

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

Injury No.: 13-020414

Employee: Joan Knutter, deceased
Dependent: Karl Knutter, deceased
Claimant: Michael Knutter
Employer: American National Insurance
Insurer: Travelers Indemnity Company of America

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge (hereinafter "ALJ").

Introduction

The parties asked the administrative law judge to resolve the following issues:

- 1) Whether the employee's March 25, 2013, injury was the prevailing factor in causing her death on May 9, 2013;
- 2) Whether there was an appropriate substitute of Michael Knutter for his deceased father Karl Knutter, employee's husband; and
- 3) A Motion for Costs filed on behalf of both employee and employer/insurer.¹

The ALJ determined that the claimant "failed to sustain his burden of proof that Joan Knutter died as the result of immobilization from the treatment of her March 25, 2013, injury resulting in a blood clot and pulmonary embolism."² Finding the issue of medical causation to be dispositive of the case, the ALJ addressed no other issues.

Both employee and employer/insurer filed timely applications for review with the Commission.

The employer/insurer allege that the ALJ's award was erroneous for the following reasons:

- I. The Award failed to address all the issues presented for adjudication at the final hearing on August 18, 2017 and specifically the following:

¹ The ALJ's October 10, 2017, award references only the issue of "whether the employer/insurer are liable for the costs of an unreasonable defense." *Award*, 3. At hearing, the parties stipulated that motions for costs pursuant to §287.560 filed on behalf of *both* the employee and employer/insurer were in dispute. See *Claimant's Exhibit 12, Transcript*, 543, and *Employer/Insurer's Exhibit F, Id.* 1228.

² *Award*, 5.

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- (a) The Motion for Costs filed on behalf of Employer and Insurer; and
- (b) Whether there was an appropriate substitution of Michael Knutter for his deceased father and husband of employee, Karl Knutter.

The attorney for claimant Michael Knutter alleged the ALJ's award was erroneous for the following reasons:

- (a) The administrative law judge erred in that she failed to award \$116.48 in TTD [temporary total disability] benefits not paid by the employer and insurer, because the parties stipulated at the hearing that the employer and insurer underpaid TTD benefits by \$116.48.
- (b) The administrative law judge misapplied the law in that she failed to find the death of Joan Knutter, caused by a pulmonary embolism according to every medical opinion in evidence, compensable because the parties stipulated that Joan Knutter sustained an accidental ankle fracture arising out of an[d] in the course and scope of her employment for the employer and as such ever[y] natural consequence that flows from her injury is compensable as a direct and natural result of the primary original injury.

For the reasons set forth below, we reverse the award and decision of the administrative law judge.

Findings of Fact

The Accident

On March 25, 2013, while in the course and scope of employment for employer, the employee slipped and fell on ice at work, twisting her right ankle. That day, she saw Dr. Thomas Corsolini, who reviewed an X-ray of employee's right ankle and identified a non-displaced fracture of the right distal fibula. Dr. Corsolini initially treated the employee's injury with a protective splint and crutches. However, after an evaluation on April 1, 2013, orthopedist Dr. Robert Bennett treated employee with a non-walking fiberglass cast and a wheelchair for ambulation. The employee received no further treatment from Dr. Bennett and was wheelchair dependent until the time of her death.

On May 9, 2013, the employee experienced shortness of breath while she was sitting on the toilet. Her husband contacted emergency medical service personnel who took the employee to the hospital. Employee's husband told EMS personnel that his wife had complained of dull chest pains for several days. Despite CPR and emergency intervention at Mercy Hospital Springfield, the employee suffered a severe anoxic brain injury due to a saddle pulmonary embolus and died on May 9, 2013.

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Medical Evidence

Dr. Randall J. Cross

Dr. Randall Cross, a family physician, summarized his findings based on a review of employee's medical records in a report dated October 22, 2014.

Dr. Cross found the employee had cardiac risk factors consisting of hypertension, hyperlipidemia, obesity, and a sedentary lifestyle, which predisposed her to vascular disease and increased risk of thrombosis. He considered the employee to have major risk factors for vascular disease including longstanding chronic renal insufficiency, obstructive sleep apnea, gastroesophageal reflux disease with esophagitis, and hemorrhoids. He considered her report of dull chest pain for two days followed by sudden onset of shortness of breath while on the toilet leading to cardiac arrest "very suspicious for an acute coronary event."³ Dr. Cross noted a hospital evaluation showed the employee had an elevated troponin level, which he also considered potentially indicative of myocardial damage. Dr. Cross surmised, based on a mass identified in the employee's left adrenal gland, that the employee also may have had undiagnosed cancer.

