

**TEMPORARY AWARD ALLOWING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
by Supplemental Opinion)

Injury No.: 10-022144

Employee: Maria White  
Employer: Anderssen Mobile X-Ray Service  
Insurer: Accident Fund General Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 23, 2011, as supplemented herein.

**Discussion**

*Legislative intent and strict construction of § 287.020.5*

This case presents an issue of first impression and turns on our construction of § 287.020.5 RSMo, as amended in 2005, which states as follows:

Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

Notably, employer does not argue that employee wasn't injured while working. Employer does argue, however, that a strict construction of the foregoing section requires us to find that employee's injuries are, nevertheless, not compensable.

Prior to the 2005 amendments, § 287.800 RSMo required application of "liberal construction" such that we were required to read the Missouri Workers' Compensation Law "with a view to the public welfare." The courts interpreted liberal construction to include the general rule that "[a]ny question as to the right of an employee to compensation must be resolved in favor of the injured employee." *Allcorn v. Tap Enters.*, 277 S.W.3d 823, 830 (Mo. App. 2009). Of course, the legislature abolished liberal construction in 2005 and also included new language which requires ALJs, this Commission, and reviewing courts to "construe the provisions of [Chapter 287] strictly" and to "weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts." § 287.800. The courts, though, have made clear that "strict construction"

Employee: Maria White

- 2 -

only refers to the way we read the words of the statute and doesn't necessarily mean the statute should be applied in a "narrow or stingy manner" after 2005. See *Allcorn* at 828.

At the same time that we must strictly construe its provisions, we are also required to read Chapter 287 with an eye toward what the legislature intended. "All canons of statutory construction are subordinate to the requirement that the court ascertain and apply a statute in a manner consistent with the legislative intent." *Meyers v. Wildcat, Inc.*, 258 S.W.3d 77, 82 (Mo. App. 2008). When we read the entire subsection, we find that the subjects the legislature designed the language of § 287.020.5 to address were (1) commuting employees and (2) the extension of premises doctrine.

As for the subject of commuting employees, the legislature was looking at the problem of employees who commute to work in employer-owned or subsidized vehicles. Although the legislature did not name it, it appears this language was a response to the judicially recognized "*Reneau* doctrine," an exception to the general "going and coming rule" that injuries sustained while going to and coming from work are not compensable; previous cases have suggested the *Reneau* doctrine implicates employer liability "where the employer, because of the distance to the job site or for the convenience of the employer, furnishes the employee's transportation, compensates the employee for use of his own vehicle, or pays the employee for travel time." *Garrett v. Industrial Com.*, 600 S.W.2d 516, 519 (Mo. App. 1980), citing *Reneau v. Bales Electric Company*, 303 S.W.2d 75, 79 (Mo. 1957). The legislature plainly rejected the notion that an employer's providing a company car creates an exception to the going and coming rule, when it crafted language making clear that injuries sustained by commuting employees, even where the employer owns or subsidizes the vehicle, are not compensable.

As for the extension of premises doctrine, we can see that the legislature wished to abrogate this doctrine to the extent it provided for employer liability for accidents occurring on property that is not owned or controlled by employer. The extension of premises doctrine, like the *Reneau* doctrine, is a judicially recognized exception to the general going and coming rule, which the courts have sometimes applied to find employer liability where an employee was injured off-premises but on a customary route used by employees to get to work. For example, see *Gaston v. Steadley Co.*, 69 S.W.3d 158, 162 (Mo. App. 2002) (holding an employee was entitled to workers' compensation benefits where he was hit by a truck while crossing a street from where he usually parked to employer's premises, on the rationale that "if [the employee] had not been going to work, he would not have been crossing the street").

After carefully considering the facts of this case in light of the legislature's clear purposes to limit employer liability for employees commuting in employer-owned or subsidized vehicles and to abrogate certain aspects of the extension of premises doctrine, we do not believe the legislature could have intended this case to be excluded from the Missouri Workers' Compensation Law when it crafted the 2005 amendments to § 287.020.5. This is because the uncontested facts of this case do not fit neatly within the plain and unambiguous terms of that section.

