

Summary of SC95170, *Ronald Malam v. State of Missouri, Department of Corrections*

Appeal from the labor and industrial relations commission

Argued and submitted March 8, 2016; opinion issued June 28, 2016

Attorneys: Malam was represented by Randy C. Alberhasky of The Alberhasky Law Firm in Springfield, (417) 865-4444; and the state was represented by Catherine D. Goodnight and Cara Lee Harris of the attorney general's office in Springfield, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A corrections officer who suffered a hypertensive crisis after executing a takedown at work appeals the denial of workers' compensation benefits. In a 4-3 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The officer's medical expert emphasized the role of the workplace accident while minimizing the officer's preexisting conditions, concluding that the accident was the prevailing factor causing the officer's hypertensive crisis.

Judge Mary R. Russell dissents. She would defer to the commission's factual determination about the expert testimony and would find that sufficient evidence supports the commission's decision denying workers' compensation benefits.

Facts: While Ronald Malam was working as a corrections officer for the state department of corrections, he executed a "takedown" on an uncooperative inmate. As he escorted the inmate back to the housing unit, Malam became short of breath and began spitting up blood. He was taken by ambulance to the hospital, where he experienced a "hypertensive crisis" and was unconscious for a week. His treating physicians were aware of the takedown but noted no external signs of injury on Malam except a bruised knee. Ultimately, Malam underwent a heart catheterization, and the doctors diagnosed him with a hypertensive crisis. Malam subsequently filed a claim for workers' compensation benefits, seeking reimbursement from the department of about \$138,000 in medical expenses. At a hearing before an administrative law judge, the parties introduced expert medical opinions from two doctors. The department's medical expert concluded the prevailing factors causing Malam's hypertensive crisis were his preexisting health problems. Malam's medical expert concluded the takedown was the "direct, proximate and prevailing factor precipitating" Malam's hypertensive crisis. Based on the department's expert, the administrative law judge concluded that the takedown was not the prevailing factor and that the hypertensive crisis was not related to any work event. Malam appealed to the labor and industrial relations commission, which ultimately concluded that Malam failed to establish that the takedown was the prevailing factor in his injury, noting his expert described the takedown as both the prevailing and a precipitating factor. Malam appeals.

REVERSED AND REMANDED.

Court en banc holds: The commission's determination that Malam was involved in a workplace accident but that the accident was not the "prevailing factor" causing his medical condition is

reversed, and the case is remanded. To obtain workers' compensation benefits under section 287.020, RSMo, Malam had to prove he was involved in an "accident" that was the "prevailing factor" causing an injury that arose out of and in the scope of employment. A "prevailing factor" is the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. This case involves not the commission's credibility determination as to competing medical experts but rather an overly technical and parsed analysis of Malam's expert's testimony that overlooks the plain meaning of what the expert said. At no point did the expert say Malam's accident was merely a "precipitating factor" in relation to another "prevailing factor." Rather, he emphasized the role of the accident while minimizing the role of Malam's preexisting conditions. In context, the plain meaning of the expert's testimony was that the accident was the prevailing factor causing – or, in his words, precipitating – Malam's hypertensive crisis.

Dissenting opinion by Judge Russell: The author would find there was sufficient competent and substantial evidence to support the commission's finding that Malam failed to show the workplace accident was the "prevailing factor" that caused his medical condition and, therefore, would affirm the commission's decision. Since 2005, a workers' compensation claimant must meet a heightened burden of showing the accident was the "prevailing factor" in causing the injury and not just a triggering or "precipitating" factor. The commission's determination of whether a workplace accident is the "prevailing factor" is a factual one that is entitled to deference by reviewing courts. In light of Malam's complex medical history and testimony from the various physicians, the author would have found the commission's award is supported by sufficient competent and substantial evidence. The commission concluded Malam's expert's testimony was equivocal with regard to whether the accident was the "prevailing factor," and, given his extensive experience in the workers' compensation system, he was well aware of the directive that the accident must be the "prevailing factor" and not just a "precipitating factor."