Although he noted that the employee had been in a wheelchair during much of the forty-five days from the time of her ankle fracture until the day of her demise, Dr. Cross concluded:

Taking all of the medical facts into consideration, this woman had multiple risk factors for the development of thrombosis and there is no way with any reasonable medical certainty to conclude that her 45-day old ankle fracture was the prevailing factor in the development of a pulmonary embolus led to her cardiac arrest and ultimate demise.⁴

Dr. Cross noted that the employee's cremation precluded an autopsy, which would have answered questions relating to the cause of her death.

Dr. Thomas F. Wright

Internist and registered vascular technologist, Dr. Thomas Wright, set out his opinions regarding medical causation in a letter dated October 22, 2014.

Dr. Wright noted that the employee had multiple underlying risk factors for venous thromboembolism (VTE), including age, obesity, renal insufficiency, and obstructive sleep apnea. However, Dr. Wright found that the key precipitating event and direct proximal cause of the employee's saddle pulmonary embolism was immobility secondary to fracture of her right ankle. He noted employee's prolonged lack of ambulation due to delay in planned removal of her cast at five and six weeks after her

³ Employer/Insurer's Exhibit A, *Transcript*, 557.

⁴ *Id.* 558.

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fracture and the recommendation that she remain completely non-weight bearing and using only a wheelchair.

Dr. Wright considered the employee's immobility attributable to the March 25, 2013, work injury to be "the tipping point", proximate cause and "the final contributing factor" of her fatal pulmonary embolism.⁵ He observed that though the employee was sedentary, she was mobile and actively ambulating without assistance prior to her fall on March 25, 2013.

Using mathematical calculations that involved multiplying the employee's independent risk factors, Dr. Wright concluded that the employee's risk of deep vein thrombosis and pulmonary embolism (DVT/PE) was 52.2% if she remained immobile for greater than several days after her March 25, 2013, ankle fracture.

Dr. Wright concluded, "In this setting of significantly elevated risk, based on my experience and knowledge of the pathophysiology of venous thromboembolic disease, that fracture of the ankle was the inciting cause of Ms. Knutter's fatal PE."⁶

Dr. Mitchell Mullins

Dr. Mitchell Mullins, an emergency medicine osteopathic physician, reviewed the employee's medical records and summarized his findings in a report dated March 24, 2015.

Dr. Mullins noted employee's confinement to a wheelchair for much of forty-five days after her work-related ankle fracture. He stated that immobilization interferes with normal blood circulation, which leads to venous stasis; that thrombi or blood clots grow especially when blood flow is not normal; and that one in five pulmonary embolism occurs longer than fourteen days after a trauma.

Dr. Mullins noted that the employee did not have cardiovascular disease and had no history of heart failure. He opined it would "clearly be against logical medical reasoning to diagnose someone's death due to a cardiac event in light of a massive saddle embolus."⁷

Dr. Mullins acknowledged that the employee's age (sixty-nine) and obesity were factors that increased her risk for pulmonary embolus. He considered obesity to be a minor risk factor.

Dr. Mullins found that employee exhibited no symptoms of cancer nor was there any indication she had cancer. He did not consider the employee's elevated troponin level at the time of hospital evaluation to be a factor that increased her risk for pulmonary embolism.

⁵ Claimant's Exhibit 2, *Transcript*, 20, 22.

⁶ *Id.* 23.

⁷ *Id.* 10.

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Dr. Mullins concluded that the most likely cause of the employee's pulmonary embolus was trauma from her March 25, 2013, work injury and resulting immobilization. Dr. Mullins specifically disputed Dr. Cross' opinion that the employee's ankle fracture was not, within any degree of medical certainty the prevailing factor in her development of a pulmonary embolism. He concluded:

[I]t is within a reasonable degree of medical certainty that the ankle fracture lead [sic] to venous stasis which ultimately led to a saddle embolism. Although other factors are possible, it is not reasonable to consider them with the weight that a recent trauma has in the development of pulmonary emboli.⁸

Dr. J. Randolph Mullins

Employer produced two undated letters from vascular surgeon Dr. J. Randolph Mullins (hereinafter Dr. J. Mullins). Dr. J. Mullins stated he firmly agreed with Dr. Cross' conclusions and opinion regarding the issue of medical causation. He further opined that the employee "had a 99.78% likelihood of **not** suffering a PE following her ankle fracture."⁹

Dr. J. Mullins summarized:

This exceedingly low risk occurs in the context of pre-existing risk factors (obstructive sleep apnea, obesity, sedentary lifestyle, sedentary profession, chronic kidney disease), likely co-morbid diseases (adrenal tumor, venous disease) and lack of clinical evidence for a DVT. Of the many people who have died of PE while on the toilet, my inability to find a single example of such a person who simultaneously had an ankle fracture is instructive.

