

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

Injury No.: 05-011805

Employee: Cheryl Whaley
Employer: Whelan Security Co., Inc.
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)
Date of Accident: Alleged January 21, 2005
Place and County of Accident: St. Louis, 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 September 1, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued September 1, 2005, is attached and incorporated by this reference.

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: Cheryl Whaley

Injury No.: 05-011805

Dependents: N/A
Employer: Whelan Security Co., Inc.
Additional Party: Second Injury Fund (Dismissed)
Insurer: Self-Insured
Hearing Date: June 13, 2005

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: January 21, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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: N/A
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: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Cheryl Whaley Injury No.: 05-011805

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$504.35
19. Weekly compensation rate: \$336.25/\$336.25
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: -0-
22. Second Injury Fund liability: Open

TOTAL:

-0-

23. Future requirements awarded: N/A

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:	Cheryl Whaley	Injury No.: 05-011805
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Whelan Security Co., Inc.	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (Dismissed)	Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: MDL:tr

PRELIMINARIES

A hearing was held on June 13, 2005, at the Division of Workers' Compensation in the City of St. Louis. Cheryl Whaley ("Claimant") was represented by Mr. Michael McDonough. Whelan Security Company ("Employer"), who is self-insured, was represented by Ms. Mary Lou Calzaretta. Although the Second Injury Fund is a party to this case, pursuant to the agreement of the parties, the Fund did not participate at hearing. Mr. McDonough requested a fee of 25% of Claimant's benefits.

The parties stipulated that on or about January 21, 2005, Claimant sustained an accident; Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated that Claimant was earning an average weekly wage of \$504.35 resulting in a rate of compensation of \$336.25 for both total disability benefits and permanent partial disability benefits. Employer has paid no benefits in this case.

The issues for resolution by hearing are: whether Claimant's accident that occurred on January 25, 2005 arose out of and in the course of her employment; liability of Employer for past and future medical care; and whether Claimant is entitled to temporary total disability benefits from January 21, 2005 until such time as Claimant reaches maximum medical improvement.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant began working as a platform security officer for Employer on or about July 25, 2004. Employer subcontracted to provide security for the Metro Link stations. Claimant's responsibilities as a platform security officer included checking tickets and bus passes of Metro Link passengers as well as making sure the platform is peacefully kept. Claimant's job requires her to wear a uniform and a badge. Claimant testified that her authority level is the same as a police officer while on duty.

Although Claimant's primary assignment was to the Hanley station platform, sometimes Captain Moreland, her supervisor, called her at home, and dispatched her somewhere other than the Hanley station.

Claimant did not own a working vehicle. She normally took a Clayton/South County bus to the Civic Center train, and then took the train to the Hanley station where she reported to work for the 9:30 shift. Claimant left her home between 7:00 and 7:30 a.m. to arrive on time. Claimant was allowed to ride the train to work free of charge as long as she was wearing her uniform. Claimant testified that it was a benefit to her because she got to ride the train for free, but it was also a benefit to Employer because there was increased security presence on the trains. Claimant testified that if a situation occurred, she was required to help out as long as she was riding the train in uniform.

Every other Friday Claimant's routine changed when her close friend and landlord, Josephine Baker, gave her a ride to the bank first so that she could pay her rent, and then took her to the Grand station where she took the train to her post at the Hanley station.

On Friday, January 21, 2005, Claimant left for work with Ms. Baker. First, they went to Walgreen's to get a prescription, and Ms. Baker then drove Claimant to the Grand Avenue train station. At approximately 8:30, she let Claimant off at the street level where there is a bus stop, an elevator, and a concrete median barrier that slopes down. The Grand Avenue platform is below street level, but the bus stop is at street level. Claimant got out of the car on the passenger side, and went to the rear passenger door to get her gym bag when she tripped over the concrete barrier and fell to the ground. She was unable to get up, and an ambulance took her to St. Louis University Hospital.

Claimant had a tibia plateau fracture, which required extensive surgery involving the placement of three plates and two screws. Claimant was admitted, and stayed at the hospital for eleven days. Because she is diabetic, extra precautions were taken to guard against infection. Claimant was also referred to a urologist and SLU Care when some urinary complications arose following her surgery. Claimant also had to see Dr. Richards to obtain a custom brace due to a foot drop that occurred related to her accident. Claimant has substantial, unpaid medical bills.

Claimant testified that she is unable to work in her present condition, and would like to have her past and future medical bills paid, as well as temporary total disability benefits because she is unable to work. Claimant also testified that she is in need of future medical care.

