

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

Injury No.: 05-114500

Employee: Thomas Schuchman

Employer: America's Center  
City of St. Louis  
St. Louis Convention & Visitor's Center

Insurer: Self-Insured (Cannon Cochran Management Service)

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 25, 2009, and awards no compensation in the above-captioned case.

All pending motions are denied.

The award and decision of Administrative Law Judge Suzette Carlisle, issued August 25, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22<sup>nd</sup> day of October 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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Attest: John J. Hickey, Member

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Secretary

## AWARD

Employee: Thomas Schuchman Injury No.: 05-114500  
Dependents: N/A Before the  
Employer: America's Center **Division of Workers'**  
City of St. Louis **Compensation**  
St. Louis Convention & Visitor's Center Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Additional Party: Second Injury Fund (Denied)  
Insurer: Self-Insured (Cannon Cochran Management Service)  
Hearing Date: May 18, 2009 and May 27, 2009 Checked by: SC

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Allegedly on July 8, 2005
5. State location where accident occurred or occupational disease was contracted: Allegedly in St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? No
8. Did accident or occupational disease arise out of and in the course of the employment? No
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: Claimant alleged he sustained a heart attack while working.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged body as a whole- heart
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
15. Value necessary medical aid paid to date by employer/insurer? \$798.68
16. Employee: Thomas Schuchman Injury No.: 05-114500

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: N/A
- 20. Method wages computation: N/A

**COMPENSATION PAYABLE**

21. Amount of compensation payable: \$0.00

22. Second Injury Fund liability: Denied

TOTAL: NONE

23. Future requirements awarded: N/A

Said payments to begin and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Claimant appeared pro se.

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

Employee:	Thomas Schuchman	Injury No.: 05-114500
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	America's Center City of St. Louis St. Louis Convention & Visitor's Center	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Additional Party:	Second Injury Fund (Denied)	
Insurer:	Self-Insured (Cannon Cochran Management Service)	
		Checked by: SC

### **PROCEDURAL HISTORY**

Judicial notice is taken of the Missouri Division of Workers' Compensation (DWC) file. The case of Thomas Schuchman (Claimant) has previously been dismissed twice. The Automated Integrated Claim System (AICS) shows attorney Keith Link withdrew as counsel for Claimant on May 1, 2008. Since that time, Claimant has appeared pro se in this matter.

Claimant appeared late for the May 1<sup>st</sup> setting, and Administrative Law Judge Margaret D. Landolt informed him the case would be reset on dismissal. Further, she informed Claimant to either hire counsel or be ready to represent himself at the next setting. On July 31, 2008, Judge Landolt continued the case on the dismissal docket for 30 days.

On August 28, 2008, Claimant failed to appear in person or by counsel for the dismissal setting. On September 3, 2008, Administrative Law Judge Linda J. Wenman issued an Order of Dismissal for Failure to Prosecute.

Claimant filed an Application for Review with the Labor and Industrial Relations Commission (Commission) on September 16, 2008. The Commission sent a certified letter on September 23, 2008, to the attorneys of record which read in part:

“Any party who objects to the Application for Review must notify the Commission within ten days of the date of this letter. If no objection is filed within that time, the Commission will assume there is no opposition to the reinstatement of the claim for compensation.”

The parties did not respond, and the Commission set aside the Order of Dismissal on October 9, 2008, and returned the case to DWC to reinstate the Claim for Compensation.

On January 22, 2009, Claimant appeared for a dismissal setting, on the record, before Judge Landolt. Claimant testified he was not prepared to represent himself and did not have legal counsel. On or about January 28, 2009, Judge Landolt issued an Order of Dismissal for Failure to Prosecute.

On February 10, 2009, Claimant filed a second Application for Review with the Commission. The Commission set aside the January 2009 dismissal on March 10, 2009, because no meaningful review was possible as the orders of dismissal were not contained in the file. The Commission returned the case to DWC to reinstate the Claim for Compensation.

On March 20, 2009, the Commission denied the Employer's motion to reconsider the order reinstating the Claim for Compensation.

### **STATEMENT OF THE CASE**

On May 18, 2009, a hearing for a final award was held at the DWC St. Louis office at the request of Claimant, pursuant to Section 287.450 RSMo (2000).<sup>1</sup> Claimant appeared pro se. Attorney Thomas Goeddel represented St. Louis City (Employer), self-insured through Cannon Cochran Management Service (Insurer). Assistant Attorney General Kristin Frazier represented the Second Injury Fund (SIF). Jurisdiction properly lies with DWC.

The parties stipulated that on or about July 8, 2005, Claimant was employed by Employer in St. Louis City; Employer and Claimant operated under the Missouri Workers' Compensation Law; Employer's liability was fully self-insured; the Claim for Compensation (claim) was timely filed, and Employer paid \$798.68 in medical expenses and no TTD benefits.

