

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

Injury No.: 02-030431

Employee: Lisa M. Stegman

Employer: Grand River Regional Ambulance District

Insurer: Missouri Rural Services Workers' Compensation Insurance Trust

Additional Parties: 1) North Kansas City Hospital (MFD No.: 02-00159)
2) NwMo Emer Physicians (MFD No.: 02-00717)
3) Eckerd Pharmacy (MFD No.: 02-00235)
4) Heartland Regional Medical Center (MFD No.: 02-00202)

Date of Accident: March 31, 2002

Place and County of Accident: King City, Gentry County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. 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 January 29, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Robert B. Miner, issued January 29, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 30th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

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 decision of the administrative law judge should be reversed. I believe the administrative law judge erred in concluding that employee failed to meet her burden of proof that she was in the course of employment at the time of the accident.

Employee went on-call as a certified EMT at 5:00 p.m. on March 31, 2002. After employee went on-call, she received a page while she was at home. Employee began to respond to the emergency which was a high priority call. At that point employee began to receive her regular hourly wage from employer. Employee ran back to her bedroom to change clothes and proceeded to the garage attached to her house to get her shoes. After she put on her shoes, she was on her way to her vehicle when she twisted her right knee and fell. Employee testified that she was moving as quickly as possible to get to the accident scene. Employee was unable to go to the accident scene because of the injury to her right knee. Employee was taken immediately to the hospital for treatment.

In order to be compensable under Missouri Workers' Compensation Law, an employee's injury must arise out of and in the course of his employment. § 287.120.1 RSMo; *Custer v. Hartford Ins. Co.*, 174 S.W.3d 602, 610 (Mo. App. W.D. 2005). There are two separate tests for the terms "out of" and "in the course of" both of which must be met in order for the employee to be entitled to compensation. *Id.* "The general rule is that an injury is one that 'arises out of' the employment if it is a natural and reasonable incident thereof and it is 'in the course of employment' if the action occurs within a period of employment at a place where the employee may reasonably be fulfilling the duties of employment." *Id.*

The court in *Seal v. Bogalusa Community Med. Ctr.*, 764 So.2d 968 (La. App. 2000) found that because employee "was still in his residence at the time of the accident is not dispositive of the issue of whether or not he was in the course and scope of his employment. At the time of the accident, he had been required by his employer to return to work and was being compensated by his employer. Clearly, Seal was under his employer's control. Therefore, considering the character or origin of the risk in this case along with the time and place relationship between the risk and the employment, we find that the injury arose out of and in the course of his employment." *Id.* at 969.

As in *Seal*, employee was required to respond to the emergency call and being compensated by employer as soon as she responded to her pager. Responding to the emergency was an integral part of the service provided by employee. There is no doubt that employee was responding to the emergency call when she was injured. Responding to the emergency call was part of employee's duties as an on-call EMT. When on-call, employee was required to have her pager on her at all times. She was at home when her pager alerted her of the emergency. Employee immediately responded to the call and her response immediately placed her on duty. Employee was heading to her vehicle, reasonably fulfilling the duties of her employment, when she was injured. Employee's car was parked in the garage and it was necessary for her to be there to get to her vehicle. Therefore, the fact that the injury occurred inside employee's garage does not negate the fact the employee was in the course of employment at the time of her injury. The moment employee began to respond to the emergency call; she began performing the duties of her employment. Therefore, any injury associated with the response to the emergency call would be within the course of employment.

Furthermore, it is in the public interest to encourage emergency personnel to hurriedly respond to emergencies. Given the nature of the employment, it is imperative for such individuals to move as quickly as possible. To limit the scope of coverage would deter on-call employees from rushing due to the fear of injury.

In this case, employee's response to the emergency call placed her on duty. Because employee incurred injury while responding to the emergency call, i.e., performing the duties of her employment, she is entitled to benefits.

Employee has met her burden by establishing that she was in the course of employment at the time of her accident. Accordingly, I would reverse the decision of the administrative law judge and award compensation.

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

John J. Hickey, Member

AWARD

Employee: Lisa M. Stegman

Injury No.: 02-030431

Employer: Grand River Regional Ambulance District

Insurer: Missouri Rural Services Workers' Compensation Insurance Trust.

Additional Party: North Kansas City Hospital (Medical fee provider)
(MFD No.: 02-00159)

Additional Party: NwMo Emer Physicians (Medical fee provider)
(MFD No.: 02-00717)

Additional Party: Eckerd Pharmacy (Medical fee provider)
(MFD No.: 02-00235)

Additional Party: Heartland Regional Medical Center (Medical fee provider)
(MFD No.: 02-00202)

Hearing date: November 7, 2006.

Checked by: RBM

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? Yes.
4. Date of accident or onset of occupational disease: March 31, 2002.
5. State location where accident occurred or occupational disease was contracted: King City, Gentry 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? 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: Employee, a paramedic, was in the garage attached to her home when, while stepping around the front of an extended cab pickup truck, she twisted her right knee and fell backwards onto a bicycle at a time when she was responding to an emergency ambulance call.
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: Not determined.
14. Nature and extent of any permanent disability: Not determined.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.

18. Employee's average weekly wages: \$467.96.

19. Weekly compensation rate: \$311.97 for temporary disability and \$311.97 for permanent partial disability.

20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.

22. Second Injury Fund liability: None.

TOTAL: None.

23. Future requirements awarded: None.

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PRELIMINARIES

A Hearing for Final Award was held at the Missouri Division of Workers' Compensation, St. Joseph office on November 7, 2006. Lisa Stegman ("Claimant") appeared in person and with her counsel, Robert E. Douglass. Attorney Paul D. Huck was present representing Missouri Rural Services Workers' Compensation Insurance Trust ("MRSWCIT and/or the Trust"). Attorney Mario Mandina was present on behalf of North Kansas City Hospital's ("NKCH") direct pay medical fee request. At the beginning of the hearing, attorney John Warren, attorney for Heartland Regional Medical Center, appeared by speaker telephone and informed the Administrative Law Judge and the parties and attorneys present in the courtroom, that Heartland Regional Medical Center had been paid in full in connection with its direct pay medical fee request, and attorney Warren made an oral Motion to Withdraw Heartland Regional Medical Center's direct pay medical fee request. Attorney Warren's Motion was sustained by the Administrative Law Judge ("ALJ"), and the medical fee request of Heartland Regional Medical Center was ordered withdrawn. Attorney Warren's telephone call then terminated, and he participated no further in the hearing.

Although duly notified of the hearing, neither NwMo Emer Physicians, nor their attorney, Henry Griffin, appeared in connection with NwMo Emer Physicians' direct pay medical fee request. Although duly notified of the hearing, there was no appearance, either in person or by attorney, on behalf of direct pay medical fee request of Eckerd Pharmacy. Attorney Franklin Foster, who is entered as attorney for Employer, did not appear in person or by phone. Todd Stegman, husband of Claimant, was also present during the hearing.

The parties entered into certain stipulations and agreements as to the evidence and issues to be presented at this Hearing.

The parties agreed that Proposed Awards be submitted on or before December 1, 2006.

STIPULATIONS

The parties stipulated:

1. On or about March 31, 2002, Grand River Regional Ambulance District ("Employer") was an employer operating under the provisions of the Missouri Workers' Compensation law.
2. Employer's liability was fully self-insured by its membership in MRSWCIT.
3. On or about March 31, 2002, Lisa M. Stegman ("Claimant") was an employee of Employer

and was working under the provisions of the Missouri Workers' Compensation law.

4. On or about March 31, 2002, Claimant sustained an accident at her home.
5. Employer had timely notice of the accident.
6. A claim for compensation was filed within the time prescribed by law.
7. On or about March 31, 2002, Claimant's average weekly wage was \$467.96, resulting in a weekly compensation rate of \$311.97 for temporary total disability, and \$311.97 for permanent partial disability benefits.
8. The Trust paid no compensation.
9. The Trust furnished no medical aid.
10. Claimant's attorney requests an attorney's fee of 25% on any award of past incurred medical expenses and permanent partial disability benefits.
11. No claim is made for temporary total disability benefits.
12. No claim has been filed against the Second Injury Fund.

