

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

Injury No.: 08-113449

Employee: Lantie Wilson  
Employer: Buchanan County  
Insurer: Missouri Association of Counties

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, reviewed the parties' 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 November 22, 2010, as supplemented herein.

**Introduction**

The issues stipulated in dispute<sup>1</sup> at the hearing before the administrative law judge were as follows: (1) whether employee sustained an injury by accident or occupational disease arising out of and in the course of his employment; (2) employer's liability for temporary total disability; (3) employer's liability for past medical expenses; and (4) the nature and extent of employee's disability resulting from the injury.

The administrative law judge made the following findings and conclusions: (1) employee suffered an accident arising out of and in the course of his employment on December 12, 2008; (2) employee sustained a permanent partial disability of 25% of his right ankle; (3) employee was temporarily totally disabled for 13 and 2/7 weeks; and (4) employer is liable for employee's past medical expenses in the amount of \$27,011.49.

Employer filed an Application for Review alleging the administrative law judge's award is erroneous in that: (1) the fact that the employer owned the parking lot is irrelevant because employee would have been equally exposed to black ice anywhere and thus his fall was not within the course and scope of employment for purposes of § 287.020.3 RSMo; (2) employee wasn't on duty as soon as he entered employer's parking lot and thus was not within a single work shift for purposes of § 287.020.2 RSMo; and (3) employee wasn't obtaining information for the benefit of his employer when he fell.

We agree with the result reached by the administrative law judge, but write this opinion to make additional findings and comments on the issue whether employee's injury arose

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<sup>1</sup> Because we are duty-bound to resolve no more and no less than the particular factual and legal issues the parties stipulate as in dispute, see *Boyer v. Nat'l Express Co.*, 49 S.W.3d 700, 705 (Mo. App. 2001), the importance of securing a precise statement of those issues on the record cannot be overemphasized. We have reviewed the issues as recited in the administrative law judge's award because neither party has challenged the administrative law judge's delving into issues that were not expressly stipulated in dispute on the record at the hearing.

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out of and in the course of his employment. We affirm the award of the administrative law judge, as supplemented herein.

### **Discussion**

#### *Injury Arising Out Of And In The Course Of Employment*

Employer's chief contention in this matter is that employee's injury did not arise out of and in the course of employment. Section 287.120.1 RSMo, provides that "every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment." The construction of the phrase "arising out of and in the course of employment" historically has been broken in half, resulting in a two prong test, with the "arising out of" portion construed to refer to cause or origin, and the "course of employment" portion to the time, place, and circumstances of the accident in relation to the employment. See *Vickers v. Mo. Dep't of Pub. Safety*, 283 S.W.3d 287, 292 (Mo. App. 2009). Employer raises several arguments intended to show that the time, place, and circumstances of employee's accident bar employee's claim; we address them individually below.

First, employer contends that employee's injury did not arise out of and in the course of his employment because he fell before 3:00 p.m., the start of his scheduled shift. This argument fails. As we have previously held, and as indicated in *Henry v. Precision Apparatus, Inc.*, 309 S.W.3d 341, 342 (Mo. App. 2010), an employee does not necessarily have to be "clocked in" to sustain an injury arising out of and in the course of employment. Employer also argues the same facts prevent employee proving an "accident" for purposes of § 287.020.2 RSMo, citing that section's language defining an accident as an event "during a single work shift." But the term "single work shift" is not defined and we decline to read it as imposing a requirement that an employee be clocked in—or that this employee must have been injured after 3:00 p.m.—to be eligible for workers' compensation benefits. We agree with the administrative law judge and credit employee's testimony and find that employee was on duty when he entered the parking lot owned by employer.

Second, employer argues that because employee's injuries resulted from his falling in an icy parking lot, we must deny employee's claim under *Hager v. Syberg's Westport*, 304 S.W.3d 771 (Mo. App. 2010). We agree with the administrative law judge that *Hager* is not applicable to these facts. The employee in *Hager* had finished his work duties, clocked out, left employer's premises, and was traversing a parking lot not owned or controlled by his employer on his way to his personal vehicle to go about his own affairs for the evening, when he fell on ice. *Id.* at 772. Here, employee was on duty by virtue of his arrival at employer's premises, was traversing an icy parking lot controlled by employer, and was engaged in an activity related to his work (as will be further explained below) when he fell. We also note that employer's argument fails to properly take into account the more recent decision in *Pile v. Lake Reg'l Health Sys.*, 321 S.W.3d 463 (Mo. App. 2010), which made clear there is no need to engage in the "equal exposure" analysis under § 287.020.3(2) (b) where the risk or hazard is not "unrelated to the employment" for purposes of that section. See *Pile*, 321 S.W.3d at

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467. Here, the risk that resulted in employee's injuries was that of walking through a parking lot covered with ice—or, in other words, the act of navigating a specific physical condition of employer's premises. Employee had to face this risk by virtue of his reporting to work his shift for employer on December 12, 2008. We conclude, therefore, that this risk was related to employee's work.

Third, employer argues that employee was injured while performing a task for his own benefit, and thus the mutual benefit doctrine does not apply here. As a preliminary matter, we note that the mutual benefit doctrine (an exception to the "going and coming" rule, see *Rogers v. Pacesetter Corp.*, 972 S.W.2d 540, 543 (Mo. App. 1998)) is not implicated on these facts. Employee was injured on employer's premises while he was on duty, so there is no reason to consult the mutual benefit doctrine, special hazard rule, extension of premises doctrine, or any other exception to the going and coming rule. (Nor, for that matter, is there any need to discuss the viability of these doctrines after the 2005 amendments). Thus, while employee's intent and the nature of his activities at the time he fell are certainly relevant factors, we need not view them through the lens of the mutual benefit doctrine.

It appears what employer is really arguing is that employee deviated from the course of his employment for employer when, instead of heading straight into his Sergeant's office (as was his usual routine), he went around the back of his car to check for damage to a coworker's vehicle parked nearby. Employer points to employee's testimony that he was going to look at the detective's vehicle "for [his] own benefit." The full exchange is set forth below:

- Q. Okay. And I didn't—I'm going to go back because forgot to ask this. What was the main reason that you were going to go look at this detective's vehicle. Why were you doing that?
- A. To see if I could tell if it had been scraped or not and what color, maybe, it was.
- Q. And why were you the one that was doing that?
- A. For my own benefit in case the sheriff or the undersheriff wanted to ask me about it because a county car had been damaged.

*Transcript*, page 16.

Employer characterizes employee's behavior as an "attempt to clear his name in a possible hit and run on the premises by looking at the vehicle hit before his work shift started." *Employer's Brief*, page 17. But we do not read the foregoing testimony as proof that employee deviated from his work in favor of a purely personal mission to "clear his name." Rather, it's clear to us from employee's testimony—and we so find—that his purpose in seeking information about possible damage to the coworker's car was to be better able to answer his supervisors' questions if he was approached about the incident, or, in other words, to gather information in anticipation of an issue arising at his work. Employee had a good reason to believe such an issue might arise, as he'd

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overheard his license plate being run in connection with his vehicle having been near the damaged car. So, after arriving at work on December 12, 2008, employee started walking over to take a look at his coworker's car in order to gather information that he had a good reason to believe would have important implications as to his work—specifically, his working relationships with the coworker and his supervisors. This activity is not like volunteering one's assistance to a coworker engaged in performing a personal vehicle repair, as in *Henry*, 309 S.W.3d at 342, nor is it like walking through a parking lot after the work day is over en route to pursue one's personal nightly activities as in *Hager*, 304 S.W.3d at 772. The employees in *Henry* and *Hager* were engaged in activities that were purely personal, with no relation to the work those employees were hired to perform for their employers. Here, on the other hand, we are convinced that employee did not deviate from his work, nor was he on a "frolic" of his own when he went around the back of his car rather than walk straight to his work site.

In sum, we are convinced that the hazard or risk of traversing an icy parking lot was related to employee's employment, and that employee was engaged in a work-related task when he sustained the injuries that came directly from that risk. Accordingly, we affirm the administrative law judge's conclusion that employee suffered an injury arising out of and in the course of his employment.

### Decision

We supplement the award of the administrative law judge with the foregoing findings and comments. In all other respects, we affirm the award.

The award and decision of Chief Administrative Law Judge Nelson G. Allen, issued November 22, 2010, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 14<sup>th</sup> day of October 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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VACANT  
Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: **Lantie Wilson** Injury No. **08-113449**  
Employer: **Buchanan County**  
Insurer: **Missouri Association of Counties**  
Hearing Date: **September 21, 2010** Checked by: **NGA**

### 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: **December 12, 2008**
5. State location where accident occurred or occupational disease was contracted: **St. Joseph, Buchanan 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? **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 occurred or occupational disease contracted: **Employee was an employee of Buchanan County Sheriff's Department and was investigating damage to a detective's car to report to the Sheriff and slipped on ice.**
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: **Right ankle.**
14. Nature and extent of any permanent disability: **25% right ankle.**

- 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? **\$27,011.49**
- 18. Employee's average weekly wages: **N/A**
- 19. Weekly compensation rate: **\$363.71 / \$363.71**
- 20. Method wages computation: **By Stipulation**

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses:	<b>\$27,011.49</b>
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<b>13 2/7</b> weeks of temporary total disability (or temporary partial disability) x \$363.71 =	\$4,832.14
<b>38.75</b> weeks of permanent partial disability from Employer x \$363.71 =	\$14,093.76