First, this case does not involve facts implicating the extension of premises doctrine (or whatever may be left of it after the abrogating language added in 2005). Second, this

Employee: Maria White

- 3 -

case does not involve a commuting employee, but rather an employee that was unquestionably “at work” when she was injured. This employee was not injured while traveling from her home to the employer’s principal place of business, but instead while traveling from her “call-in” or “check-in” point (where she was required, while driving, to call employer to find out if there were any assignments) and the office. In our view, employee was not traveling between “work and home” but rather between “work and work” when the accident happened. “[T]he exclusionary clause in § 287.020.5 can be given no broader application than is warranted by its plain and unambiguous terms.” *Harness v. Southern Copyroll, Inc.*, 291 S.W.3d 299, 304 (Mo. App. 2009). We are convinced that to construe the language “from the employee's home to the employer's principal place of business” to include this employee, who was traveling from a mandatory call-in point and employer’s principal place of business, would require our unduly enlarging the scope of the exclusion under § 287.020.5 beyond the plain and unambiguous terms of that section.

Ultimately, we conclude that the language of § 287.020.5, strictly construed, does not work the effect that this employee’s injuries are not compensable. Accordingly, we affirm the award of the administrative law judge concluding that employee’s injuries arose out of and in the course of her employment.

### Decision

We conclude that § 287.020.5 RSMo, as amended in 2005, does not have the effect that employee’s injuries in this case are not compensable. The award and decision of Administrative Law Judge Kathleen M. Hart, issued August 23, 2011, is affirmed and is hereby attached and incorporated to the extent it is not inconsistent with this supplemental opinion.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

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

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

DISSENTING OPINION FILED

James Avery, Member

---

Curtis E. Chick, Jr., Member

Attest:

---

Secretary

Employee: Maria White

### **DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I disagree with the majority's analysis. I believe the law requires that the decision of the administrative law judge be reversed.

The majority discusses strict construction in its opinion, but I am convinced the majority has failed to actually apply it in this case. The language of § 287.020.5 RSMo is quite clear and unquestionably applies to the facts before us. The section states that injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business are not compensable. This employee sustained her injuries in a company-owned or subsidized vehicle: it is uncontested that employer provided the minivan employee was driving to work on March 2, 2010. Employee's injuries were sustained in an accident that occurred while she was traveling from her home to employer's place of business: it is uncontested that employee left from her home on March 2, 2010, and that she was traveling to employer's office, when the motor vehicle accident occurred. There is no evidence that employee made any stop, changed course, or otherwise interrupted her travels, and thus she was unquestionably "traveling from [her] home to the employer's principal place of business," as provided in the plain and unambiguous language of § 287.020.5.

Because the factual circumstances involved in the instant case are squarely on point with the statutory language, the analysis must end there. This is because "[a] strict construction of a statute presumes nothing that is not expressed." *Sell v. Ozarks Med. Ctr.*, 333 S.W.3d 498, 507 (Mo. App. 2011) (citation omitted). But the majority goes a step further and inappropriately extends the analysis, when it construes the fact employee was required to call-in every morning as somehow interrupting the course of her "travels" from her home to employer's office on March 2, 2010. There is no evidence that such is the case. Employee was still "traveling" when she made that phone call at about 2:30 p.m. She did not stop to make that call. Nothing about the call constituted an interruption of her travels—to the contrary, the dispatcher told employee to continue on to employer's offices, because there were no assignments that might otherwise have interrupted her commute. The majority appears to equate employee's phone call with the start of her work day and goes so far as to state that she was "unquestionably at work" at the time of the accident. I disagree with the majority's choice to accord more significance to employee's phone call to employer than is warranted by the uncontested evidence before us in this case.

But more importantly, there is no language within § 287.020.5 that creates an exception for employees who call in or who may otherwise be "on the clock" during their commute—and the language that we do have suggests that whether the employer compensates (or "subsidize[s]") an employee's commute is not a factor that will support a finding of employer liability. *Id.* In interpreting the 2005 amendments to the Missouri Workers' Compensation Law, the courts have pointed out that it doesn't matter how "harsh" the result might seem in certain cases—what matters is that the result is mandated by a

Employee: Maria White

- 2 -

proper reading of the law. *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823, 830 (Mo. App. 2009). For this reason, I find the majority's discussion of legislative intent beyond the point here. The language of § 287.020.5 is, at least to me, abundantly clear and in no need of construction or dissection. It says employee's claim is "not compensable," and we must find accordingly, regardless whether we believe the legislature anticipated the particular circumstances at hand.