ISSUES

The parties stipulated that the issues to be determined were:

1. Whether Claimant's accident arose out of and in the course of her employment?
2. If the accident is found compensable, what injury or injuries were medically causally related to the accident?
3. If the accident is found compensable, what is the liability of the Employer's self-insured Trust for past incurred medical bills, all of which are being disputed on the reasonableness of the charges and some of which are being disputed on their medical causal relationship to the accident?
4. If the accident is found compensable, what is the Employer's self-insured Trust's liability for permanent partial disability benefits?
5. If the accident is found compensable, whether the Employer's self-insured Trust is liable for any future medical treatment and, if so, what is the nature of the treatment?
6. If the accident is found compensable, what is the liability of the Employer's self-insured Trust relating to the direct pay Medical Fee Requests of North Kansas City Hospital, NwMo Emer Physicians, and Eckerd Pharmacy?

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EXHIBITS

The following exhibits were admitted into evidence without objection:

Claimant's Exhibits:

- A. Heartland Regional Medical Center - medical records.
- B. Heartland Regional Medical Center - billing records.
- C. JM Healthcare, Inc. (Dr. Miller) - medical records.
- D. The Orthopedic & Sports Medicine Center - medical records.
- E. The Orthopedic & Sports Medicine Center - billing records.
- F. St. Francis Family Health Care (Dr. DiStefano) - medical and billing records.
- G. St. Francis Hospital & Health Services - medical records.
- H. St. Francis Hospital & Health Services - billing records.
- I. Wasif F.M. Almuttar, M.D. - billing records.
- J. Stanberry Pine View Manor - medical and billing records.
- K. Northwest Medical Center (formerly Gentry County Memorial Hospital) - medical records.
- L. Northwest Medical Center (formerly Gentry County Memorial Hospital) - billing records.
- M. Healthsouth Corporation - medical and billing records.
- N. North Kansas City Hospital - various admissions.
- O. North Kansas City Hospital - admission of October 20, 2002.
- P. Consultants in Gastroenterology - billing records.
- Q. Pulmonary Medicine Associates - billing records.
- R. Northland Radiology, Inc. - billing records.
- S. Northland Cardiology - billing records.
- T. D.J. Orthopedics, LLC - medical and billing records.
- U. Mid America Gastrointestinal Consultants (Dr. Allen) - medical and billing records.
- V. Mayo Medical Transport and Gold Cross Ambulance Service - medical and billing records.
- W. Mayo Clinic - medical records.
- X. Mayo Clinic - billing records.
- Y. CV - Dr. Brent Koprivica.
- Z. Report of Dr. Koprivica dated December 15, 2005.
- AA. Report of Dr. Koprivica dated January 4, 2006.
- BB. Initial Form 1/Report of Injury.
- CC. Amended Form 1/Report of Injury.
- DD. Ambulance Log.
- EE. Copy of Claimant's Exhibit List.
- FF. Medical bill of Grand River Regional Ambulance District.
- GG. Medical bill of JM Healthcare (\$330.00).

- HH. Medical bill of JM Healthcare (\$31.00).
- II. Medical bill of Professional Radiology of St. Joseph dated 6/3/02 (\$293.00).
- JJ. Medical bill of Emergency Physicians Service at Heartland (\$69.96).
- KK. List of Additional bills claimed.
- LL. Summary of total medical billing charges.

Insurer's Exhibits:

1. Mayo Clinic dated 3/21/79-1/6/03.
2. Jackie Miller, D.O. dated 1/28/00-7/22/04.
3. Grand River Regional Ambulance District Full-Time Employee Policy dated 11/15/95.
4. Grand River Regional Ambulance District Part-Time Employee Policy dated 9/19/01.
5. Ambulance Call Schedule dated 3/02.
6. Daily Call Log for Vehicle #5893 dated 3/10/02-4/14/02.
7. Ambulance Report dated 3/31/02.
8. Employee Time Logs.
9. Payroll Records/Time Cards of Lisa Stegman.
10. Original Claim for Compensation dated 6/20/02.
11. Deposition of P. Brent Koprivica, M.D. dated 6/20/06.
12. John A. Gragnani, M.D. report dated 7/17/06.
13. Deposition of John A. Gragnani, M.D. dated 10/5/06.
14. Deposition of Mona Scott taken 10/27/06.
16. Certified Notice of Hearing directed to Eckerd's Pharmacy.
17. Certified Notice of Hearing directed to Northwest Emergency Physicians.
18. Copy of Insurer's Exhibit List.

North Kansas City Hospital's Exhibits: [\[1\]](#)

1. Notice of filing of medical bills affidavit of NKCH (\$56,048.47).
2. Notice of Services Provided and Request for Direct Payment of NKCH.
3. Joint submission of Insurer's Exhibit 14/deposition of Mona Scott taken October 27, 2006.

In addition, Insurer offered Exhibit 15, Correspondence from Meridian Resource Company dated 1/6/06. Attorney for Claimant objected to the admission of Exhibit 15 on the ground of relevance. Claimant's objection to the admission of Exhibit 15 is overruled.

SUMMARY OF THE EVIDENCE

Claimant's Testimony

Claimant testified she was born on July 1, 1969 and was 37 years old. She resided in a ranch house in King City, Missouri, and had lived there since 2000. She had been employed full time for the Grand River Regional Ambulance District since 1993. That was located at 104 S. Ohio St. in King City, about one-half mile from her home. She received an EMT certificate from Hillyard's, and obtained

a paramedic's license in 1993. Claimant graduated from high school in 1987. She took some general courses at Missouri Western State College. Prior employment included being a dispatcher and a clerk. In March 2002 she was a full-time paramedic and crew chief for Employer.

On March 31, 2002, which was Easter Sunday, Claimant went on call at 5:00 p. m.. Alice Shaw was also on call. Claimant had worked for Employer the week before Easter weekend. On March 31, 2002, a page went off in the evening. Claimant received the page while she was at home. It was a priority one call which was the most important type of call. Claimant learned there had been a rollover accident, and a person was trapped in a car between King City and Union Star Missouri. Claimant was standing in her kitchen in her pajamas scooping ice cream with her family when the page came in. Claimant lives in a home with an attached garage. It is three steps up to the kitchen from the garage.

After the page came in, Claimant ran back to her bedroom to change clothes. She then went into the attached garage to get her shoes. She has a two-car garage that contained an extended-cab pickup and a Chrysler automobile. After she put her shoes on, and while she was in the garage on her way to her vehicle, she stepped around the front of the truck near the driver side, twisted her right knee, and fell backwards, landing on her hip on a wheel of a bicycle. She did not slip or twist. Her husband was behind her in the garage. He was going to go with her to the accident scene even though he was not on call. She said he was going as fast as she could when this happened. After she fell, she sat down. Her husband said she needed to get up. She got up and stood next to the pickup truck and put weight on her right leg, but she could not support her knee. She did not go on the call. She told her husband to go to the ambulance barn. Her children got her into a chair and called her sister-in-law. Her in-laws came to the house and helped her into her sister-in-law's car, and she was taken to the hospital.

Claimant said she did not know that Donna Miles would show up for the call. Donna did go to the accident scene on Sunday evening. Claimant said that the ambulance call began at the barn.

Claimant was treated in the emergency room by a nurse practitioner who put a knee brace on her, gave her crutches, and told her to see her primary care doctor, Dr. Jackie Miller. She did not see Dr. Miller, but instead saw Dr. Humphreys in St. Joseph. Dr. Humphreys examined her, put her in a brace, and said if she was not better in two weeks to come back. She said her knee was in constant pain and was swollen, and she could not put weight on it. She then saw Dr. Distefano on recommendation from Dr. Miller. Dr. Distefano performed a right knee ACL repair in April 2002 at St. Francis Hospital. She said her ACL was torn completely in two. She was in the hospital one day, and came home with crutches and a knee brace which she wore for several weeks. She had physical therapy before and after her surgery.