22. Second Injury Fund Liability: **N/A**

**TOTAL: \$45,937.39**

23. Future requirements awarded:	<b>NONE</b>
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Each of said payments to begin **December 13, 2008** 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 **25%** of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: **Jay M. Allison**

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

Employee: **Lantie Wilson** Injury No. **08-113449**  
Employer: **Buchanan County**  
Insurer: **Missouri Association of Counties**  
Hearing Date: **September 21, 2010** Checked by: **NGA**

**ISSUES**

Prior to presenting evidence, the parties stipulated the issues to be determined by this hearing are:

1. Whether the claimant sustained an accident arising out of and in the course of his employment with Buchanan County;
2. Liability of the employer for temporary total disability for 93 days;
3. Liability of the employer for past medical expenses in the amount of \$43,249.60;
4. Nature and extent of claimant's disability.

**STIPULATIONS**

At the time of the hearing, the parties stipulated to the following:

1. On or about December 12, 2008, Lantie Wilson, "*Claimant*" was an employee of Buchanan County, "*Employer*", and was operating under and subject to the provisions of the Missouri Workers' Compensation Law and was fully insured by Missouri Association of Counties, "*Insurer*".
2. It was further agreed that the employer had proper notice of the injury and a timely Claim for Compensation was filed within the time allowed by law.
3. The parties also agreed that the correct rate of compensation is \$363.71 per week for both temporary total disability and permanent partial disability. No compensation has been provided.
4. No medical aid has been furnished. Claimant is asking for past medical aid in the amount of \$43,249.60.
5. No compensation has been paid.

## EXHIBITS

Claimant offered the following exhibits which were admitted in evidence without objection, provided the depositions were admitted subject to objections contained in the depositions:

- A. Payment Log
- B. Time Log (Withdrawn)
- C. Deposition – Dr. Pazell
- D. Employee Medical

Employer/Insurer offered the following exhibits which were admitted into evidence without objection:

- 1 Dr. Fevurly Report
- 2 Dr. Fevurly C.V.
- 3 Employee's Deposition 1/5/10 (Withdrawn)

All objections contained in the admitted depositions are overruled unless otherwise noted.

### Findings of Fact – Summary of the Evidence

Claimant testified in person. He is 69 years old. He is employed as a corrections officer in the Buchanan County Sheriff's Department. He started his employment on September 1, 2002. I found claimant to be a believable witness.

The claimant normally works a shift from 3:00 p.m. to 11:00 p.m., Monday through Friday. He said he is on call 24 hours a day, seven days a week. His duties include overseeing the pods where the prisoners are located. Sometimes he is required to assist the Sheriff's Department in their tasks. He might be required to transport prisoners back and forth from the Law Enforcement Center across the street to the Buchanan County Courthouse. Mr. Wilson said that he is officially on duty from the time he enters the parking lot until he leaves the parking lot.

He is required to park his automobile in the Sheriff's parking lot. This lot adjoins the Law Enforcement Center and is directly west on the same block as the Law Enforcement Center. The lot is fenced and gated. It requires a special key in order to gain admittance. The parking lot is only used by law enforcement personnel and some employees of the Buchanan County Courthouse. The parking lot appears to be owned and operated by Buchanan County. Members of the public are not granted admission to the parking lot.

Mr. Wilson said that he was on the clock as soon as he entered the parking lot and remained on the clock until he left the parking lot. December 12, 2008 was a clear day although the previous day there had been an ice storm.

The claimant testified that he entered the parking lot his regularly scheduled time. He exited his vehicle and walked around the back of his vehicle and slipped on some black ice that was covering the parking lot. At the time of his fall, he was in the process of going to observe a vehicle that belonged to one of the Sheriff's detectives. The previous date the detective's vehicle had been involved in an accident. Apparently, a vehicle being driven by one of the Sheriff's detectives had been hit when it was in the parking lot. The claimant's car had been in the vicinity of the detective's car around the time it had been scaped or scratched.

The claimant had heard his license number being run by the dispatcher. He testified that at the time of the injury, he was walking over to investigate the detective's car damage. He was doing this so that if he was questioned by the Sheriff about the incident, he would be able to answer the Sheriff's questions.

When claimant fell, he sustained a right ankle fracture dislocation. While in the parking lot, claimant's ankle was braced and an ambulance was called. Claimant was transported to Heartland Regional Medical Center. Once at the hospital, claimant was taken to surgery and Dr. Trease performed an open reduction and internal fixation of the fibula. The surgery reduced the ankle mortise gap medially. This required that a lag screw and lateral plate be placed into claimant's fractured ankle.

Claimant did follow up care with Dr. Trease. Claimant testified that he had to have a second surgery to remove the hardware. The hardware was causing him significant pain. This procedure was also performed by Dr. Trease. Claimant's surgery and follow up care required that Mr. Wilson miss work. Claimant missed work from 12/12/08 to 2/24/09.