Given the above, it is simply impossible to suggest that the predominant cause of Mrs. Knutter's PE was her ankle fracture.¹⁰

Our Findings

We do not dismiss the ALJ's observation that because there was no autopsy, no medical records document the specific location of the employee's blood clot or deep vein thrombosis. However, we disagree with the ALJ's conclusion that it is purely speculative to link the employee's work-related right ankle injury and her fatal saddle pulmonary. Neither Dr. Cross' identification of a multitude of other risk factors based the employee's medical history and hospital records, nor Dr. J. Mullins' inability to find examples in medical literature of individuals who had ankle fractures and experienced onset of pulmonary embolus while sitting on the toilet, convince us that the employee's fatal pulmonary embolism following forty-five days of virtually total immobility due to

⁸ *Id.* 11.

⁹ *Transcript*, 1151.

¹⁰ *Id.*

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confinement to a wheelchair immobilization was purely coincidental. We find, based on the credible expert medical opinions of Dr. Wright and Dr. Mitchell Mullins, that the prevailing cause of the employee's death was her March 25, 2013, traumatic ankle injury and subsequent immobilization, resulting in venous stasis and ultimately causing her fatal saddle pulmonary embolism.

Substitution of Michael Knutter for His Deceased Father and Employee's Husband, Karl Knutter

Subsequent to the employee's death, Karl Knutter, her spouse, filed a timely claim for compensation for dependent death benefits. Karl Knutter died on July 17, 2015.

On July 31, 2015, Michael Knutter's attorney filed a Motion for Substitution of Party and Suggestion of Death (Motion) with the Division. Said Motion attached a death certificate of Karl Knutter, Michael Knutter's birth certificate, and an affidavit signed by Michael Knutter attesting that he is the natural son and only child of Karl and Joan Knutter and "the only person entitled to proceeds of the workers' compensation claim with injury number 13-020414."¹¹ The Motion referenced § 287.230 but did not assert that Michael Knutter was a dependent.

Employer/insurer objected to the Motion on the basis that § 287.230 provides no legal basis for substitution of a party on the death of a *dependent*, as opposed to the employee. On October 28, 2015, after oral argument on the Motion, ALJ Holden issued an order finding Michael Knutter to be the personal representative of Karl Knutter, and the only person entitled to the proceeds of Joan Knutter's workers' compensation claim. The ALJ granted the Motion and ordered, pursuant to §287.580, that Michael Knutter be substituted as the claimant in this matter.¹²

Mediation Proceedings

The claimant's attorney and the attorney for employer/insurer unsuccessfully mediated Mr. Karl Knutter's claim before ALJ Margaret Holden on July 13, 2015, and July 28, 2015. ALJ Holden subsequently held a hearing on employer/insurer and claimant's respective motions for costs on November 12, 2015.¹³

Based on a transcript of this hearing, mediation mainly focused on the issues of medical causation of the employee's death and claimant Karl Knutter's life expectancy. The mediator noted that the medical evidence regarding medical causation was diametrically opposite and told the parties that both sides had merit. She further suggested that the parties obtain the opinion of a vascular surgeon. Employer/insurer did not dispute claimant's attorney's claim that the mediator stated she believed the claimant had a sixty percent probability of winning his case.

¹¹ Claimant's Exhibit 10, *Transcript*, 537.

¹² Claimant's Exhibit 11, *Id.* 542.

¹³ Employer/Insurer's Exhibit F, *Id.* 1236.

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The case failed to settle on July 13, 2015, primarily because employer/insurer's attorney was unable to secure settlement authority. ALJ Holden scheduled a second mediation for July 28, 2015. In the interim, unbeknownst to employer/insurer, Mr. Karl Knutter died on July 17, 2015.

At the conclusion of the second mediation on July 28, 2015, believing that Karl Knutter was the claimant, counsel for employer/insurer extended a \$35,000 settlement offer. Claimant's attorney accepted the offer, only then advising employer/insurer that Mr. Karl Knutter had passed away on July 17, 2015, and that claimant's attorney intended to file a motion to substitute Michael Knutter, Karl Knutter's son, as the appropriate party to pursue his father's claim. Employer/insurer, upset that claimant's attorney had not informed them of Karl Knutter's death prior to the July 28, 2015, mediation, withdrew its settlement offer. Employer/insurer subsequently reevaluated the case, and made a revised offer to settle the claim for \$5,000.