Claimant went to the Gentry County Memorial Hospital in May 2002 for shortness of breath and swelling in her right leg. She first had symptoms of shortness of breath on May 14, 2002—twenty-six days after her surgery. She returned to work on July 6, 2002. She was transferred the next day to North Kansas City hospital by a Grand River ambulance. She was diagnosed with a blood clot, and a Greenfield filter was inserted. She also had blood clots in her lung—a pulmonary embolism. Before that she had deep vein thrombosis. She was put on a heparin drip at the hospital, and later put on Coumadin. She was at the North Kansas City hospital for about two weeks. Dr. Joseph Henry was her pulmonologist who treated her there. Physical therapy started on May 6, 2002. She had four physical therapy sessions between May 6 and May 13, 2002.

After she was discharged from North Kansas City Hospital, she went home and saw Dr. Miller to have her protime checked. She had severe pain in the right side of her back. Her filter was checked and was found to be okay. She got an IV for pain. An MRI was done for her right hip. She continued to have protime testing for Coumadin. She saw Dr. Henry's partner in October 2002, and had her blood drawn. She was in respiratory distress, went home, and then was told to come back for a blood transfusion. She was hospitalized at North Kansas City Hospital for several days and had an IV in her left foot because of a clot in her leg. When she was at North Kansas City Hospital the second time, she was taken off Coumadin. She was not prescribed with any other anticoagulant.

Before Christmas 2002 she went to North West Medical Center hospital for blood transfusions. She was not taking Coumadin then. She had a lung scan at North West Medical Center. She had severe abdominal pain and went to the emergency room. A doctor there said she might have appendicitis. She was treated at Heartland Hospital by Dr. Beheler who told her she was full of blood clots from her waist down. She was transferred to the Mayo Clinic. She had severe abdominal pain, and both of her legs were swollen. She was a patient at the Mayo Clinic for about two weeks. She was diagnosed as being full of clots from the waist down, and her Greenfield filter had plugged up.

Claimant was admitted to North Kansas City Hospital for the second time on October 24, 2002. The purpose was to investigate and better define her anemia. She acknowledged that the Heartland records showed that her diagnosis of abdominal pain was associated with taking antibiotics. She did not recall what antibiotics she took. She said she is allergic to codeine, and she should not take anti-inflammatories. She had already planned to go to the Mayo Clinic to have an overall evaluation of her anemia, a condition she had had since age 10. Lab tests at Mayo showed a protein S deficiency. Dr. Miller treated Claimant for that condition in 2003 and 2004.

Claimant said her medical bills had been paid under group health insurance. She had not been billed by North Kansas City Hospital. She rated her pain at 4/10 in her knee. She was not on any prescription pain medication for her knee. She was not wearing compression stockings at the time of the hearing. She had not had any recurrent clots since her release from the Mayo Clinic.

Prior to March 2002 she had had some trouble with blood count. She had anemia at age 10 and had a blood transfusion. She had been treated at Mayo's when she was 10 years old, and had exploratory surgery in an area near her breastbone. She did not take medication after that. Dr. Miller's January 28, 2000 record noted that Claimant had fatigue. That record also noted that Claimant had a history of a transfusion seven years before at the age of 23. Claimant denied that statement. She said she tried to donate blood, but did not have a transfusion. Dr. Miller had ordered blood work and found it to be abnormal on January 20, 2000. She was admitted to the hospital then and had another transfusion. The source of her bleeding was not identified then. Claimant was also treated by Dr. Miller in February 2002 for fatigue. She started taking an iron supplement in 1992 or 1993, and was taking an iron supplement in March 2002.

Claimant said she was working without any permanent restrictions at the time of the hearing in the same capacity as before her March 2002 accident. She restricted her activities because of blood clots. She does not do horseback riding, and she cannot run, squat, or jump. She tries to avoid rough terrain while working as a paramedic. She still has problems with her right knee, including pain, swelling, and

grinding. These problems are not constant, but she has them almost daily. She takes Tylenol. She also takes Coumadin, and will have to take that for the rest of her life. She has taken Coumadin daily since she left Mayo's. She takes 10 mg of Coumadin Monday through Friday, and 5 mg on Saturday and Sunday. She gets protime checked once per month at Dr. Miller's office. She occasionally has her hemoglobin checked if she feels weak. She has swelling in her left lower extremity, and if she is sitting, she has more swelling. She tries to walk hourly. She has had blood transfusions since being at Mayo's.

Claimant saw Dr. Gragnani in St. Louis at the request of Employer. While on the trip to St. Louis, her Coumadin was too thin, and she was bleeding in her bowels. She cut her knee the night before the appointment, and it would not heal. She was nauseated the next morning, had diarrhea, and her toilet was full of blood. The doctor in St. Louis noted the blood, and cleaned and bandaged her. She returned to Chillicothe, and then went to the St. Joseph emergency room because of continued bleeding of her bowels. She was admitted to the intensive care unit and given two units of blood. Since that time she has been fine and has been working.

Claimant testified that the King City Ambulance building had an office in back. She worked there from 8:30 a.m. until 5:00 p.m. Monday through Friday, and earned \$10.60 per hour for the first forty hours, plus time and one half for hours worked over forty hours per week. Her full-time work generally did not include weekend calls. She was on call on an as needed basis. Ninety percent of her time was spent in the office by herself. Part-time employees did not work in the office. Claimant said that when the pager went off she went to overtime.

Claimant had Blue Cross Blue Shield health insurance provided by Employer. All employees used log sheets to keep track of time. The office hours during the week were from 8:30 a.m. to 5:00 p.m. and began and ended at the ambulance building known as the barn. Ambulance runs began and ended at the barn. Two persons were on call at all times.

Claimant said she was on call with Alice Shaw on March 31, 2002. She said she was on call between 5:00 p.m. until midnight on that day. Her pay when on call was \$4.25 per hour as an on call paramedic. Alice Shaw receive \$3.25 per hour when on call. Claimant said that she was not confined to her house when she was on call. She said that a five minute response time is not mandatory, and an employee is not subject to discipline for failure to respond to an ambulance call within five minutes. Claimant said it was very common for more than two persons to respond to an ambulance call.

Claimant said her actual on call shift started at 5:00 p.m. on Sunday. Alice Shaw was on call the entire weekend of March 29, 2002 through March 31, 2002. Alice Shaw was on call during all five work shifts. There were two runs that weekend--one on Friday night, and a second on Sunday night. The two employees who handled the Friday night call were Donna Muff and Alice Shaw. Those two employees also handled the Sunday night call. Claimant said that she and her husband were going to respond to the Sunday night call in separate vehicles. Her husband was going to the scene to lend a hand. They seldom go on call together.

Claimant said she was not claiming any injury to her back or hips.

Testimony of Barbara Shupe

Barbara Shupe testified that she was the District manager of Employer, and had been Employer's administrator for thirteen years. Her duties included overseeing the operation of the ambulance district, making sure the finances were in order, and handling scheduling. The District covers all of Gentry County, and parts of four other counties. There are three ambulances stationed in the District--one in Albany, one in Stanberry, and one in King City. Claimant was crew chief and paramedic in King City. Ambulance district employees carry pagers and are required to respond when a call comes in. Two people have to be on the ambulance twenty-four hours a day, seven days per week.

On March 31, 2002, Employer had four full-time employees. Claimant was the only full-time employee in King City. There were four or five volunteers who worked part-time in King City including Claimant's husband, Todd Stegman. Claimant and her husband live in King City within one mile of the ambulance building. During March 2002, Claimant's regular work hours were 8:30 a.m. until 5:00 p.m. Monday through Friday. She was also on call from 5:00 a.m. until 5:00 p.m. She was paid \$10.60 per hour. Claimant was paid to be on call. If she was called out during her on call hours, she received full pay. Claimant had a pager. Calls came from a 911 center in Albany. When Claimant was paged, and she was on call, her pay went to \$10.60 per hour from \$4.25 per hour. When an on call employee received a page, the employee usually called 911 from the ambulance to find out additional information. The suggested response time was five minutes to get from the place where the page was received to get to the ambulance.

Barbara Shupe was out of town when Claimant was hurt on March 31, 2002. She prepared a report of injury (Exhibit BB) that had "p.m." marked, but the time was not marked. Exhibit CC, a copy of report of injury, had the time marked "two o'clock." Barbara Shupe said she did not put that time on exhibit CC. Barbara Shupe maintained the ambulance call logs for the King City unit in her office in Stanberry.

Barbara Shupe had known Claimant for thirteen years. Claimant was crew chief. There were always two employees on call on weekends. Over ninety percent of Claimant's work was in the office. Full-time employees were provided health insurance. In March 2002, that was Blue Cross Blue Shield, a policy with a \$500.00 deductible. Claimant was covered by Blue Cross Blue Shield in March 2002.

Employees were required to keep track of their time, and were to break down their time including on call time. When actual working hours exceeded forty hours, employees were paid at a different rate. If employees actually worked forty hours, they had to be paid the minimum wage, or \$5.15 per hour. Records were kept for full-time employees showing actual working hours and time spent on call.

Employees were permitted to undergo a wide range of personal pursuits while on call. A five minute response time was not mandatory. No employee was disciplined for violating the five minute response time. Claimant did not travel to the ambulance barn on March 31, 2002 after her accident. She was paid from 5:00 p.m. until midnight on March 31, 2002 at \$4.25 per hour

According to the logs, a page went out at 8:26 p.m., Claimant's fall occurred after that in her garage according to Claimant. Four people were initially responding to the call on March 31, 2002-- Claimant, her husband, Alice Shaw, and Donna Muff. Alice Shaw and Donna Muff responded to the only other call that weekend, which was a call on Friday night. Alice Shaw was on call on Sunday night, March 31, 2002. Claimant only responded to one call that weekend, but she was not a primary. She was

on transfer.

Two injury reports were prepared. Neither included a time. The fall occurred at Claimant's home in her attached garage, and not on a street or at the ambulance barn.

Medical Evidence

Records of JM Healthcare, Inc. (Dr. Jackie Miller) (Exhibit C) included notes of Claimant's office visit on January 28, 2000. Those notes mentioned a history of anemia-seven years ago, had a transfusion. The impression was fatigue. A February 19, 2002 progress note indicated "feeling tired lately." A history of GI bleed was noted.

Records of Heartland Health (Exhibit A) note that Claimant was admitted at Heartland in St. Joseph, Missouri on March 31, 2002 with a chief complaint of right knee injury. The history of present illness noted that Claimant stated she had gone out into her garage to go to work for an ambulance call. Claimant noted both her car and a bicycle in the garage. She stated she had slipped. She inverted her right foot, everted the patella, and fell to the ground on the bike. She had pain and swelling in the knee. She did not injure herself elsewhere. Past medical history was noted to be positive for anemia, and NSAID exacerbated gastritis which caused GI bleeding and required blood transfusion. The clinical impression was acute right knee strain and pain. An x-ray of the right knee was taken and found to be negative for any fracture or other abnormality at that point. A right knee immobilizer was placed. Claimant had her own crutches. She was given pain medication and instructions to follow up with Dr. Miller within seven days.

Records of The Orthopedic Sports Medicine Center (Exhibit D) included a note from Dr. Humphreys dated April 2, 2002 that stated Claimant injured her right knee two days before. Claimant was noted to have been responding to an ambulance call and twisted her knee in her garage and went to the ER herself. The doctor noted a small effusion and tenderness. His impression was that it looked like she strained her knee and could have something going on with the meniscus or her ACL. The note indicated he would have her wean herself out of the brace as she tolerated and come back in two weeks. An April 8, 2002 note indicated Claimant had called complaining of right posterior hip and leg pain. Per Dr. Humphreys she needed to see a neurosurgeon or someone that treats the back.

Records of St. Francis Orthopedic Sports Medicine (Exhibit F) noted that Claimant visited the office on April 9, 2002, with a chief complaint relating to the right knee. She was unable to bear weight. A note dated April 16, 2002 indicated Claimant still had pain with weight bearing. The note indicated a large effusion, ACL strain, lateral tibial plateau micro fracture, right knee patella subluxation/LTC bone bruise/ACL strain. Claimant was given a prescription for pain medication. Dr. DiStefano performed surgery on Claimant's right knee on April 18, 2002, at St. Francis Hospital & Health Services in Maryville, Missouri. The surgery consisted of an arthroscopy, debridement of chondromalacia of the patella, and an anterior cruciate ligament reconstruction.

The Pine View Manor, Inc. records (Exhibit J) contained records showing that Claimant had therapy there for her knee in April, May, June, and July 2002. A report from therapist Diane Wilson dated July 19, 2002 noted that she had seen Claimant for twenty-five physical therapy

visits. As of that date, Claimant was ambulating without crutches and was wearing a knee brace. Exhibit M contained records of Healthsouth Corporation. Claimant had numerous therapy sessions at Healthsouth for her right knee from July 22, 2002 until her discharge on November 7, 2002.

Dr. Miller's records included a May 14, 2002 progress note, "Claimant 'c/o exertional SOB. Admit." X-rays were taken of the chest, and no acute process was found.

Records of Northwest Medical Center (formally known as Gentry County Memorial Hospital) (Exhibit K) included a history and physical for an admission on May 14, 2002. She was admitted with shortness of breath. She was transferred on May 15, 2002 to North Kansas City Hospital.

Exhibit N contained the medical records of North Kansas City Hospital. Claimant was admitted at North Kansas City Hospital on May 15, 2002. She had swelling of her lower extremities prior to her admission, and was notably quite breathless. Her family physician, Dr. Miller, started her on Lovenox. Her history and physical noted she had multiple pulmonary emboli. Her past medical history was noted to be significant for chronic anemia and repair of anterior cruciate ligament. Her treating doctor at North Kansas City Hospital was Dr. Joseph Henry. A Greenfield (IVC) filter was placed on May 15, 2002. She was treated with IV heparin, and was started on Coumadin on May 22, and once the protime was therapeutic, heparin was stopped. She developed abdominal pain while in the hospital. She had consistent back pain that was felt to be most consistent with sacroiliac dysfunction. She was discharged with instructions to follow up with her regular physician, Dr. Miller, for continued Coumadin monitoring. She was discharged from North Kansas City Hospital on May 27, 2002. The discharge diagnosis was: (1) multiple pulmonary emboli, (2) sacroiliac dysfunction and (3) history of gastrointestinal bleeding.

Dr. Miller's note dated May 28, 2002 (Exhibit C) indicated follow-up--released from NKC May 27, 2002 and complained of pain right flank and radiated down RLQ. She had filter placed in inferior vena cava due to blood clots. The impression was right hip pain. An x-ray of the pelvis and right hip taken on May 28, 2002 noted an impression of no evidence for fracture by plain film. The records also included an MRI of the right hip report dated June 3, 2002 for hip pain. The impression was negative MRI of the right hip.

Exhibit O contained the records of North Kansas City Hospital for an admission on October 22, 2002 for anemia. Claimant received blood transfusions. She had been on Coumadin the last five months, and it was noted that because of anemia and blood loss, the Coumadin had been discontinued. She was noted to need iron therapy. She was discharged on October 24, 2002 by Dr. Joseph Henry.

Claimant visited Dr. Miller's office on October 31, 2002. The note indicated she was released from NKC hospital one week before. Claimant had a blood test. The note also indicated that Claimant had periodic blood tests at the clinic and took Coumadin and Warfarin in 2003 and 2004.

Exhibit U contained records of Mid-America Gastrointestinal Consultants. Claimant was

diagnosed by Dr. Mark Allen on November 15, 2002 with occult GI bleeding with negative endoscopies, colonoscopy, and small bowel enteroscopy. Claimant had an M2A capsule study done by Dr. Mark Uhl on December 2, 2002. His impression was several small erosions of the proximal small bowel.