Josephine Baker, Claimant's friend and landlord, testified on behalf of Claimant. Ms. Baker's testimony corroborated Claimant's with regard to the morning Claimant's accident occurred.

Judith Weis also testified on behalf of Claimant. Ms. Weis testified that she also works for Employer and corroborated Claimant's testimony that company policy allowed employees in uniform to ride the train to or from work free of charge. Ms. Weis testified that if something were to happen, as security officers they were expected to intervene. Ms. Weis also testified that the extent of her authority was the same as that of a police officer.

Ted Moreland testified on behalf of Employer. He is Claimant's supervisor and supervises all security officers for his company. Mr. Moreland testified that the security officers have the responsibility of walking up and down the platforms to make they are safe and free of water, oil, or debris. They are also responsible for checking fares. They must make sure that if someone is on the platform they have a fare or they are then asked to purchase a fare. If they refuse to purchase a fare, the security officers then call the police. Mr. Moreland testified that security officers do not have the same authority as police officers, and are not able to make arrests. Security officers are called upon to intervene in an altercation, but only at the direction of their supervisor. They are not able to do this on their own; they have to call it in first. Basically the job of the security officer, according to Mr. Moreland, is to observe and report. Mr. Moreland testified that the security officers' responsibilities are only on the platform itself and not on the street level. According to Mr. Moreland, his officers are not responsible for the street level at Grand Avenue, that is the responsibility of the city police department. According to Mr. Moreland, if the security officers on duty go above street level they are subject to reprimand.

RULINGS OF LAW

Based upon my observations of the witnesses at hearing, the review of the medical evidence in the case, and the application of Missouri law, I find:

There is no dispute that Claimant's sustained a significant injury when she fell on January 21, 2005. Because Claimant has failed to meet her burden of proving that her injury arose out of and in the course of employment, her claim for compensation is denied.

Generally, injuries that occur while going to and from work are not compensable. However, under the "Extended Premises Doctrine," injuries sustained while going to or from work can be compensable if (a) the accident occurs on premises which are owned or controlled by the employer, or not actually owned or controlled by employer but which have been so appropriated by the employer, or so situate, designed and used by the employer and his employees incidental to their work as to make them for all practical, intents and purposes a part and parcel of the employer's premises and operation; and (b) if that portion of such premises is a part of the customary, expressly or impliedly approved, permitted, usual and acceptable route or means employed by workers to get to and depart from their places of labor and is being for used for such purpose at the time of injury. *Cox v. Tyson Foods, Inc.*, 920 S.W.2d 534, 535-536 (Mo.banc 1996). Injuries sustained on employer's premises along the accepted route to and from work arise out of and in the course of employment as much as injuries which occur during the performance of work. *Id.*, *State ex.rel., McDonnell Douglas Corp. v. Luten*, 679 S.W.2d 278 (Mo.banc 1984).

In this case, Claimant failed to establish the applicability of the Extended Premises Doctrine. Under that doctrine, Claimant must prove that the injury occurred on premises which are owned or controlled by Employer. There is no question that Claimant's accident occurred when she tripped over a concrete barrier while exiting her friend's car on Grand Avenue. Claimant failed to prove that Employer, Whalen Security, owned or controlled the sidewalk area on Grand Avenue where the incident occurred. Mr. Moreland testified that Employer did not provide services and was not responsible for the area on Grand Avenue where the incident occurred.

Claimant also failed to establish the second part of the two-part test. Claimant typically left her home between 7:00 and 7:15, walked to the bus stop, rode the bus downtown to the Civic Center, and took the Metro Link from the Civic Center to the North Hanley station. Claimant testified the North Hanley Metro Link station was her usual place of employment. Approximately twice a month, coinciding with Claimant's pay schedule, her landlord and friend would drive her to an ATM machine so that she could cash her check and pay her rent. Her landlord also took her to a drug store where she was able to obtain a prescription. After finishing her errands, the landlord dropped her off on Grand Avenue and she was planning to ride the Metro Link to her place of employment. This was not Claimant's customary and acceptable route used to get to work nor did Employer in any way approve such a route. Claimant has failed to establish the second portion of the test and thus the Extended Premises Doctrine is inapplicable.

Claimant argues that the Mutual Benefit Doctrine is the exception which allows her to receive compensation for this injury. If Claimant's injury had occurred while she was riding the train, it would have been compensable under the Mutual Benefit Doctrine. However, Claimant's injury occurred before she boarded the train and was not on Employer's premises.

Because Claimant has failed to meet her burden of proving that her accident arose out of and in the course of her employment, her claim against the Second Injury Fund is dismissed.

Date: _____

Made by: _____

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

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation