

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

ALAN LEAKE, Deceased; LINDA LEAKE,

Respondent,

v.

CITY OF FULTON,

Appellant.

DOCKET NUMBER WD71821

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 27, 2010

APPEAL FROM

The Labor and Industrial Relations Commission

APPELLATE JUDGES

Division Two: Joseph M. Ellis, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

ATTORNEYS

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Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ALAN LEAKE, Deceased; LINDA)
LEAKE,)
)
 Respondent,)
v.)
)
CITY OF FULTON,)
)
 Appellant.)

WD71821

Labor and Industrial Relations Commission

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, and
Alok Ahuja and Karen King Mitchell, Judges

The City of Fulton appeals from a final order of the Labor and Industrial Relations Commission awarding benefits to Linda Leake, the widow of decedent Alan Leake. On appeal, Fulton claims that the Commission’s award was not supported by substantial evidence and was against the overwhelming weight of the evidence because there was evidence that, absent Leake’s pre-existing but undetected coronary artery disease, he would not have died on April 30, 2006.

AFFIRMED.

Division Two holds:

Because Leake’s fatal injury occurred after the 2005 amendments to the Workers’ Compensation Law, his workplace “accident” had to have been the “prevailing factor” in causing his injury for the injury to be compensable. At the hearing, Fulton’s expert testified that the workplace accident was not the prevailing factor in causing Leake’s injury because of Leake’s pre-existing cardiovascular disease. Leake’s expert testified that the workplace accident was the prevailing factor in causing Leake’s injury because his pre-existing conditions had not been detected before the accident and had not limited Leake’s activities prior to the accident. Also, another rescue worker who was present at the scene testified that it was the most physically and emotionally demanding rescue that he had ever experienced.

Even after the 2005 amendments to the Workers' Compensation Law, the question of whether a particular accident was the prevailing factor causing the injury to the employee is essentially a question of fact. In this case, there was substantial evidence to support the factual determination made by the Commission. Accordingly, we affirm the Commission's order.

Opinion by: Karen King Mitchell, Judge

July 27, 2010

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