The Northwest Medical Center records (Exhibit K) also included an x-ray report dated December 23, 2002 for a lung scan. The history was shortness of breath. The impression was negative for pulmonary embolus. Claimant received blood transfusions on December 18, 2002 and December 19, 2002. The diagnosis was anemia.

Heartland's records (Exhibit A) for an admission on December 26, 2002 noted chief complaint of abdominal pain, rule out appendicitis. Claimant had a six-day history of abdominal pain. Claimant gave a past history of having had six units of blood in transfusion over the past several days and of six units in transfusion in October. She stated she had long term chronic anemia which had been evaluated in a variety of institutions. She had a GI endoscopy and anterior cruciate ligament repair on April 20, 2002. Thereafter she had pulmonary embolism and was transferred to North Kansas City hospital where she underwent Greenfield filter on May 2, 2002. She had swelling of the legs thereafter. The impression for the December 2002 admission was abdominal pain, etiology obscure. Claimant was discharged on December 28, 2002. The discharge summary noted claimant was on Coumadin after placement of the Greenfield filter, but that had been discontinued due to her anemia thought to be due to bleeding. Claimant was noted to be massively obese. Her legs were enlarged due to a combination of obesity and edema. CT of the abdomen revealed dilated inferior vena cava, dilation at the common iliac veins with central low density suggesting extensive inferior vena cava and pelvic deep venous thrombosis, most likely related to perivascular edematous changes relating to the clot burden. Claimant had originally planned to go to the Mayo Clinic for overall evaluation of her anemia and other problems. Arrangements were made for transfer there by air ambulance on December 28, 2002. Final diagnosis at Heartland was iliac/pelvic vein thrombosis, acute and chronic; past history of pulmonary embolism with inferior vena cava filter in place; abdominal pain, nonspecific; massive edema of lower extremities; anemia, etiology not established.

Claimant was admitted at Mayo Clinic on December 28, 2002 and discharged on January 6, 2003. Exhibit W contained records of Mayo Clinic. The chief complaint on admission was abdominal pain and anemia. Claimant was noted to have a history of anemia requiring twelve transfusions over the past four months. The record noted also that Claimant had, apparently, a clot extending from the filter down into the iliac and severe lower extremity edema. The record noted that Claimant had been readmitted to an outside hospital on December 26 and was given morphine PCA for pain control. A CT of the abdomen revealed probable IVC bilateral iliac clots and nonspecific pericolic stranding. She was transferred to Mayo for further evaluation. She also complained of bilateral lower extremity swelling. The Mayo record noted Claimant was with probable thrombosis of the IVC and the deep veins on admission. Diagnosis was verified by a repeat CT scan of the abdomen. She was started on heparin. A thorough thrombophilia workup was initiated and was noted to be significant for a protein S activity of only 15% of expected. The record noted that the vascular medicine felt that while some of this decrease was secondary

to large clot burden, a degree of congenital protein S deficiency was very likely. It was suggested to have family members tested in the future. A CT scan of the right knee was done. Orthopedics felt that there was no infection in the knee, and did not recommend aspiration. Claimant was recommended to have screw removed in the future, but not urgently. Bilateral thigh high Jobst stockings were ordered for Claimant. The record noted that abdominal pain was felt to be secondary to the large DVT/IVC thrombus. Pain medications were prescribed. Claimant's anemia was felt most likely due to iron deficiency. Claimant was discharged with instructions to follow up with primary physician, Dr. Jackie Miller on January 8. And INR (adjust Coumadin dose), CBC (follow anemia), and electrolyte panel (follow potassium on Lasix) will need to be checked on that date.

Medical Experts

The medical report of Dr. P. Brent Koprivica dated December 15, 2005 (Claimant's Exhibit Z) documented the doctor's independent medical evaluation of Claimant on December 15, 2005. His deposition taken by Insurer's counsel on October 27, 2006 was admitted as Exhibit 11. One hundred percent of his practice is medical/legal evaluation, and virtually all of his exams are performed at the request of the claimant or the plaintiff. Dr. Koprivica is board certified in occupational medicine. He reviewed medical records identified in his report. His report summarized Claimant's educational and vocational history, including past work as a cashier, cook, aide at King City Manor, dispatcher, and employment with Employer.

Dr. Koprivica described the history of Claimant's present injury/illness. He discussed the history of Claimant's medical treatment. She was being maintained on Coumadin. She received transfusions in May 2003 and October 2005. Dr. Koprivica stated in his report that Claimant was temporarily and totally disabled for nearly a year associated with his injury. He noted that the extensive medical care and treatment which Claimant had received was felt to be medically reasonable and a direct necessity of the injuries sustained on March 31, 2002, including the transfer to the Mayo Clinic. He stated further that with a history of propensity to develop anemia and that the fact that Claimant had to remain on anticoagulant as a direct necessity of complications from the March 31, 2002 injury, the need for monitoring as well as the transfusions would be causally connected to the original injury date of March 31, 2002. He also stated in his report that he believed the complication from clotting was a complication that arose as a result of the trauma and the surgery that had been performed. He stated that was a known complication, and that had resulted in the necessity for placement of a Greenfield filter. Claimant had evidence after the Greenfield filter placement of extensive clotting involving the pelvis in both lower extremities in the treatment records. She continued to have post phlebotic symptoms with severe insufficiency problems involving both lower extremities. Dr. Koprivica's January 4, 2006 report (Exhibit AA) noted that he had reviewed additional records from North Kansas City Hospital related to an admission of October 20, 2002, and that after reviewing those records, he would not materially change any of his opinions or conclusions expressed in his December 15, 2005 report.

Dr. Koprivica testified that deep vein thrombosis can occur in almost anyone and is associated with multiple risk factors. He testified that Claimant's presentation was consistent

with other conditions which could possibly put her at risk for the development of DVT. He acknowledged that the Mayo records contained a questionnaire indicating that Claimant's mother had a history of bleeding. He was not aware of that until the time of his June 20, 2006 deposition. He noted the Mayo records indicated that Claimant had multiple transfusions, and a history of transfusion at age twelve and in early year 2000. He also noted those records contained a history of her passing dark stools. Dr. Koprivica indicated that Claimant was overweight and obese. He noted that there were indications in the records that Claimant had an adverse reaction to medications. He knew that Claimant had G.I. bleeding with the use of nonsteroidal anti-inflammatory drugs, by history.

Dr. Koprivica acknowledged that Claimant had been worked up at the Mayo Clinic for thrombophilia, a disease which affects the coagulability of the blood. He acknowledged the Mayo records indicated that vascular medicine noted what was felt to be a congenital protein deficiency that will require protein replacement. He acknowledged that Dr. Miller's June 16, 2004 office note indicated a history and diagnosis of protein S deficiency. He also acknowledged that Claimant was admitted to the North Kansas City Hospital on October 24, 2002 to attempt to get a better definition of her anemia. He also acknowledged that Claimant's next admission was to Heartland where she was admitted with a six-day history of abdominal pain that had the onset after being treated with an antibiotic, and then had six units of blood transfusion again in the hospital. Both legs were massively enlarged when he saw her. He also acknowledged that a history in a record from Heartland indicated that Claimant had originally planned to go to the Mayo Clinic for overall evaluation of her anemia.

Dr. Koprivica also testified that one of the known risks for developing a deep vein thrombosis is having surgery, and how sedentary someone is following the surgery has some bearing upon the likelihood of developing the disease. He testified that part of the response to surgery is to increase the propensity to clot. He stated that protein S deficiency makes you more likely to develop a blood clot. He also stated that if neither of Claimant's parents has protein S deficiency, Claimant does not have it, because it is an autosomal dominant inheritance. He admitted he had not seen any history of the parents being tested at the Mayo Clinic.