On August 18, 2015, employer/insurer's attorney filed a Motion for Costs alleging,

That claimant counsel's silence during the mediation and his refusal to divulge for 11 days the actual death of his client was a material misrepresentation of the facts of this case and clearly indicate that claimant's counsel pursued this case improperly and under false pretenses in an attempt to obtain settlement at a higher value than would have been considered by Employer and Insurer had it been given appropriate information regarding the death of Mr. Knutter. That such withholding of material fact during mediation is a claim prosecuted without reasonable ground.¹⁴

On or about November 5, 2015, the attorney for claimant, Michael Knutter, filed a Motion for Costs, claiming that employer/insurer's appearance at the July 13, 2015, mediation without authority to settle the claim and without access to anyone with authority constituted an "unreasonable defense" justifying an assessment of costs pursuant to §287.560.

ALJ Holden announced during the November 12, 2015, hearing that she would not rule on the claimant's Motion. She advised the parties that she would take employer/insurer's Motion for Costs under advisement. ALJ Fischer made no ruling on either employer/insurer's or claimant's motions in her Final Award. Employer's application for review requests a ruling on employer/insurer's Motion for Costs.

Substitution of Michael Knutter as Claimant for Karl Knutter, Employee's Husband

On July 31, 2015, claimant Michael Knutter, the only child of Karl and Joan Knutter, filed a Motion for Substitution of Party and Suggestion of Death (Motion) before the Division of Workers' Compensation.¹⁵ Employer/insurer objected to claimant's Motion and on September 17, 2015, the parties appeared before ALJ Holden for oral argument. On

¹⁴ Transcript, 1231.

¹⁵ Claimant's Exhibit 10, Transcript 537.

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October 28, 2015, ALJ Holden granted claimant's Motion, finding that Michael Knutter is Karl Knutter's only son, his personal representative and the only person entitled to the proceeds of Karl Knutter's workers' compensation claim. Citing § 287.580 as authority, she substituted Michael Knutter as the claimant in this matter.¹⁶

Conclusions of Law

Was Michael Knutter Properly Substituted as the Successor to Karl Knutter for Purposes of Pursuing Karl Knutter's Claim as a Dependent of Employee Joan Knutter?

Employer/insurer correctly notes that the Commission lacks jurisdiction to decide Michael Knutter's claim in the absence of an order substituting him as a party to pursue the claim of deceased dependent Karl Knutter.¹⁷

As we have found, Michael Knutter's attorney filed a Motion for Substitution of Party and Suggestion of Death (Motion) with the Division on July 31, 2015. Said Motion attached a death certificate of Karl Knutter and a birth certificate for Michael Knutter. It also included an affidavit from Michael Knutter attesting that he is the natural son and only child of Karl and Joan Knutter and "the only person entitled to proceeds of the workers' compensation claim with injury number 13-020414." The Motion alluded to § 287.230 but did not assert that Michael Knutter was a dependent.

287.230 RSMo provides:

The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, as far as the liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee due the employee shall be paid to his dependents without administration, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability.

Section 287.580 RSMo provides:

If any party shall die pending any proceedings under this chapter, the same shall not abate, but on notice to the parties may be revived and proceed in favor of the successor to the rights or against the personal representative of the party liable, in like manner as in civil actions.

¹⁶ Claimant's Exhibit 11, *Transcript*, 542.

¹⁷ See *Abel by and Through Abel v. Mike Russell's Standard Serv.*, 901 S.W.2d 299 (Mo App. 1995).

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Missouri courts have consistently instructed, “[u]nder the Workers’ Compensation Act, substantial rights are to be enforced at the sacrifice of procedural rights.”¹⁸

Employer/insurer objected to the employee’s Motion primarily on the basis that § 287.230 provides no legal basis for substitution of a party on the death of a *dependent*, as opposed to the employee.

On October 28, 2015, after oral argument on the Motion, ALJ Holden issued an order finding, *inter alia*, that Michael Knutter is the personal representative of Karl Knutter and the only person entitled to the proceeds of this workers’ compensation claim. The ALJ granted claimant Michael Knutter’s Motion and ordered, pursuant to § 287.580, that Michael Knutter be substituted as the claimant in this matter.¹⁹

Employer/insurer argues that pursuant to § 287.800, the Worker Compensation Law’s strict construction mandate, the ALJ improperly substituted Michael Knutter as the successor to claimant Karl Knutter’s rights because the Motion for Substitution of Party and Suggestion of Death filed with the Division on July 31, 2015, referenced only § 287.230 RSMo and failed to reference § 287.380.²⁰ We note that the Supreme Court’s recent decision in *Accident Fund Insurance Company; E. J. Cody Company, Inc., v. Robert Casey*, citing the statutory mandate that workers’ compensation proceedings “be simple, informal and summary”²¹ found that an amended claim naming the employee’s widow and children and her attorney’s oral motion for substitution of parties within ninety days constituted a *de facto* suggestion of death and was sufficient to substitute both the widow and eight surviving children because this process “substantially tracked the procedural rules and was ‘in like manner as in civil actions’ as required under § 287.580.”