For the foregoing reasons, I conclude that, as a matter of law, employee's claim is not compensable. I would reverse the award of the administrative law judge and enter a final award denying employee's claim for compensation.

Because the majority has determined otherwise, I respectfully dissent from the decision of the Commission.

---

James Avery, Member

Issued by DIVISION OF WORKERS' COMPENSATION

### TEMPORARY OR PARTIAL AWARD

Employee: Maria White

Injury No.: 10-022144

Dependents: n/a

Employer: Anderssen Mobile X-Ray Service

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

Additional Party: Second Injury Fund (open)

Insurer: Accident Fund

Hearing Date: June 6, 2011

Checked by: KMH

#### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: March 2, 2010
5. State location where accident occurred or occupational disease contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted:  
Claimant was injured in a motor vehicle accident.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Parts of body injured by accident or occupational disease: Body as a whole
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? Unknown

Issued by DIVISION OF WORKERS' COMPENSATION

Injury No: 10-022144

Employee: Maria White

Injury No.: 10-022144

- 17. Employee's average weekly wages: unknown
- 18. Weekly compensation rate: maximum
- 19. Method wages computation: stipulation

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

Unpaid medical expenses:	To be determined
temporary total disability (or temporary partial disability):	To be determined
Future medical expenses:	To be determined

**TOTAL: TO BE DETERMINED**

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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:

Mark Bahn

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: Maria White

Injury No.: 10-022144

Dependents: n/a

Before the  
Division of Workers'  
Compensation

Employer: Anderssen Mobile X-Ray Service

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund (open)

Insurer: Accident Fund

Checked by: KMH

A hearing was held on the above captioned matter June 6, 2011. Maria White (Claimant) was represented by attorney Mark Bahn. Anderssen Mobile X-Ray Services (Employer) was represented by attorney Dale Weppner. The Second Injury Fund was left open.

Claimant alleges she was injured in the course and scope of her employment March 2, 2010, as a result of a motor vehicle accident. Employer denies liability based on Section 287.020.5 (RSMo 2005).

### STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation Law.
2. Employer's liability was fully insured by Accident Fund General Insurance.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was sufficient to entitle her to the maximum rates of compensation.
5. Employer has paid no benefits to date.

### ISSUES

The parties stipulated the issue to be resolved is whether Claimant's accident arose in the course and scope of her employment or is barred by Section 287.020.5.

**FINDINGS OF FACT**

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 26 year-old female who began working for Employer in August 2009 as a Staff Technologist. Her job involved taking x-rays at various locations throughout the metropolitan area. She worked forty hours a week, and often worked overtime.
2. From the date Claimant was hired through February 26, 2010, she was required to call the office dispatcher at 4 pm, the beginning of her shift, for a list of assignments. Claimant was typically at home when she called the office, and that was when her shift began. Payroll records indicate Claimant was paid for shifts beginning at 4 pm.
3. Claimant used a Nextel provided by Employer when she called the dispatcher. He gave her an assignment, instructed her where to go for the assignment, and told her what type of x-rays to take. Claimant proceeded to those locations, took the x-rays, and then went to the office to develop the films. If there were no assignments at the time she called in, Claimant would drive to the Employer's office on Clayton Road west of Highway 141. Claimant drove Employer's minivan containing Employer's x-ray equipment, films, and office papers. Employer paid for the gasoline and vehicle repairs.
4. Claimant testified she went from home directly to the x-ray site about 90% of the time. The other 10%, she went from home to the office. While en route to an assignment or the office, Claimant often was dispatched to a different assignment or to the office. Claimant also was paid to be "on call". She could spend her time on call at home, at the office, or at any location she chose.
5. In February 2010, Employer changed Claimant's start time. Employer's Exhibit 4 and Claimant's Exhibit A contain a written agreement reflecting the outcome of a meeting on February 24, 2010. This new agreement indicates Claimant's start time was changed to 3 pm and she was to start in the office as opposed to at her home. The agreement then states Claimant's "start time will be 30 minutes prior to arrival to the office." The agreement is signed by several members of management, with a note written by Claimant changing the start date of the new agreement to February 26, 2010.
6. Claimant testified she was not present for the meeting on February 24, and this new contract was left on her clipboard. Claimant testified Cathy Browning called to advise her the change was to address the problem of overflow work from the day shift. Claimant testified she understood the change meant she was to be in the office at 3 pm and was to call 30 minutes before her arrival to see if there were any assignments en route to the office. Her prior start time was 4 pm, and the new start time was 2:30 pm.
7. Tim Ackmann, Claimant's supervisor, testified via deposition. He testified there were several other technologists who had the same duties as Claimant. All technologists started their shift from home, and were on the clock from the minute they called the dispatcher. He had discussions with Ms. Browning regarding Claimant's new contract

