

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

Injury No.: 03-040115

Employee: Eddie Stegall
Employer: J. V. Transfer a/k/a Julie Voelk
Insurer: American Home Assurance Company
Date of Accident: May 8, 2003
Place and County of Accident: Oklahoma City, Oklahoma

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 1, 2005. The award and decision of Chief Administrative Law Judge Nelson G. Allen, issued September 1, 2005, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 19th day of April 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Eddie Stegall

Injury No. 03-040115

Employer: J. V. Transfer a/k/a Julie Voelk
Insurer: American Home Assurance Company
Hearing Date: May 16, 2005 Checked by: NGA
Submitted: August 16, 2005

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: May 8, 2003
5. State location where accident occurred or occupational disease was contracted: Oklahoma City, Oklahoma
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: Employee was driving a truck and was struck by a tornado.
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: Sternum, Ribs and body as a whole
14. Nature and extent of any permanent disability: 20% body as a whole
15. Compensation paid to-date for temporary disability: \$7,047.56
16. Value necessary medical aid paid to date by employer/insurer? \$14,737.64
17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$542.12 / \$340.12
20. Method wages computation: By Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)
80 weeks of permanent partial disability from Employer × \$340.12 = \$27,209.60
weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning _____ for claimant's lifetime.

22. Second Injury Fund liability:

_____ weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:

_____ weekly differential payable by SIF for _____ weeks
beginning and, thereafter, for claimant's lifetime.

TOTAL: \$27,209.60

23. Future requirements awarded: None

Said payments to begin May 9, 2003 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Jacqueline Ross.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Eddie Stegall Injury No. 03-040115

Employer: J. V. Transfer a/k/a Julie Voelk

Insurer: American Home Assurance Company

Hearing Date: May 16, 2005 Checked by: NGA

Submitted: August 16, 2005

Prior to presenting evidence, the parties stipulated the only issue to be determined by this hearing is did the Claimant's accident arise out of his employment.

The parties agreed that on May 8, 2003, Eddie Stegall was an employee of J. V. Transfer a/k/a Julie Voelk. The employer was operating under the provisions of the Missouri Workers' Compensation Law and was fully insured by American Home Assurance Company.

The parties also agreed that on May 8, 2003, Eddie Stegall sustained an injury and, as a result of his injury, the claimant sustained a permanent partial disability in the amount of 20% of the body as a whole.

The parties further agreed that the employer had proper notice of claimant's injury. The claimant has filed a timely claim for compensation. The agreed rate of compensation is \$542.12 per week for temporary total disability and \$340.12 per week for permanent partial disability. Medical aid has been provided in the amount of \$14,737.64. Compensation has been paid in the amount of \$7,047.56 representing a period of 13 weeks.

The claimant testified in person. He is 55 years old. I found him to be a believable witness.

He said that on May 8, 2003, he was driving a standard cab 18-wheeler truck in Oklahoma City, Oklahoma. He had left Saginaw, Michigan on the previous day.

He was to deliver his truckload to the General Motor's plant in Oklahoma City by 6:00 p.m. that day. If he was late, he would not necessarily be fired for one occasion but he was expected to be on time and it was important to his employer. If he were routinely untimely his employer would lose the General Motor's business.

At 5:30 p.m., he was close enough to the General Motor's plant that he would be on time. He stopped his truck and was waiting for a red light to change. Suddenly, the wind began to blow. He heard a siren sounding. His truck started to shake violently.

The claimant attempted to get out of his cab but he was unable to. He held onto the steering wheel of the truck. The truck was flipped over. In the process, he was thrown about the cab. The truck was eventually turned upright again. The truck had been struck by a tornado.

The claimant suffered a fractured sternum and 13 fractured ribs. He was taken to a hospital emergency room where he was joined by other people who were injured by the same tornado.