Based on claimant Michael Knutter’s Motion for Substitution of Party and Suggestion of Death and the ALJ’s October 28, 2015 Order substituting Michael Knutter as the successor to the rights of dependent claimant Karl Knutter, we find we have jurisdiction to decide this dispute.

Medical Causation

Section 287.020.3(1) RSMo sets forth the standard of medical causation applicable to this claim, and provides, in relevant part, as follows:

An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and

¹⁸ *Hale v. Treasurer of Mo.*, 164 S.W.3d 184 (Mo App. 2005). See also *Parsons v. Steelman Transp., Inc.*, 335 S.W.3d 6, 18 (Mo. App. 2011); *Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App. 2004); *Seeley v. Anchor Fence Co.*, 96 S.W.3d 809, 816 (Mo. App. 2002); *Crowell v. Hawkins*, 68 S.W.3d 432, 441 (Mo. App. 2001); *Lorenz v. Sweetheart Cup Co.*, 60 S.W.3d 677, 683 (Mo. App. 2001); *Elking v. Deaconess Hosp.*, 996 S.W.2d 718 (Mo. App. 1999); *Wiele v. National Super Mkts.*, 948 S.W.2d 142, 146 (Mo. App. 1997); and *Vogt v. Ford Motor Co.*, 138 S.W.2d 684, 686 (Mo. App. 1940).

¹⁹ Claimant’s Exhibit 11, *Transcript*, 542.

²⁰ Claimant’s Exhibit 10, *Id.* 537.

²¹ Section 287.550 RSMo.

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disability. "**The prevailing factor**" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Section 287.020.3 (4) RSMo provides:

A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

As we have found, based on the expert opinions of Dr. Mitchell Mullins and Dr. Thomas Wright, the employee's forty-five day immobilization related to treatment for the ankle fracture she suffered in a March 25, 2013, compensable injury was the prevailing factor causing her venous stasis, which led to a saddle pulmonary embolism and death on May 9, 2013.

Temporary Total Disability

Sections 287.149 and 287.170 RSMo provide for the payment of temporary total disability benefits while an employee is engaged in the rehabilitative process following a compensable work injury. *Greer v. Sysco Food Servs.*, 475 S.W.3d 655 (Mo. 2015).

The ALJ's award includes a list of written stipulations by the parties that includes the fact that employee Joan Knutter was underpaid temporary total disability benefits in the amount of \$116.48.²²

Employer/insurer bases its objection to an award of additional temporary total disability based on its argument that Michael Knutter was never properly substituted as a successor pursuant to § 287.580. In that we have rejected the employer/insurer's argument on the issue of substitution of parties and proper designation of Michael Knutter as Karl Knutter's successor with respect to this claim, we find that employee is entitled to, and employer is obligated to pay, temporary total disability benefits in the amount of \$116.48.

Death Benefits

At hearing, and as documented in the ALJ's award, the parties' stipulated that death benefits in the amount of \$43,160.00 were in dispute.²³ Consistent with our findings supra, we find that death benefits in this amount had accrued and become payable as of the time of dependent Karl Knutter's death on July 17, 2015, and that employer/insurer are liable to claimant Michael Knutter therefor.

²² Award, Exhibit A.

²³ *Id.*

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Employer/insurer and Employee's Motions for Costs Pursuant to §287.560

Section 287.560 provides, in pertinent part:

[I]f the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them.

As stated by the Supreme Court of Missouri in *Landman v. Ice Cream Specialties, Inc.*, "The commission should only exercise its discretion to order the cost of proceedings under section 287.560 where the issue is clear and the offense egregious."²⁴

Employer/insurer and its attorney were understandably upset when they discovered, at the time of their July 28, 2015, offer that the claimant had died eleven days prior and, as a result, their settlement offer greatly exceeded their valuation of the case. We do not condone claimant's attorney's delay in disclosing his client's demise of July 17, 2015, until the time of employer/insurer's settlement offer on July 28, 2015.

That said, notwithstanding his attorney's conduct in settlement negotiations, nothing in the record convinces us that claimant Michael Knutter's underlying claim for compensation, based on his mother Joan Knutter's compensable, fatal injury was brought, prosecuted, or defended without reasonable ground. Employer/insurer cites no authority that persuades us otherwise.

