

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

Injury No.: 03-135880

Employee: Elizabeth Weber  
Employer: IBT, Inc.  
Insurer: Virginia Surety Company, Inc.  
Date of Accident: January 2, 2003  
Place and County of Accident: St. Louis 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 October 12, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 12, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Elizabeth Weber

Injury No.: 03-135880

Dependents: N/A

Employer: IBT, Inc.

Additional Party: N/A

Insurer: Virginia Surety Company, Inc.

Hearing Date: July 25, 2006

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: MDL:tr

### 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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? 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 was driving company truck when she was involved in a motor vehicle accident.
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: N/A
14. Nature and extent of any permanent disability: -0-
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Elizabeth Weber

Injury No.:

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17. Value necessary medical aid not furnished by employer/insurer? 090
18. Employee's average weekly wages: \$460.92
19. Weekly compensation rate: \$307.28 for PPD and TTD
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

TOTAL:

-0-

23. Future requirements awarded: None

Said payments to begin N/A 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:

N/A

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

Employee:	Elizabeth Weber	Injury No.: 03-135880
Dependents:	N/A	Before the <b>Division of Workers'</b>
Employer:	IBT, Inc.	<b>Compensation</b>
Additional Party:	N/A	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Virginia Surety Company, Inc.	Checked by: MDL:tr

## PRELIMINARIES

A hearing was held on July 25, 2006, at the Division of Workers' Compensation in the City of St. Louis. Elizabeth Weber (Claimant) was represented by Mr. Charles Bobinette. IBT, Inc. (Employer) and its Insurer Virginia Surety Company, Inc., were represented by Mr. Todd Beekley. Mr. Bobinette requested a fee of 25% of Claimant's award.

The parties stipulated that on or about January 2, 2003, Claimant was an employee of Employer. Venue, notice and timeliness of the claim are not in dispute. Claimant was earning an average weekly wage of \$460.92 resulting in a compensation rate of \$307.28 for permanent partial disability benefits and temporary total disability benefits. Employer has denied liability in this case and has paid no benefits.

The issues for resolution by hearing are whether Claimant's accident, which occurred on January 2, 2003, arose out of and in the course and scope of her employment; liability of Employer for past medical benefits of \$8,762.50; liability of Employer for future medical care; and nature and extent of permanent partial disability.

### SUMMARY OF EVIDENCE

Claimant is a 54 year old woman who, on January 2, 2003, was employed by Employer, a manufacturer supplier, in Inside Sales. Claimant was an hourly employee, and her duties included phone work with vendors and customers, helping walk-in customers, taking and pulling orders, UPS packaging, and pulling and packing orders for shipping. Her direct supervisor was Allen Webb.

Employer owned one or two trucks, and occasionally Claimant and other employees used them. Occasionally she received permission from her supervisor Allen Webb to use the company truck to get lunch. Other employees also used the company truck if their vehicle was broken down.

On January 2, 2003, weather conditions were bad. There was snow and ice. Claimant called her co-worker, Randy Ray, to obtain a ride to work. Mr. Ray picked her up an hour earlier than usual. It was a very hectic day at work. Around noon, Claimant asked her supervisor, Mr. Webb, if she could use the company truck to drive across the street to a fast food restaurant to pick up a sandwich for her lunch. Mr. Webb told her she could, and she planned to go to the restaurant, buy a sandwich, and come back and eat lunch at her desk. On previous occasions when she used the truck to get herself lunch, she also got lunch for other employees.

Claimant's lunch hour is not a paid hour. Claimant left for lunch around noon and clocked out before she left. She went to the restaurant and bought her lunch, and on her way back to work, a truck hit her head on. Claimant sustained injuries to her back and was taken to the hospital.

Employer did not offer Claimant any treatment. Claimant went to her family doctor and incurred numerous bills for treatment for her accident. Claimant continues to have physical problems as a result of the accident.

Claimant's sole purpose for leaving Employer's premises was to get her lunch. Claimant was not getting lunch for anyone but herself. Claimant was on an unpaid lunch break at the time that she was injured.