Claimant offered Exhibits A through I. A ruling was reserved on the exhibits. Objections raised by Employer and SIF are sustained for the following reasons:

Exhibit A- Faxed Notice of Hearing- dated April 6, 2009- Lack of relevance;

Exhibit B- Faxed report titled 'James B. Adams'-Hearsay, unsigned, the author is unknown, lack of foundation, and relevance;

Exhibit C- First Aid Report -Not certified, lack of foundation, and no patient signature;

Exhibit D- CDC Health Form Evaluation (Computer printout)-Lack of foundation, not certified, hearsay, incompleteness, and relevance;

Exhibit E- Request to amend the answer and Claimant's work schedule -Lack of foundation, appears to be two documents combined into one;

Exhibit F- America's Center letter dated 8-31-2005-Lack of foundation and hearsay;

Exhibit G- Occupational Health Guideline for Carbon Monoxide -Lack of foundation and relevance;

Exhibit H- Electronic Accounting of Disclosure for Claimant-(Tests from VA Medical Center)- Not certified, relevance, not produced 60 days prior to hearing, missing pages, and incompleteness;

Exhibit I- Authorization to Inspect and/or copy Medical Records- an unapproved, lack of

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<sup>1</sup> All statutory references are to the 2000 Revised Statutes of Missouri unless otherwise stated.

foundation, and relevance<sup>2</sup>

Exhibits A through I were excluded but retained. Any notations contained in the exhibits were present when offered for admission. The Court's Exhibits 1 through 3 are admitted.

The parties stipulated that on or about July 8, 2005, Employee was employed by the Employer;<sup>3</sup> the alleged injury occurred in St. Louis City; Employer and Claimant operated under the Missouri Workers' Compensation Law; Employer's liability was fully self-insured; the claim was timely filed; and Employer paid \$798.68 in medical benefits, and no TTD benefits were paid.

The parties presented the following issues for disposition: 1. Did Claimant sustain an accident that arose out of and in the course of employment? 2. If so, did Employer receive proper notice? 2. Is Claimant's condition medically causally related to his work activities? 3. What is the nature and extent of Employer's liability for permanent partial disability, if any? 4. What is the nature and extent of SIF liability for permanent partial disability, if any? 5. What is Claimant's average weekly wage?

### **FINDINGS OF FACT**

The record contains no live testimony and Claimant's exhibits were excluded for the reasons stated above. Therefore, the facts are based upon DWC records and events that occurred before, during and after the hearing.

On November 17, 2005, DWC received a Claim for Compensation from Claimant, filed pro se. (Court Exhibit 2). The claim alleged an injury to Claimant's heart from a work injury on July 8, 2005. The claim alleged Claimant experienced a heart attack after working more than 8 hours per day for 10 consecutive days without breaks.

On February 7, 2006, Claimant submitted another original claim for the July 8, 2005 injury date. It is date stamped November 17, 2005, but contains 2 additional pages. (Court Exhibit 3). On the last page, next to Claimant's signature, is typed "Amended and supplemented February 7, 2006." The "amended" claim alleged, among other things, Claimant is permanently and totally disabled due to the alleged work-related heart attack. Claimant sought a lump sum settlement of \$675,000.00, "now and \$800.00 AWW to be paid on a monthly basis until the full amount determined and agreed has been paid to employee or his dependants."

On April 3, 2006, attorney Harry Nichols entered the case as Claimant's attorney. Mr. Nichols represented Claimant at numerous pre-hearing and dismissal settings between October 2006 and May 2008. A February 2008 minute entry states Mr. Nichols has withdrawn but no withdrawal is contained in the file. On May 1, 2008, attorney Keith Link withdrew on behalf of Mr. Nichols.

Claimant's case was dismissed in August 2008 for failure to prosecute when he failed to appear for a notice setting. The case was reinstated and dismissed again in January 2009 for failure to obtain counsel or represent himself. (See discussion above)

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<sup>2</sup> After the hearing, Mrs. Schuchman returned to DWC and submitted Exhibit I for signature, which was approved.

<sup>3</sup> Any reference to Employer also includes the Insurer.

*The May 18, 2009 hearing*

During the May 18, 2009 hearing, Claimant refused to provide an opening statement or testify. Claimant stated he could not represent himself and needed to talk to an attorney. Mrs. Schuchman was asked to leave on two occasions because of inappropriate talking and crying, which disrupted the proceedings.

The Court denied Claimant's request to call Mrs. Schuchman to testify about certification of medical records. However, the record remained open until May 26, 2009, at 5:00 p.m. for Claimant to receive medical records from St. Louis University, the first aid station at the Dome, and Abbott Ambulance.

After the hearing, the Court decided to reset the hearing on May 27, 2009, to allow Claimant to call witnesses. Later the same day, Mrs. Schuchman requested authorization to obtain Dr. Corley's records, which the Court approved. At that time, Mrs. Schuchman was notified the hearing would be continued to May 27, 2009, for Claimant to present witness testimony. The same day, DWC court reporter Kathy Rethemeyer contacted Mrs. Schuchman by telephone and informed her that her husband's hearing was continued to May 27, 2009.

