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

Injury No.: 06-057024

Employee: Kenneth Williams

Employer: Missouri Department of Social Services

Insurer: Central Accident Reporting Office (CARO)

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.[1] We have reviewed the evidence and briefs, heard oral argument, and we have considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge (ALJ) dated June 24, 2010.

Preliminaries
The ALJ found that employee sustained an injury by accident arising out of and in the course of his employment on April 21, 2006, and that employer had actual notice of the injury within 30 days of its occurrence. As a result, the ALJ found employer liable for employee's past medical expenses, past temporary total disability benefits, and permanent partial disability benefits.

Employer appealed to the Commission. The primary issues currently before the Commission concern: 1) employer's notice of employee's injury; 2) whether the injury arose out of and in the course of employee's employment; and 3) medical causation.

Findings of Fact
Employee worked for employer, a juvenile detention facility in St. Louis, Missouri, during all times relevant to this case. On or about April 21, 2006, employer had scheduled a field trip to a rope course for employee's students. Employee was directed to accompany the students and about 6 adults on the field trip to observe, direct, and help the students. Employee was supposed to have visual contact with the students at all times in the threat that any of them might run away.

While observing the students, employee sat in the grass. In addition to sitting in the grass, employee did some sit-ups and push-ups while continuing to observe the students by maintaining visual contact with them.

At some point after the field trip date, employee noticed red marks on his hands and face, as well as puffy eyes. On May 4, 2006, employee was examined by Dr. Venkatesan, a partner of his primary care physician, Dr. Avery. Dr. Venkatesan noted a rash on employee's foot had been present for two weeks which employee attributed to using the YMCA hot tub. Dr. Venkatesan also noted erythematous, lichenfied, hyperpigmentation, and urticaria on employee's face, hands, and legs and diagnosed contact dermatitis.

[1] Statutory references are to the Revised Statutes of Missouri 2005 unless otherwise indicated.

Employee had multiple complications with this skin condition and was ultimately diagnosed with methicillin-resistant staphylococcus aureus (MRSA).

Employee could return to work on July 18, 2006. On September 19, 2006, employee underwent his final abscess drainage of the left leg.

Employee completed an Employee Injury Report (for a Workers' Compensation claim) on June 9, 2006. One of employee's supervisors, Vernon Germain, testified that employer was not made aware of employee's workers' compensation claim until they received his injury report. Although Mr. Germain acknowledged that the injury report stated that employee had left phone messages on April 27, 2006, for him and Cornelius Robinson (employee's other supervisor) regarding the injury, Mr. Germain denied ever being informed that employee's absences were related to a work injury until after they received the June 9, 2006, injury report. Mr. Germain testified that he was absent from work on April 27, 2006. Mr. Robinson no longer works for employer and did not provide any testimony regarding this case.

Mr. Germain did not believe employee reported a work injury to Mr. Robinson because Mr. Robinson generally informed Mr. Germain of such reports. Mr. Robinson never spoke with Mr. Germain about employee's alleged work injury.

Mr. Germain testified that they were aware employee was missing work during May 2006, but they were never informed that his absences were related to a work injury. Mr. Germain stated that they received a statement from employee's doctor in May 2006 informing employer that employee had an abscess in his groin that had to be removed, but the origin of the abscess was never revealed to employer.

Mr. Germain testified that employee ran out of sick leave halfway through June and started using his vacation time thereafter.

Mr. Germain testified that in addition to the injury report, he also received a copy of a letter employee wrote to employer's Division Director in Jefferson City, Missouri seeking assistance for the work injury. The letter was undated, but Mr. Germain testified that he received the letter no earlier than June 2006.

Employee testified that the field trip was on April 20, 2006. Employee stated that the next day, April 21, 2006, he began noticing symptoms. Employee testified that all of his students kept asking him what was wrong with his skin and a teacher told him that he needed to see a doctor. Employee stated that he called and left a message for Mr. Germain and then called Mr. Robinson. Employee testified that he received permission to leave early on that day and went directly to his doctor's office.

Other evidence suggests that employee's recollection of the field trip and subsequent events is not accurate. The medical records reveal that employee did not obtain treatment for his alleged injury until May 4, 2006, from Dr. Venkatesan. Employee's time sheet reveals that he worked a full shift for every scheduled work day throughout the month of April 2006. Employee testified on numerous occasions that his memory is

impaired due to a stroke he suffered in 2004 and that he especially has difficulty recalling dates. At one point, employee affirmatively testified that the injury did not occur in the year 2006.

Based on the aforementioned, we do not find claimant's testimony regarding the date of the field trip and the sequence of events thereafter to be credible.

Conclusions of Law

With regard to the issue of notice, § 287.420 RSMo provides, as follows:

> No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice….

Based on the aforementioned findings of fact, we find that the most credible evidence establishes that the alleged work-related injury occurred on April 21, 2006, and employee did not provide notice, of any form, to employer until sometime in June 2006. Even if we assume that employer received a copy of employee's letter to the Division Director on June 1, 2006, this is still significantly later than 30 days after the alleged accident. Therefore, it is employee's burden to prove that employer was not prejudiced by its failure to receive timely written notice. *Seyler v. Spirtas Industrial*, 974 S.W.2d 536, 538 (Mo. App. 1998), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

In discussing what constitutes "prejudice" by an employer's failure to receive notice within 30 days of the accident, the Court in *Seyler* stated as follows:

> The purpose underlying the notice requirement is twofold. First, the notice requirement is designed to ensure that the employer will be able to conduct an accurate and thorough investigation of the facts surrounding the injury. The second purpose of the notice requirement is to ensure that the employer has the opportunity to minimize the employee's injury by providing prompt medical treatment. Thus, in cases where the employer does not have actual notice of the accident, courts have examined whether the claimant has proffered evidence on both the employer's ability to investigate the accident and the minimization of the employee's injury in determining whether the employer was prejudiced by the claimant's failure to provide written notice.

Id. at 538 (citations omitted).

In the instant case, assuming that employee's skin condition was contracted during the field trip on April 21, 2006, the record reveals that employee's medical treatment was delayed until May 4, 2006 (14 days later). During these 14 days after the field trip, employee's skin condition progressively worsened from red marks appearing on his

hands and face (the day after the field trip, as stated by employee) to spreading to his armpits, legs and feet (by May 4, 2006) to affecting his eyelids, chest and abdomen, and his scrotum (by May 23, 2006). Additionally, employee underwent several leg surgeries and was treated for a staph infection. Employee accrued substantial medical expenses that were not authorized by employer. With proper notice, employer could have investigated the claim and – if deemed appropriate – referred employee to the appropriate specialist(s) prior to June 2006, when employer was first notified of employee's claim.

We find that employee did not provide notice to employer within 30 days of the occurrence of the alleged accident and that employee failed to prove that employer was not prejudiced by its late notice. Because the issue of notice is dispositive, we find that all other issues are moot. We hereby reverse the award and decision of the administrative law judge and find that employee's claim for benefits is denied.

The award and decision of Administrative Law Judge Linda J. Wenman, issued June 24, 2010, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 7th day of March 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer

Alice A. Bartlett, Member

DISSENTING OPINION FILED
John J. Hickey, Member

Attest:

Secretary

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 believe the decision of the administrative law judge should be affirmed. Therefore, I adopt the decision of the administrative law judge as my decision in this matter.

Because the Commission majority has decided otherwise, I respectfully dissent.

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John J. Hickey, Member