### FINDINGS OF FACT AND RULINGS OF LAW

Based upon my observations of the witnesses at hearing, a comprehensive review of the evidence and the application of Missouri law, I find:

Claimant's accident that occurred on January 2, 2003, did not arise out of and in the course and scope of her employment. Under Missouri law, an injury arises "out of employment" if it is a natural and reasonable incident of the employment and if the rational consequence is some hazard connected with the employment. *Turpin v. Turpin Electric, Inc.*, 904 S.W.2d 539, 543 (Mo.App. 1995) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003)). Likewise, an injury is in the "course of 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. *Id.* at 543. Accidents to and from work are generally found not compensable. *Williams v. ServiceMaster*, 907 S.W.2d 193, 194 (Mo.App. 1995) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003)). An employee with a fixed time and place of work is outside the scope of employment during an uncompensated, off premises lunch break unless lunch is undertaken under special circumstances to suit employer's convenience or unless employee is performing a special task, service or errand in connection with employment during break. *Shinn v. General Binding Corp., Koelling Metals Div.*, 789 S.W.2d 230, 232 (Mo.App. E.D. 1990), *Daniels v. Krey Packaging Co.*, 346 S.W.2d 78, 83 (Mo. 1961).

Claimant worked in the inside sales office, and clocked in and out for lunch. Claimant borrowed the company truck to travel to the nearby fast food restaurant to obtain lunch for herself. She did not obtain lunch for

any other employee. Claimant's activities over her lunch break were unrelated to her employment duties and were purely personal at the time of the accident, and had no relationship to her employment activities. Because the injuries were unrelated to her job activities, her injury did not arise out of and in the course of her employment.

The Mutual Benefit Doctrine does not apply in this case. The Mutual Benefit Doctrine holds that an injury suffered by an employee while performing an act for the mutual benefit of the employer and employee is usually compensable however, not every act of claimant that may result in a remote, attenuated or speculative benefit to the employer is compensable under this doctrine. *Blades v. Commercial Transport, Inc.*, 30 S.W.3d 827, 829 (Mo.banc 2000). Employee injuries incurred during an unpaid lunch hour off the employer's premises while eating, shopping, exercising or walking are not generally compensable under the workers' compensation law, even though the employer may benefit from a healthier, happier work force from those acts. *Id.* at 829.

There is no evidence that Employer received a benefit from Claimant's trip for lunch. The cases of *Wilson v. Monsanto*, 926 S.W.2d 48, 49 (Mo.App. 1996) and *Bell v. Arthur's Fashions, Inc.*, 858 S.W.2d 760 (Mo.App. 1993) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003) control. In *Wilson*, claimant rode his bicycle to a nearby McDonald's to eat lunch. He finished eating lunch at McDonald's and then rode back to work after stopping at a supermarket to buy candy bars and soda. On his way back to work, he stopped at a stop sign when a truck hit him. This occurred roughly a mile from his place of employment on a public street. The Court found that claimant was not on an errand for his employer or serving any other purpose for the employer when the injury occurred. The Court of Appeals noted that a healthier, happier employee was not the type of benefit that invokes the Mutual Benefit Doctrine.

Likewise, in the case of *Bell v. Arthur's Fashions, Inc.*, the Court of Appeals affirmed the denial of benefits where the claimant walked to a nearby store during a paid break where she fell at the checkout line. Again, the Court noted that claimant's activities were unrestricted on the paid break and she was not performing any special task or duty for her employer. In both *Bell* and *Wilson*, the Court noted that the employer did not require the claimant's presence where the injury took place and it was a location where the employer had no control over the premises. In both cases the activity during a break had no connection of any kind to the claimant's job activities and such injuries occurred off the employer's premises.

In the instant case, Claimant was on a city street outside the control of the Employer. Employer did not require Claimant to go to the restaurant for lunch, and she was not performing any type of special tasks or duty at the time that she was hurt.

Claimant's activities fail to satisfy the requirements of the Mutual Benefit Doctrine and her Claim for Compensation is denied.

The remaining issues are moot.

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

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

Margaret D. Landolt  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
Director  
Division of Workers' Compensation

Employee: Elizabeth Weber

Injury No.:

03-135880