Dr. Koprivica concluded in his December 15, 2005 report that Claimant sustained permanent injury to her right knee as a direct and proximate result of the March 31, 2002 injury. He assigned a permanent partial disability of 25% at the level of the knee (160 week level) for the March 31, 2002 injury. In addition, he apportioned 10% permanent partial disability to the body as a whole for sacroiliac and chronic back pain complaints. He also assigned a 25% permanent partial disability to the body as a whole for severe problems with deep venous thrombosis and need for placement of inferior vena cava Greenfield filter and ongoing peripheral vascular involvement of the pelvis in both lower extremities. Globally he assigned a 50% permanent partial disability to the body as a whole. He noted that Claimant had ongoing, indefinite needs for anti-coagulation as a direct necessity of the March 31, 2002 injury. He stated the slip and fall she experienced on March 31, 2002 was not only a substantial factor, but the prevailing factor in the cause of the injury to her knee, the cause of injury to her back, and

the cause of the development of her deep vein thrombosis.

The medical report of Dr. John Gragnani dated July 17, 2006 and addressed to Insurer's counsel, was admitted as Exhibit 12. Dr. Gragnani's report described the history of Claimant's injury and medical treatment, her chief complaints, physical examination, and a description of records reviewed. His impression was: 1. history of right knee ligamentous injury, surgically repaired; 2. chondromalacia, right knee, surgically treated; 3. deep venous thrombosis, right leg, treated; 4. pulmonary embolism, secondary to 3, treated with Greenfield sieve; 5. recurrent thromboembolic disease, treated; 6. exogenous obesity; 7. Clotting disorder by history. Dr. Gragnani concluded to a reasonable degree of medical certainty that the injuries to her knee were related to her fall on March 31, 2002, and the surgical intervention was performed as a result of that injury. He also concluded to a reasonable degree of medical certainty that the deep vein thrombosis in the right leg was most likely triggered as a result of the immobilization and subsequent surgical treatment to the right knee. He concluded that as to the subsequent deep venous thrombosis and the complications related to blood transfusions and so forth, those would not be substantially related to the incident of March 31, 2002 and were more likely to be related to medical conditions that had been poorly defined but may be hypercoagulability due to possible protein S deficiency or some other deficiency that may be inherent in Claimant.

Dr. Gragnani noted that Claimant's weight of over 200 pounds put her at greater risk, and while the first instance of DVT may be related to the fall of March 31, 2002 and a subsequent surgery, the subsequent DVT, blood transfusions, hospitalizations and treatment for anemia have nothing to do with any work related condition or incident. He said there was no back injury and that Claimant had no current complaints in reference to her back. He said there is no disability or impairment stemming from any back condition and so there is no rating. In reference to the right knee, Dr. Gragnani said the rating would be 15% of the whole person for damage to the ligament with subsequent repair of the cruciate. He said there were no other areas to rate at that time as there were no other areas affected that had anything to do with any work related condition.

Dr. Gragnani's October 5, 2006 deposition was admitted as Exhibit 13. All objections contained in Dr. Gragnani's deposition are overruled. Dr. Gragnani practices in the areas of physical medicine and rehabilitation and occupational medicine. He is board certified in physical medicine rehab and in occupational and environmental medicine. About twenty percent of what he sees is requests for independent evaluations, and the other eighty percent are relative to treatment. Probably ninety-five percent of the independent medical examinations are from some source related to the employer. He testified that to a reasonable degree of medical certainty the March 31, 2002 accidental fall were (sic) not a substantial factor in the causation of the clotting dysfunctions that were subsequently diagnosed. He said they were a separate issue and the clotting disorders were not either directly caused or aggravated by the condition specifically or the fall of March 31, 2002. Dr. Gragnani was aware of Claimant's history that she had returned to work as a paramedic, and he had no objection to that.

Dr. Gragnani testified that he did not believe that Claimant's use of Coumadin was directly

related to the fall of March 31, 2002. He also testified that protein S deficiency can be an acquired condition as well as a hereditary one. He stated that almost a month had elapsed between the surgery and the deep vein thrombosis which was kind of unusual. Usually if there is a thrombophlebitis that is going to be induced by surgery, it happens within the first week or so following the surgery. He said she would not have developed the DVT and the pulmonary emboli in May of 2002 if she did not have a clotting disorder. He said that someone taking Coumadin is prone to more easily bleed because of the anti-coagulation. That presents some issues about caution and working around areas where they might be cut or traumatized where it might result in some bleeding, but beyond that, there is no impairment of the physical body and as a consequence, he could not establish a disability.

Mona Scott Testimony

Mona Scott's deposition was admitted as an Insurer's Exhibit 14. All objections contained in Ms. Scott's deposition are overruled. Ms. Scott is patient accounts counselor for North Kansas City Hospital. When asked whether there are ever any adjustments to write-offs to the fees and charges that are originally billed, she responded only with those companies that they contract with. They are limited by contract as to what they can bill a patient. The patient is billed for any of the fee adjustments or write-offs from the original amount billed only when the insurance company requests their monies back. She testified that the hospital billed Claimant's private insurer, Blue Cross Blue Shield, the total charges. They also sent a claim to Grand River Regional Ambulance District. She said that Claimant had no further responsibility for the three accounts as of that time due to contractual discounts. The total amount charged for the admission of May 15 through May 27 was \$46,786.93. The hospital received payment from Blue Cross Blue Shield of \$13,776.00. There was a contractual write-off of \$33,010.93. If there were not other issues such as the responsibility under workers compensation, the hospital would not be able to go after the patient for the amount written off. If the patient worker's compensation claim is denied, the hospital will not pursue the patient for the outstanding balances.

The hospital had stopped billing Claimant because of the pending workers' compensation case. The hospital had received a letter from Blue Cross Blue Shield stating that they would be seeking a refund of the money they had paid on behalf of Claimant if this claim was a worker's compensation claim. She also testified that if it is determined that Claimant's injury was work related, they would have to refund Blue Cross their payment, and the total charges for all accounts, or \$56,040.47, would be due and owing by the patient. If the claim is found to be work related, all of the write offs would not be applicable to Claimant, and at that point, Claimant could not come back to the hospital and ask for a patient discount, other than prompt pay discount which would be like twenty percent, or possible charity, but those would have to be decided at that time through a committee. It is not guaranteed that she would get a discount, and the hospital would be looking to Claimant for payment. She also said that the hospital probably had contractual discounts with workers comp providers, but she did not describe those.

DISCUSSION

Did Claimant sustain an injury by accident that arose out of and in the course of employment?

Generally, workers' compensation benefits are available for an employee's personal injury or death by accident arising out of and in the course of employment.^[2] In addition, the compensability of injuries is restricted to those associated with an employer's premises or an employee's performance of duties of employment.^[3] The accident must both "arise out of" and be "in the course of" employment.^[4] "Arising out of" and "in the course of" employment are two separate tests, both of which must be met.^[5] Claimant has the burden of proving both elements. An injury "arises out of" the employment if it is a natural and reasonable incident thereof and is the rational consequence of some hazard connected with the employment.^[6] An injury arises "in the course of" the employment when it occurs within the period of employment, at a place where the employee may reasonably be and while he is reasonably fulfilling the duties of his employment.^[7] There is no "all embracing definition" of the phrase "arising out of and in the course of the employment," and each case must be decided on its own facts and circumstances and not by reference to some formula.^[8] A claimant has the burden to prove all the essential elements of his or her case, and a claim will not be validated where some essential element is lacking.^[9] "To meet the test of ... 'arising out of' the employment, the injury must be a natural and reasonable incident of the employment, and there must be a causal connection between the nature of the duties or conditions under which the employee is required to perform and the resulting injury."^[10]

In general, an employee does not suffer injury arising out of and in the course of his employment if he is hurt while journeying to or returning from his place of work.^[11] It is not sufficient that the employment may simply have furnished an occasion for an injury from some unconnected source.^[12] In general, an employee does not suffer injury arising out of and in the course of his employment if he is hurt while journeying to or returning from his place of work because it is an inevitable condition of employment that every worker present himself at the assigned location to perform the task for which he was hired and depart therefrom when the day's work is over. The employer usually controls neither the place of residence chosen by the employee nor his mode of transport, and the employer therefore plays no part in the relative extent of the risk incurred by the employee in traveling to and from work.^[13]

