013, in the amount of \$170.00 and the Bills of Capital Region Medical Center for an MRI on March 12, 2013 in the amount of \$1,386.00. The noted bills are for treatment provided to Mr. Savage for his accident and injury of February 28, 2013. The bill for the evaluation of Dr. Schlafly is not for treatment rendered to Mr. Savage; rather, the bill reflects an evaluation in anticipation of litigation.

Made by: \_\_\_\_\_  
HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*