On July 2, 2009, client had to be readmitted to Heartland Regional Medical Center. Claimant had developed an infection near the site of his previous ankle surgery. Claimant had been dealing with swelling and discomfort for a period of two (2) weeks prior to his admission to Heartland Regional Medical Center. Claimant's primary care doctor, Dr. Kafka, had opened a small area near the scar site and drained frank pus. Dr. Kafka recommended that Mr. Wilson be admitted to the hospital. Based upon Dr. Kafka's recommendation, claimant was admitted to Heartland Regional Medical Center. Claimant was diagnosed with a staph infection and treated with Vancomycin IV and a PICC line was placed in claimant's arm.

Claimant testified that he then developed a fungal infection in his mouth. The fungal infection was the result of the medication that Mr. Wilson was required to take for the staph infection. Eventually, the staph infection and fungal infection resolved. Claimant was on IV antibiotics for approximately two (2) months.

As a result of this staph infection the claimant was unable to work from July 2, 2009 until July 22, 2009.

The employer argues that the claimant's injury did not arise out of and in the course of his employment and is barred by Hager v. Syberg's Westport, 304 SW 3d 771 (Mo. App. E.D. 2010). In Hager's, the facts are very similar to the facts in this case with only two major distinctions.

The first disparity is that in *Hager* the employer leased the parking lot and did not control the maintenance of the parking lot and the parking lot was not in the control of the employer. Here, the employer owned and controlled the parking. It was an extension of the employer's premise.

The second distinction is that in *Hager* the claimant was simply leaving his place of employment after he had completed his work shift and checked out. In this case, the claimant was seeking information to inform his employer. He had clocked in when he passed through the gate and entered the parking lot.

I find Mr. Wilson did have an accident arising out of and in the course of his employment.

John A. Pazell, M.D., testified by deposition taken on August 19, 2010 and admitted into evidence as Claimant's Exhibit Number C. All objections thereto are hereby overruled.

Dr. Pazell examined the claimant on April 16, 2009 and January 4, 2010. He found the claimant had a fracture dislocation of his right ankle. Both the tibia and fibula were fractured and dislocated. Both were broken in inner and outer parts of the ankle. This required original surgical intervention. This required an open reduction and internal fixation and surgical intervention were preformed. Screws and a plate were inserted.

Unfortunately, Mr. Wilson developed a severe type of staff infection on his ankle. It was a Methicillin-resistant staph infection. The claimant was hospitalized because of this and this also caused a fungal infection in Mr. Wilson's mouth that had to be treated. The claimant has had the screws and plate removed from his ankle as part of the treatment for the staph infection.

Dr. Pazell said the infection was caused by his surgery as there was no other explanation as to why the infection would have developed.

Dr. Pazell noted the claimant suffers pain and loss of motion in his right ankle. He rated the claimant as having a 30% permanent partial disability to his right ankle.

The report for Chris D. Fevurly, M.D., was admitted into evidence as Employer/Insurer's Exhibit Number 1. Dr. Fevurly examined the claimant on June 16, 2010. He medically causally related the claimant's fracture and resulting staph infection and his oral fungal infection to claimant's fall.

Dr. Fevurly rated the claimant as having a 15% permanent partial disability to his right ankle as a result of his fall.

I find and believe from the evidence that as a result of the claimant's accident arising out of and in the course of his employment on December 12, 2008, the claimant has sustained a permanent partial disability of 25% of his right ankle. I order and direct the employer to pay to the claimant \$363.71 for 38.75 weeks for a total of \$14,093.76.

As a result of his injury, the claimant was temporarily totally disabled and unable to compete in the open labor market for 13-2/7 weeks. I order and direct the employer to pay to the claimant the sum of \$363.71 per week for 13-2/7 weeks for a total of \$4,832.14.

The claimant was originally billed \$43,249.60 for his medical expenses but \$16,238.11 was written off by the medical provider. His actual medical expense was \$27,011.49. I find this amount was reasonable and necessary to cure and relieve the condition caused by his injury.

I order and direct the employer to pay to the claimant the sum of \$27,011.49 for his medical expenses.

The claimant states that he had strained the left knee because of the strain of putting additional weight on it. However there was no evidence that the accident was the prevailing factor as he had had prior surgery to the knee in 2007.

Dr. Fevurly found it was not the prevailing factor of his left knee problem. I agree. Any additional claim the claimant has for his left knee is denied.

Jay M. Allison is hereby assigned a lien in the amount of 25% of this Award for necessary legal services provided claimant.

Made by: /s/ Nelson G. Allen  
*Nelson G. Allen*  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*

This Award is dated and attested to this 18th day of November, 2010.

/s/ Naomi Pearson  
**Naomi Pearson**  
Division of Workers' Compensation