The Missouri Court of Appeals further discusses this general principle in the *McClain* case:

Going to or returning from employment is a personal act, akin to dressing, grooming

and presenting oneself for work.... In other words, a trip to or from one's place of work is merely an inevitable circumstance with which every employee is confronted and which ordinarily bears no immediate relation to the actual services to be performed. 'If a worker is to do the task for which he is employed, he must of course present himself at his place of work at the appointed hour; and when his day's work is over, he is no longer subject to his employer's direction and control but is free to return to his home to do anything else that may happen to suit his own personal convenience. . . .' Suffice it to say that the following exceptions have been recognized by our courts: (1) the 'journey' exception authorizes compensation when an injury suffered by the employee occurs while the employee is traveling for the employer.... (2) the 'conveyance exception' where the employer furnishes the employee with a vehicle or the employee uses his own vehicle and the employer pays expenses on it when used for business purposes.... However, the use of the vehicle to go to or return home after the work day serves no employment-related function so that no award of compensation is authorized.... (3) the 'special task' exception whereby the employee performs a special task, service or errand in connection with his employment. In such cases compensation is awarded.... (4) the exception which authorizes compensation where the duties of the employee entail travel away from the employer's business to obtain parts or supplies for employer. ^[14]

The Missouri Labor and Industrial Commission recently discussed the *McClain* case in *Amanda Ketchem v. Westran R-1 School District*. ^[15] The Commission reversed the award that concluded an employee's death was compensable, and concluded, as a matter of law, that the death of the employee was not attributable to an accident arising out of and in the course of her employment. In *Ketchem*, on the date of accident, the deceased employee was employed as a first grade school teacher. She was involved in a fatal automobile accident while driving her automobile from her residence, to her place of employment, the school building where she taught. At the time of the accident, she had with her school papers referred to as mid-quarter progress reports, and it was her personal custom to work on those type papers at home rather than on the school premises. She was not required to work on those papers at home. She was allowed to stay at the school after regular work hours if necessary to work on assignments. It was strictly for her convenience to take work home. ^[16]

The Commission in *Ketchem* stated:

In the case of *Ray v. Great Western Stage and Equip. Co.*, 413 S.W.2d 576 (Mo. App. W.D. 1967), the Western District of the Missouri Court of Appeals cited with approval the following principles of law enunciated by Professor Larson in his treatise, (at p. 582): "The mere fact that claimant is, while going to work, also carrying with him some of the paraphernalia of his employment does not, in itself, convert the trip into a part of the employment. For example, the mere fact that at the time of the accident the employee had with him some of the tools of his trade, such as a steamfitter's hard hat, a pocket rule, and a level, all belonging to the employer, does not make the accident compensable. Adherence to this methodical process of analysis in particular cases can help remove some of the uncertainty that attends the

many familiar situations involving teachers who prepare lessons or correct papers at home, lawyers who take home briefs, salesman who work on accounts at home, and newspapermen who polish up a bit of writing at home—all of whom might be tempted under a more vague rule to assert compensation coverage of all their movements to, from or around the house by virtue of some morsel of work carried around in their pockets." Applying these principles, the Missouri Court of Appeals, Western District, reached the following conclusions in *Ray*, supra, (at pp. 582-583): "In the case before us we find no substantial evidence that (1) employer contracted to pay claimant's transportation costs from his home to the office; (2) claimant was either to perform any part of his work at home or that his duties required him to do so; (3) that at the time of the accident claimant was in the performance of any duty which the employer requested, required or even knew was being performed at home.... These activities are quite similar to school teachers grading papers at home, lawyers who take home briefs, salesmen who work on accounts at home, and newspapermen who polish up a bit of writing at home, none of whom are covered, as stated by Larson, supra. "In addition to the reference to the Larson treatise in the *Ray* case, supra, the Commission also notes the following general principles of law in the same treatise, at A. Larson, *Workers' Compensation Law*, Desk Edition, Sections 16-10 [2][3] (2004): "When reliance is placed upon the status of the home as a place of employment generally, instead of or in addition to the existence of a specific work assignment at the end of the particular homeward trip, three principal indicia may be looked for: the quantity and regularity of work performed at home; the continuing presence of work equipment at home; and special circumstances of the particular employment that make it necessary and not merely personally convenient to work at home..... [17]

One exception to the general rule of non-liability for accidents of employees going to and returning from work is the special errand doctrine which may bring the journey within an employee's course of employment if the special inconvenience, hazard or urgency of making the journey, under the particular circumstances, is sufficiently substantial so as to make the journey an integral part of the employee's services rendered to employer. [18]

The *Hilton* Court stated:

The 'special errand' rule states that when an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part

of the service itself. 1 Larson, *Workmen's Compensation Law*, § 16.10 (1993). The element of urgency may supply the necessary factor converting a trip into a special errand. 1 Larson, *Workmen's Compensation Law*, § 16.15 (1993). Thus, while the general rule is that accidents incurred while an employee is going to or coming from work are not compensable because they do not arise out of and in the course of employment, [FN1] that rule is not applicable where the employee during that period performs a special task, service or errand in connection with her employment. *Delozier v. Munlake Constr. Co.*, 657 S.W.2d 53, 55-56 (Mo.App.1983) (citations omitted). "Such circumstances might be better characterized as causing a trip made in performing such a special task to be a part of the employment." *Id.* at 56. [19]

No Missouri case has been cited or found dealing specifically with where coverage begins in special errand cases. However, cases in several other states hold that if an employee is found to be on a special mission, he will be considered to be within the course of his employment from the moment he leaves his home to the location of the mission, until he returns home, or alternatively, from the location of the mission to his home. [20]

Larson notes that the effect of the special errand rule is to confer "portal to portal" coverage on the employee. [21] In *Charak*, claimant, a lawyer, was injured on steps leading from the inner lobby to the outer lobby of her apartment while leaving on a special errand for her employer. The court held she had not left her home and commenced her employment and therefore compensation was denied. The court described the in-between nature of the location of claimant's accident when it noted:

A fall in her apartment would not have given rise to any claim. If, however, in the performance of a special errand, she had fallen on the street, barely beyond the outer door of the building, the accident would have been compensable [22]

The Kansas Supreme Court has ruled that an on call volunteer fireman injured en route while responding to an emergency call is entitled to compensation under the Act. [23] The Kansas Supreme Court explained, "responding to emergency calls is an integral and necessary part of a volunteer firefighter's duties, which entails a special degree of inconvenience and urgency. When an emergency call is received, volunteer firefighters are expected to report either to the fire station or to the site of the fire. Volunteer firefighters have no set hours of employment, but rather are on call and assume the duties of their employment when they receive an emergency call and begin to respond." [24] The Court also noted:

This result corresponds with that of *DeLong v. Miller*, 285 Pa.Super. 120, 426 A.2d 1171 (1981), where the Superior Court of Pennsylvania held that the

defendant, who was driving his car to the fire house in response to a fire alarm when he struck the plaintiff, who was directing traffic near the fire house, was acting in the course of his employment and was therefore immune from suit.

The court stated:

"[O]ur cases have held that volunteer firemen injured en route while responding to an alarm are entitled to compensation under the Act. [Citations omitted.] These cases recognize that because the unique character of the employment requires prompt reaction to an alarm, a volunteer fireman is in the course of his employment *when he leaves his home in response to an alarm.*" 285 Pa.Super. at 123, 426 A.2d 1171.

