

Summary of SC92113, *Sandy Johme v. St. John's Mercy Healthcare*

Petition for review of a decision of the labor and industrial relations commission
Argued and submitted Jan. 12, 2012; opinion issued May 29, 2012

Attorneys: St. John's was represented by Amanda Lee Miranda and Maurice D. Early of Early & Miranda PC in St. Louis, (314) 241-3030; Johme was represented by Ellen E. Morgan of the Law Offices of Ellen E. Morgan in St. Louis, (314) 918-7888. The Missouri Association of Trial Attorneys, which filed a brief as a friend of the Court, was represented by Randy Charles Alberhasky of The Alberhasky Law Firm PC in Springfield, (417) 865-4444.

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 hospital seeks review of a labor and industrial relations commission decision finding that its employee's injury arose out of and in the course of her employment and, therefore, that she was entitled to worker's compensation benefits. In a 5-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the commission's decision, holding the woman's injury was not compensable. The woman did not show the injury arose out of and in the course of her employment, and she would have had equal exposure to the risk causing her injury in her normal nonemployment life.

In a dissenting opinion, Chief Justice Richard B. Teitelman disagrees that the woman's injury was not compensable. The applicable statute creates a two-step analysis to determine whether an injury is compensable. Under this analysis, an injury occurring during the performance of a work-related task often is work-related for worker's compensation benefits purposes. He would affirm the commission's award of worker's compensation benefits.

Judge Thomas J. Prebil, a circuit judge in the 21st circuit (St. Louis County), participated in this case by special designation in place of Judge George W. Draper III.

Facts: Sandy Johme worked as a billing representative for St. John's Mercy Healthcare. She was injured when she fell in the office kitchen after making a pot of coffee to replace the one she had emptied. Johme was clocked in at the time of the injury, and it was part of the employment routine to refill the coffee pot. Johme turned – either to dispose of coffee grounds or to walk back to her desk – and twisted her ankle, causing her foot to fall off her shoe. She was admitted to the hospital for a fracture in her pelvis. Johme subsequently sought workers' compensation benefits. An administrative law judge denied her claim, and the commission found that St. John's provided the coffee to its employees and that Johme was not required to clock out before getting coffee. It determined an employee's personal activity can be within the course of employment if the activities ultimately benefit the employer under the personal comfort doctrine and section 287.020.3(2), RSMo, and, therefore, awarded Johme benefits. St. John's seeks review of the commission's decision.

REVERSED.

Court en banc holds: The commission erred in awarding Johme benefits because she failed to show her injury arose out of and in the course of her employment. There is no issue that Johme's fall was the prevailing factor in causing the injury for which she seeks compensation. The commission failed to reference *Miller v. Missouri Highway & Transportation Commission*, 287 S.W.3d 671 (Mo banc. 2009), which is controlling for this case.. *Miller's* focus is on whether the risk leading to the injury was a risk to which the employee would be exposed equally outside of and unrelated to the employee's normal nonemployment life. As such, the commission erred in focusing on whether Johme's activity of making coffee was incidental to her employment. There is no evidence to show Johme's employment heightened her exposure to the cause of the injury. Accordingly, Johme's injury is not compensable under the statutory standards and case law regarding worker's compensation.

Dissenting opinion by Judge Chief Justice Teitelman: The author disagrees that Johme's injury was not created by a work-related risk. Section 287.020.3(2)(b) creates a two-step process to determine whether an injury resulted from a hazard or risk related to employment to which an employee would have been exposed equally in normal nonemployment life. The first step – whether the hazard or risk is related to the employment – is satisfied because Johme was injured while performing a work-related task. The second step – whether the employee would have been equally exposed to the risk in normal nonemployment life – need not be considered because the risk was related to Johme's employment. Accordingly, the author would affirm the commission's award of worker's compensation benefits.