On May 19, 2009, a letter was sent to all parties, notifying them the hearing was continued to Wednesday, May 27, 2009 at 9:00 a.m. for Claimant to present witnesses and obtain medical records from Employer. Claimant's letter was sent certified, number 7008 1300 0000 1867 3642, to his last known address of record.

Three sets of document were submitted after the hearing. Mrs. Schuchman delivered documents date stamped May 20, 2009, which included a cover letter, 'Affidavit in Support to Show Cause,' an award written by Judge Margaret Landolt, an attached Commission decision, various letters, a blank Subpoena Duces Tecum for Deposition form, and a typed statement signed; "Thomas L. Schuchman."

Mrs. Schuchman delivered a packet date stamped May 26, 2009, which included a cover letter signed "Thomas Schuchman," and requested the court "stipulate to the STATEMENT OF FACT, served by the Commission with my Application for Review, copy for evidence provided, to be admitted into the record *at hearing May 27, 2009.*" (Emphasis added) The packet included a document titled the 'Missouri Ambulance Reporting System,' correspondence, certified records from St. Louis University, an earnings statement, and a document titled 'Department of Veterans Affairs.'

*The May 27, 2009 Continuance*

On May 27, 2009, the hearing resumed at 10:12 a.m. after Claimant failed to appear in person or by counsel for the 9:00 a.m. hearing. Attorney Goeddel appeared for Employer. Assistant Attorney General Kristin Frazier appeared for SIF. Employer's objection is sustained regarding 2 packets of documents submitted after the first hearing based on lack of foundation, hearsay and Claimant's failure to offer the exhibits during the hearing. Both Employer and SIF stated they did not receive copies of the packets. Employer's motion to dismiss the case was denied.

At 10:34 a.m., the record closed and Claimant had not appeared or called. As of August 24, 2009, Claimant has not contacted the court in person or through counsel regarding his failure to appear on May 27, 2009.

A third packet was received from the Labor and Industrial Relations Commission, dated June 15, 2009. The packet included Guest Services Updates and Claimant's proposed award. None of the documents received after the first hearing date were offered or admitted into evidence.

### **RULINGS OF LAW**

After careful consideration of the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law of the State of Missouri, I find Claimant did not meet his burden to prove he sustained an accident that arose out of and in the course of employment for the following reasons.

Claimant has the burden to establish that he sustained an injury by accident arising out of and in the course of his employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. App. 1991). An employee must prove all material elements of his claim.<sup>4</sup> *Fisher v. Archdiocese St. Louis-Cardinal Richter Inst.*, 793 S.W.2d 195 (Mo.App. 1990) (citations omitted). Material elements of the claim must be proven by a preponderance of credible evidence, including Second Injury Fund Liability. *Meilves v. Morris*, 422 S.W.2d 335, 339 (Mo. 1968).

Section 287.020.2 defines accident as "an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor."

Section 287.120.1 requires employers provide compensation for personal injuries caused by an accident arising out of or in the course of employment.... Section 287.020.3(2) provides that an injury arises out of and in the course of the employment only if:

- (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury, and;
- (b) It can be seen to have followed as a natural incident of the work; and
- (c) It can be fairly traced to the employment as a proximate cause; and
- (d) 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.

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<sup>4</sup> Several cases herein were overruled by *Hampton* on grounds other than those for which the cases are cited. No further reference will be made to *Hampton*.

I find Claimant did not sustain an accident that arose out of and in the course of his employment. Claimant's exhibits were excluded based on hearsay, uncertified medical records, and other reasons discussed above. Claimant refused to testify on his behalf. The only witness he called was Mrs. Schuchman. Claimant was uncertain why he called Mrs. Schuchman, but her request to testify about certification of the exhibits was denied.

I find Claimant's work activities were not a substantial factor that caused a heart attack or any work-related injury. I find Claimant did not sustain an injury that is a natural incident of work that was fairly traced to employment as a proximate cause. I further find Claimant did not sustain an injury from a hazard or risk related to employment that workers would not have been equally exposed to outside of and unrelated to employment.

Claimant had an opportunity to be heard and produce witnesses on May 27, 2009. I find Claimant knew about the May 27<sup>th</sup> hearing date but failed to appear. Claimant was sent a certified letter to his last known address. (Court Exhibit 1). The letter was not returned to DWC undelivered. Claimant submitted a written request that the Court stipulate that certain documents be admitted at the May 27, 2009 hearing. The undersigned judge notified Mrs. Schuchman in person about the continuance, and court reporter Kathy Rethemeyer notified her by telephone. As of the date this award was issued, Claimant has not contacted the Court about his failure to appear at the hearing.

Having found Claimant did not sustain a work related accident, other issues are moot.

### CONCLUSION

Claimant did not sustain an accident that arose out of and in the course of employment. The Second Injury Fund is denied.

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

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

**Suzette Carlisle**  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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