See also *Le Febvre v. Workmen's Comp.App. Bd.*, 69 Cal.2d 386, 388, 71 Cal.Rptr. 703, 445 P.2d 319 (1968), which held: "As a volunteer fireman whose duties were to respond to calls to fight fires at any location within the entire district and to attend evening drills and meetings twice each month at such locations as might be designated from time to time, Le Febvre's employment cannot be viewed as having a regular headquarters or office where he was regularly required to report in order to perform his duties or before setting out on his assigned tasks. Instead, *from the moment he left his home, or any other point from which he might have been summoned, to engage in firefighting or in training drills in the district, he was acting within the scope of his employment by the volunteer fire department.* Accordingly, the fact that he met his death while traveling on the public highway en route to an evening drill does not bring the going and coming rule into play. The travel was plainly required by the employment, the travel risk was incident to the employment, and Le Febvre's death is compensable. [Citations omitted]"

(Emphasis added.) ^[25]

The Supreme Court of Louisiana has also discussed the portal-to-portal coverage in special mission cases. ^[26] In *McLin*, claimant was injured en route to his home from a mandatory safety meeting. The Court found that McLin was clearly on a mission for his employer. McLin was required by his employer to attend the safety meeting on Highland Road. The Court concluded that the "time and trouble" or "inconvenience" of making the journey to the mandatory safety meeting was "sufficiently substantial to be viewed as an integral part of the service itself." Accordingly, the Court found McLin was within the course of employment during his travel home from the meeting. ^[27] The Court also held that "if an employee is found to be on a special mission, he will be considered to be within the course of his employment from 'portal-to-portal,' or in other words, *from his home to the location of the mission, or alternatively, from the location of the mission to his home.* Larson & Larson, *supra*, § 14.05[1]-14.05[2] (reflecting that the effect of the special mission rule is to confer 'portal-to-portal' coverage on the employee)." (Emphasis added.)

The Court noted that the reasoning for this rule had been explained by one court as follows:

'[W]hen an employee is requested, directed, instructed, or required by the employer to be away from the place of employment, the employee is deemed to be in the course of employment because the employee is engaged in the direct performance of duties assigned by the employer. The employee remains within the scope of employment *from the moment the employee leaves home* or work until he returns either to the regular premises or to the employee's home. *Camburn v. Northwest School District*, 459 Mich. 471, 592 N.W.2d 46 (1999) (emphasis added). See also *Pribyl v. Standard Electric Co.*, 246 Iowa 333, 67 N.W.2d 438 (1954).'

[28]

In this case, Claimant was injured in her attached garage after receiving an ambulance call on a pager. She had not left her home when she sustained her injury. She went into the garage to get her shoes. After she put her shoes on, and while still in the garage, she stepped around the front of an extended cab pickup truck while on her way to get to her vehicle to respond to the call, and sustained her injury. Her attached garage was a part of her residence. It contained her shoes, as well as a bicycle, in addition to two motor vehicles. Claimant had not commenced her travel from her home to the ambulance barn at the time of the injury. Claimant had not yet passed the 'portal' of her abode at the time she fell in her garage. Claimant's accident occurred prior to commencing the necessary prerequisite journey to the ambulance barn, where she would have met the crew and boarded the ambulance to respond to the scene of the emergency.

Further, Claimant was not performing any duties for Employer at her home prior to receiving the pager call. She was not performing any duty which Employer requested or required at the time she sustained her injury. There was no evidence that she had been requested or required to perform any work at home for Employer. There was no evidence that there was any work equipment at Claimant's home on March 31, 2002. She was not required to be at home when the call came in. Rather, she was preparing to leave her home to embark upon a journey by automobile from her home to the ambulance barn. She never performed any emergency medical services or any other work that benefited Employer on the evening of March 31, 2002.

Under the reasoning discussed in the authority cited above, I find and conclude that Claimant did not sustain an injury by accident arising out of and in the course of her employment for Employer. I therefore find that Claimant's entire claim should be denied.

CONCLUSION

In conclusion, based upon all the evidence and the application of The Missouri Workers' Compensation Law, I find that Claimant's accidental injury sustained in her garage on March 31, 2002 did not arise out of and in the course of her employment for Employer. Claimant's claim is denied. The direct pay medical fee requests of North Kansas City Hospital, NwMo Emer

[29]

Physicians, and Eckerd Pharmacy are also denied. All other issues are moot.

Date: 01/24/2007 Made by: /s/ Robert B. Miner
Robert B. Miner, Administrative Law Judge Division of
Workers' Compensation

A true copy: Attest:

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

[1] The exhibits of North Kansas City Hospital were offered and admitted prior to Claimant presenting her evidence. Mario Mandina requested to be excused for the remainder of the hearing, and permission was granted.

[2] Sections 287.120.1, 287.020.3(1), RSMo 2000; *Smith v. Donco Constr.*, 182 S.W.3d 693, 699 (Mo. App. 2006).

[3] Section 287.020(5), RSMo 2000.

[4] *Simmons v. Bob Mears Wholesale Florist*, 167 S.W.3d 222, 225 (Mo.App. 2005).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Foster v. Aines Farm Dairy Co.*, 263 S.W.2d 421, 423 (Mo. 1953).

[9] *Thorsen v. Sachs Electric Company*, 52 S.W.3d 611, 618 (Mo.App. 2001), *overruled in part on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 225 (Mo. 2003); *Cook v. Sunnen Products Corp.*, 937 S.W.2d 221, 223 (Mo. App. 1996).

[10] *Smith*, 182 S.W.3d at 699.

[11] *Cox v. Tyson Foods, Inc.*, 920 S.W.2d 534, 535 (Mo. 1996); *Reece v. Neal Chev. & Universal Underwriters Ins. Co.*, 912 S.W.2d 599, 602 (Mo. App. 1995); *McClain v. Welsh Co.*, 748 S.W.2d 720, 724-25 (Mo. App. 1988).

[12] *Kelley v. Sohio Chemical Co.*, 392 S.W.2d 255, 257 (Mo.banc 1965).

[13] *Garrett v. Industrial Commission*, 600 S.W.2d 516, 519 (Mo.App. 1980).

[14] *McClain*, 748 S.W.2d at 725.

[15] 2006 WL 3336672 (November 15, 2006).

[16] *Id.*

[17] *Id.*

[18] *Hilton v. Pizza Hut*, 982 S.W.2d 625, 633-34 (Mo.App. 1994).

[19] *Hilton*, 892 S.W.2d at 633.

[20] *Charak v. Leddy*, 261 N.Y.S.2d 486 (1965); *DeLong v. Miller*, 285 Pa. Super. 120, 426 A.2d 1171 (1981); *Estate of Soupene v. Lignitz* 265 Kan. 217, 960 P.2d 205 (Kan. 1998); *McLin v. Industrial Specialty Contractors, Inc.* 851 So.2d 1135(La. 2003); *Le Febvre v. Workmen's Comp.App. Bd.*, 69 Cal.2d 386, 388, 71 Cal.Rptr. 703, 445 P.2d 319 (1968); *Camburn v. Northwest School District*, 459 Mich. 471, 592 N.W.2d 46 (1999); *Pribyl v. Standard Electric Co.*, 246 Iowa 333, 67 N.W.2d 438 (1954). *See also, Larson's Workers' Compensation Law* §14.05(2) (2005). *But see, Seal v. Bogalusa Community Medical Center*, 764 So.2d 968 (La.App. 2000).

[21] *Larson's Workers' Compensation Law* §14.05(2) (2005). "Portal" is defined as "a door, gate, or entrance. . . ." *Random House Webster's College Dictionary*, p. 1052 (1991).

[22]

Charak, 261 N.Y.S.2d at 487.

[23] *Estate of Soupene v. Lignitz* 265 Kan. 217, 960 P.2d 205 (1998)

[24] *Estate of Soupene*, 960 P.2d at 211.

[25] *Estate of Soupene*, 960 P.2d at 211.

[26] *McLin v. Industrial Specialty Contractors, Inc.* 851 So.2d 1135 (La. 2003)

[27] *McLin*, 851 So.2d at 1143.

[28] *McLin*, 851 So.2d at 1143.

[29] The oral Motion to Withdraw the direct pay medical fee request of Heartland Regional Medical Center (“Heartland”) made by Heartland’ attorney on November 7, 2006 was sustained on November 7, 2006, and Heartland’s direct pay medical fee request is withdrawn.