Because the claimant's attorney failed to preserve the issue of costs in his application for review, we need not decide this issue.

Decision

We reverse the award of the administrative law judge.

Employer is liable for temporary total disability benefits owed employee Joan Knutter in the amount of \$116.28.

Employer is liable for death benefits due and owing at the time of Karl Knutter's death in the amount of \$43,160.00.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued October 10, 2017, is attached solely for reference.

For necessary legal services rendered to employee, Ryan E. Murphy, Attorney at Law, is allowed a fee of 25% of the compensation awarded, which shall constitute a lien on said compensation.

²⁴ *Landman v. Ice Cream Specialties, Inc.*, 107 S.W. 3d 240, 250 (Mo. banc 2003).

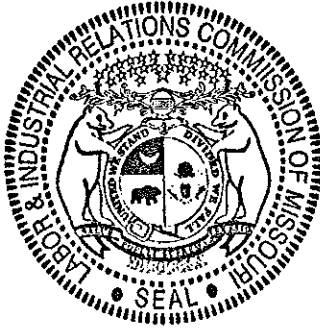
Employee: Joan Knutter, deceased

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

Given at Jefferson City, State of Missouri this 10th day of July 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION





John J. Larsen, Jr., Chairman

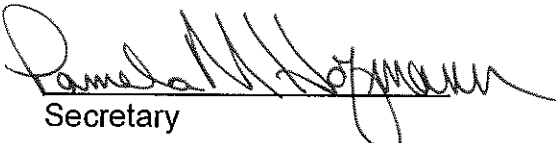
DISSENTING OPINION FILED

Reid K. Forrester, Member



Curtis E. Chick, Jr., Member

Attest:



Secretary

Employee: Joan Knutter, deceased

DISSENTING OPINION

I did not participate in the April 11, 2018, oral argument in this matter, held prior to my appointment to the Commission. However, I have reviewed the evidence, read the briefs of the parties, listened to an audio recording of the oral argument, and considered the whole record. 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 Worker's Compensation Law, I believe the decision of the administrative law judge should be affirmed with respect to her denial of the merits of the claimant's claim.

As the ALJ persuasively states in her award:

While it is possible that a blood clot or a deep vein thrombosis could have formed as a result of [the claimant's] wheelchair ridden status, there is no evidence in any of the medical records before or contemporaneous with Mrs. Knutter's death to suggest that this was the case. There are no medical records after the death from the saddle pulmonary embolus because Mrs. Knutter was cremated. While both parties to this case cite resources indicating the likelihood of pulmonary embolism due to a wide variety of causes, without any information regarding the location of the blood clot or deep vein thrombosis, it is purely speculative to link the saddle pulmonary embolism which resulted in Mrs. Knutter's death to her accident and injury to the right ankle about six weeks prior, much less to find that the accident and injury is the prevailing cause.¹

The majority's award of compensation in this case is simply not supported by competent and substantial evidence in the record.

As the employer/insurer's application for review notes, the ALJ failed to address the issue of employer/insurer's Motion for Costs. Section 287.560 allows for an assessment of costs "if the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground." Employer/insurer asks the Commission to assess costs against the claimant based on his attorney's conduct during mediation proceedings before the Division. Specifically, claimant's attorney chose not to disclose that his client, Karl Knutter, had died on July 17, 2015, until employer/insurer's settlement offer on July 28, 2015, subsequent to a mediation proceeding that day. In light of his claim for lifetime death benefits, Karl Knutter's life expectancy was a major issue during pretrial mediation. Karl Knutter's demise substantially reduced the value of the case. Claimant's attorney's delay in disclosing Karl Knutter's death caused employer/insurer to incur unnecessary legal expense. One could conclude that this lack of transparency was unfair to opposing counsel and without reasonable ground. Conduct of this nature jeopardizes the integrity of the workers' compensation system. Therefore, pursuant to § 287.560, I would

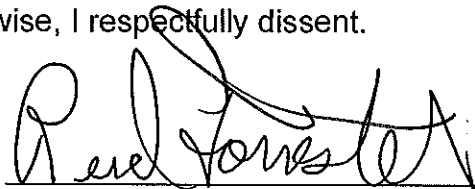
¹ Award, 5.

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assess employer/insurer's legal costs related to this conduct, as documented in the record, against the claimant.

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

A handwritten signature in black ink, appearing to read "Reid Forrester". The signature is written in a cursive style with a large, looping initial "R".