"Tornadoes are acts of God. The generally accepted rule is that an injury resulting to an employee by reasons of the elements or act of God may be compensable as an injury arising out of his employment only where it is shown that the nature of the employment subjects the employee to hazards from the forces of nature over and above those to which the public generally is exposed. The character of the employment in the involved aspect must be such as to intensify the risks that arise from the extraordinary natural cause. The test has been said to be not whether the injury was caused by an act of God but whether the one injured was by his employment specially endangered by the act of God. If not, the general rule that injuries resulting from exposure to weather conditions such as heat, cold, ice, snow, lightning and tornado are to be considered as risks to which the general public is exposed, and not within the purview of the Workmen's Compensation Law, applies even though the person at the time he received his injury may have been performing duties incidental to and in the course of his employment, [citations omitted]. Thus, injury sustained as a result of a tornado is not ordinarily compensable unless the employee by reason of his employment is exposed to the risk of such harm to a greater degree than the public generally in the same vicinity." *Williams vs. Great Atlantic & Pacific Tea Co.*, 332 S.W.2d 296, 298 (K.C. Ct. App. 1960). Thus, our initial inquiry is whether Ed Stegall was at an increased risk from the general public because of his employment as a truck driver with JV Transfer.

The employer argues that the claimant was at the same risk of injury and not exposed to a greater hazard than others in the path of the tornado. The employer cites *Stone vs. Blackmer & Post Pipe Co.*, 27 S.W.2d 459 (Mo.App. 1930) and the *Williams'* case.

In *Williams*, a checker at a grocery store brought an action for benefits when the wall of a store he was working in was caved in by a tornado, which had caused destruction of property over a wide area. The court went on to note that many other stores were damaged by the storm and the particular building that *Williams* was in was constructed as strongly as the other damaged buildings.

In this case, the claimant was in a large slow-moving non-maneuverable vehicle. He was stopped at a stop light and had no opportunity to maneuver and escape the path of a tornado.

The truck and attached trailer, while they have weight, are particularly vulnerable to tornados because of the large surface area that is exposed to the wind making it more unstable. It also has an opening underneath that would cause air currents to create more stress on the vehicle than a building.

All safety information on tornados advises one to not stay in a vehicle upon the approach of a tornado. The advice is to exit one's vehicle and seek shelter in a ditch or a culvert or even be flat on the ground. People are warned not to stay in their vehicle.

The warning system for tornadoes has advanced considerably from what was available when the other Missouri tornado cases took place. We now have the National Weather Bureau warning system and Doppler Radar.

The truck did not have a radio from which the claimant could have received information that would have allowed him to either miss the path of the tornado or to have sought shelter.

The claimant was aware that a vehicle is a dangerous place to be in a tornado. He indicated this by attempting to exit the vehicle when he heard the warning siren and noticed the wind, but he was unable to exit the vehicle.

If he did not have a time limit to be at the General Motor's plant, he could have stopped his truck and sought shelter before he got in the path of a tornado. He said the previous week at his home in Michigan, he had spent the afternoon in his basement and not operated a vehicle due to tornado warnings issued by the weather bureau.

The fact the General Motors Plant was damaged does not mean that the claimant would or would not have been injured had he been at the plant when the tornado struck.

I do not find the fact that other people were injured as relevant. We do not know what they were doing, what their exposure was, whether they received warning or acted prudently once they received warning.

I find and believe from the evidence that the claimant was exposed to a hazard from the tornado greater than that to which the public generally was exposed. Mr. Stegall's injury was the result of an accident arising out of and in the course of his employment.

As the parties have stipulated, the claimant sustained a permanent partial disability in the amount of 20% body as a whole. I order and direct the employer to pay to the claimant the sum of \$340.12 per week for a period of 80 weeks for a total of \$27,209.60.

Ms. Jacqueline Ross is hereby assigned a lien in the amount of 25% of this Award for necessary legal services provided claimant.

Date: 09/01/05

Made by: /s/ Nelson G. Allen
Nelson G. Allen,
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret
Patricia "Pat" Secret, Director
Division of Workers' Compensation