before it was finalized. Since Claimant lived so far from the office, it was agreed she would start her shift earlier. Claimant would call the dispatcher once she reached St. Louis County at Highway 55 and 270, and that is when she would be on the clock, regardless of whether or not she had an assignment. With normal traffic conditions, it took approximately 30 minutes to get to the office from 55 and 270. Under the old agreement, she started working when she called in from her house at 4 pm. Under the new agreement, she started working, and her shift began, when she reached Highway 55 and 270 and called the dispatcher.

8. Ronald Anderssen, owner of Employer, also testified via deposition. He testified x-ray technicians were paid from the time they left their house. Claimant's start time was 30 minutes prior to arrival in the office. The intent of adding this 30 minute provision was to pacify Claimant because technologists were paid from the time they called in from their home. Claimant was being paid for travel time, she could receive assignments during that time, and she would proceed to those assignments before heading to the office.
9. Claimant testified she abided by this agreement beginning Friday, February 26, 2010.
10. On March 2, 2010, Claimant was driving from her house towards Employer's office in Employer's van. She was at the intersection of Highway 55 and Highway 141 in Jefferson County when she called the dispatcher. The dispatcher told her there were no x-rays on the schedule, so she should come to the office. Claimant proceeded north on Highway 141 towards Employer's office, and made no stops or detours on the way. An accident report indicates at approximately 3:10 Claimant was in a motor vehicle accident on Highway 141 in St. Louis County, blocks from the office. This was on her normal route to the office.
11. Claimant called 911 to report the accident, and after dealing with the police, she went to the office. Employer advised if Claimant needed to go to the doctor, she should call her supervisor and go to the doctor. At some point, Claimant recorded her start time for that day as 2:30, and she was paid for a shift beginning at 2:30. She did not work a full day that day or the next. She returned to work a few weeks later, but never returned to full time work for Employer. She was laid off April 20, 2010.
12. Claimant is credible.

**RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

**1. Claimant's injury arose out and in the course of her employment.**

287.020.5 (RSMo 2005) provides "Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment."

Employer argues the 2005 changes in the law preclude liability for Claimant's accident and injuries.

The case is not the case of a casual drive to work. The essence of Claimant's employment is driving to Employer's customers and patients to provide mobile x-ray services. Claimant credibly testified she was required to call the dispatcher from her house or while driving to the office. Once Claimant called in for an assignment, her shift began, she was working, and she was subject to Employer's control. Employer and Claimant's supervisor each corroborate this testimony. Although Claimant's hours changed days before this accident, she had the same call in arrangement.

On the date of her accident, Claimant called the dispatcher at approximately 2:30 pm. Once she called in, her shift began and she was working. She was directed by the dispatcher to report to the office for an assignment. While she was driving to the office, she was under Employer's control and subject to being rerouted to an assignment. Claimant's accident occurred shortly after 3 pm. She was not simply driving from her home to Employer's principal place of business. She was already working and fulfilling her job duties at the time of her accident.

I find Claimant's accident arose out of and was in the course and scope of her employment. The injuries she sustained as a result of the accident are compensable, and she is entitled to medical treatment for her injuries.

Date: August 23, 2011

Made by: Kathleen M Hart  
KATHLEEN M. HART  
Administrative Law Judge  
Division of Workers' Compensation