Reid Forrester, Member

AWARD

Employee: Joan Knutter Injury No.: 13-020414
Dependents: Karl Knutter
Employer: American National Insurance
Additional Party: N/A
Insurer: Travelers Indemnity Co. of America
Hearing Date: August 18, 2017

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: HDF/scb

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? 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 25, 2013
5. State location where accident occurred or occupational disease was contracted: Greene 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:
See Award
12. Did accident or occupational disease cause death? No. Date of death? May 9, 2013
13. Part(s) of body injured by accident or occupational disease: Right ankle
14. Nature and extent of any permanent disability: ----
15. Compensation paid to-date for temporary disability: \$2,311.27
16. Value necessary medical aid paid to date by employer/insurer? \$2,908.41

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- 17. Value necessary medical aid not furnished by employer/insurer? - 0 -
- 18. Employee's average weekly wages: \$566.55
- 19. Weekly compensation rate: \$377.70
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

- 21. Amount of compensation payable: - 0 -
- 22. Second Injury Fund liability: None
- 23. Future Requirements Awarded: None

Employee: Joan Knutter

Injury No. 13-020414

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Joan Knutter

Injury No: 13-020414

Dependents: Karl Knutter

Before the
DIVISION OF WORKERS'
COMPENSATION

Employer: American National Insurance

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

Additional Party: Treasurer of the State of Missouri
Custodian of the Second Injury Fund

Insurer: Travelers Indemnity Co. of America

Checked by: HDF/scb

The above-referenced workers' compensation claim was submitted on the record on August 18, 2017. Briefs were submitted by September 22, 2017.

The parties stipulated to the facts found in the attached Exh. A, attached and incorporated herein.

The issues to be resolved by hearing are 1) whether the injury of March 25, 2013 and subsequent immobilization during treatment was the prevailing factor regarding Joan Knutter's blood clot and pulmonary embolism that ultimately led to her death on May 9, 2013, 2) whether the employer/insurer are liable for the costs of an unreasonable defense, and 3) whether there was an appropriate substitution of Michael Knutter for his deceased father and husband of employee, Karl Knutter.

FACTS

As I find the first issue dispositive of this case, only those facts pertinent to that issue are recited.

The claimant, Joan Knutter, was 69 years old and worked as a claims representative on or about March 25, 2013. On or about that date, Ms. Knutter sustained an injury to her right ankle, described as a non-displaced fracture of the right ankle lateral malleolus. After initial treatment with crutches, Ms. Knutter was treated with a cast and a wheelchair for ambulation. On April 30, 2013, Ms. Knutter's cast was replaced due to the reduction in swelling in her right leg causing the cast to be too loose. On May 9, 2013, Ms. Knutter was sitting on the toilet at home when she became short of breath. Ms. Knutter was taken to the hospital by ambulance where she was pronounced dead after being taken off of life support. Ms. Knutter suffered a cardiac arrest with severe anoxic brain injury as the result of a pulmonary saddle embolism. Ms. Knutter's body was cremated after her death.

Dr. Thomas Wright, M D, board certified in internal medicine, phlebology, and venous and lymphatic medicine, evaluated Ms. Knutter's medical records and medical history and concluded that Ms. Knutter died of a saddle pulmonary embolism. In his July 30, 2016 report, Dr. Wright opined that the proximate cause of Ms. Knutter's embolism was her immobility secondary to the fracture of her right ankle. Dr. Wright acknowledged that Ms. Knutter had underlying risk factors

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for a pulmonary embolism which, as Dr. Wright described it, were added to the immobility causing the immobility to be the “tipping point” and proximate cause of her pulmonary embolism. Dr. Wright analyzed the risk factors in Ms. Knutter’s death as the result of a pulmonary embolism and determined that the fracture of the ankle was “the inciting cause” of Ms. Knutter’s fatal pulmonary embolism.

Dr. Mitchell Mullins, D O, board certified in emergency medicine, an independent medical evaluator and certified life care planner, evaluated Ms. Knutter’s medical records and concluded that the trauma to Ms. Knutter’s right ankle fracture resulted in her blood clot. Dr. M. Mullins went on to explain that the ankle fracture resulted in immobilization which in turn caused “venous stasis” or abnormal blood circulation which allows blood clots or thrombi to grow, resulting in a saddle pulmonary embolism.

Dr. John Randolph Mullins, M D, board certified in general surgery as well as vascular surgery, testified by deposition that he reviewed Ms. Knutter’s medical records pertaining to her right ankle fracture on March 25, 2013, and treatment therefor as well as the records relevant to Ms. Knutter’s death as the result of a pulmonary embolus on May 9, 2013. Dr. J. Mullins opined that the ankle fracture Ms. Knutter sustained was not the prevailing factor in causing her death as the result of a pulmonary embolism. Dr. J. Mullins cited the lack of evidence that a deep vein thrombosis or any other type of clot was directly tied to the ankle fracture as well as the other factors in Ms. Knutter’s life, such as obesity, a sedentary lifestyle, obstructive sleep apnea, and chronic kidney disease, which are factors increasing the likelihood of a deep vein thrombosis, as reasons for his opinion. Dr. J. Mullins found it significant that Ms. Knutter had had her right ankle cast replaced on April 30, 2013, due to a significant reduction in the swelling of the right leg; Dr. J. Mullins opined that a reduction in swelling made it extremely unlikely that she had a deep vein thrombosis emanating from her right leg in the absence of swelling.

Dr. Randall Cross, M D, specialist in occupational medicine, evaluated Ms. Knutter’s medical records and concluded that, without an autopsy, it is impossible to conclude that Ms. Knutter had a deep vein thrombosis in her lower extremities that may have embolized to her lungs leading to her cardiac arrest and death.

APPLICABLE LAW

RSMo Section 287.020.3(1) In this chapter the term “injury” is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. “The prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

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(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

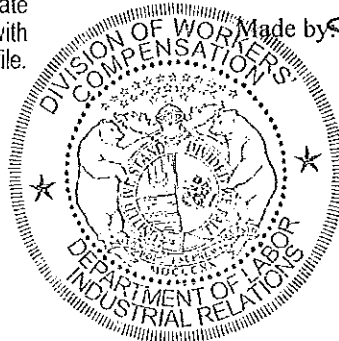
(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

AWARD

The claimant has failed to sustain his burden of proof that Joan Knutter died as the result of immobilization from the treatment of her March 25, 2013 injury resulting in a blood clot and pulmonary embolism. Ms. Knutter was certainly immobilized in a wheelchair as the result of her March 25, 2013 accident and the treatment therefor. The medical records are clear that her right ankle fracture was treated with a series of casts and a wheelchair to immobilize the fractured ankle. There is, however, no evidence of a blood clot or deep vein thrombosis in the immobilized parts of Ms. Knutter's body, ie, her lower extremities. While it is possible that a blood clot or deep vein thrombosis could have formed as the result of her wheelchair ridden status, there is no evidence in any of the medical records before or contemporaneous with Ms. Knutter's death to suggest that this is the case. There are no medical records after the death from the saddle pulmonary embolism because Ms. Knutter was cremated. While both parties to this case cite resources indicating the likelihood of a pulmonary embolism due to a wide variety of causes, without any information regarding the location of the blood clot or deep vein thrombosis, it is purely speculative to link the saddle pulmonary embolism which resulted in Ms. Knutter's death to her accident and injury to the right ankle about six weeks prior, much less to find that the accident and injury is the prevailing factor.

I certify that on 10-10-17,
I delivered a copy of the foregoing award
to the parties to the case. A complete
record of the method of delivery and date
of service upon each party is retained with
the executed award in the Division's case file.

By mp



Made by [Signature]
HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation

**Joan Knutter (Deceased)
Final Hearing, 8/18/2017**

STIPULATIONS

1. On or about 3/25/2013, American National Insurance was an employer operating under and subject to the terms and provisions of the Missouri Workers' Compensation Law, and during this time was fully insured by Travelers Indemnity Co of America.
2. On 3/25/2013, Joan Knutter (Deceased) was an employee of the employer and was working under and subject to the Missouri Workers' Compensation Law.
3. On the alleged date of injury of 3/25/2013, Joan Knutter (Deceased) sustained an accidental injury arising out of and in the course and scope of her employment for the employer.
4. Joan Knutter died on May 9, 2013.
5. Karl Knutter was the dependent husband of Joan Knutter.
6. Karl Knutter died on July 17, 2015.
7. Claimant Michael Knutter is the only child of Karl and Joan Knutter.
8. The above referenced employment and accident occurred in Springfield, Greene County, Missouri. Venue is proper.
9. The employee notified the employer of her injury as required by §287.420 RSMo.
10. The claim for compensation was filed within the time prescribed by §287.430 RSMo.
11. At the time of the alleged injury of 3/25/2013, the employee average weekly wage was \$566.55, which is sufficient to allow a compensation rate of \$377.70 for all purposes.
12. Temporary disability benefits in the amount of \$2,311.27 have been paid to date by the employer/insurer.
13. Necessary medical aid in the amount of \$2,908.41 has been paid to date by the employer/insurer.
14. Joan Knutter was underpaid TTD benefits in the amount of \$116.48.
15. The death benefits sought are \$43,160.00.
16. The attorney fee being sought by the Ryan E. Murphy Law Firm, LLC is 25%.