

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DENNIS CARVER,**

**Appellant,**

**v.**

**DELTA INNOVATIVE SERVICES; AMERICAN HOME ASSURANCE CO and  
TREASURER OF THE STATE OF MISSOURI - CUSTODIAN OF THE SECOND  
INJURY FUND,**

**Respondents.**

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DOCKET NUMBER WD74266 Consolidated with WD74271)

**Date: September 11, 2012**

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Appeal from:  
Labor and Industrial Relations Commission

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Appellate Judges:  
Division One: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, Judges

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Attorneys:  
Mark E. Kelly and Kristi L. Pittman, Liberty, MO, for appellant.  
John D. Jurcyk, Kansas City, KS and Andrew J. Dickson, Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

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Appellant Dennis Carver worked as a roofer at Delta Innovative Services. On October 1, 2007, Carver suffered a back injury while carrying a 100-pound roll of roofing material up a ladder. Carver testified that he felt immediate pain in his back and leg while carrying the load up the ladder; the pain increased significantly the next day.

Carver filed a claim for workers' compensation benefits. Delta defended against Carver's claim by arguing, among other things, that Carver caused his own injury by failing to follow its "three-point" safety rule while climbing a ladder. As a general matter, the three-point rule requires that workers continuously maintain three points of contact with a ladder at all times; Delta contends that its three-point rule prohibits workers from carrying items while climbing a ladder.

An administrative law judge found that Carver was permanently and totally disabled, and awarded benefits accordingly. The ALJ assessed a 50% reduction to Carver's award pursuant to § 287.120.5, RSMo, however, based on her finding that Carver's injury was caused by his failure to follow Delta's three-point safety rule. The Commission amended the ALJ's decision in part, but affirmed the portion of the ALJ's award imposing the 50% reduction. This appeal follows.

**REVERSED AND REMANDED FOR THE ISSUANCE OF FURTHER FINDINGS OF  
FACT.**

Division One holds:

Pursuant to § 287.120.5, an employer has the burden of proving the following elements to justify a reduction of an employee's workers' compensation award: that the employer adopted a reasonable rule for the safety of employees; that the injury was caused by the failure of the

employee to obey the safety rule; that the employee had actual knowledge of the rule; and that prior to the injury the employer had made a reasonable effort to cause his or her employees to obey the safety rule.

Carver contends that the Commission erred in reducing his award because the record does not contain substantial and competent evidence to support the Commission's findings that Delta had proven the elements required to justify a reduction under § 287.120.5. One of Carver's primary arguments is that the evidence was insufficient to establish that Delta engaged in reasonable efforts to cause employees to follow the three-point rule. The evidence concerning Delta's efforts to enforce compliance with the three-point rule is controverted, and substantial evidence would support the conclusion that Delta had failed to engage in the requisite "reasonable effort." Despite this disputed factual issue, the ALJ's decision contains only the following generic statement: "many efforts were made to ensure that safety rules were followed."

The Commission is required to make explicit findings which determine the basic facts on which its ultimate conclusions are based, and demonstrate how the controlling issues were decided. The Commission's findings in this case fail to comply with this minimum standard. Without sufficient findings, we cannot meaningfully determine whether the Commission's ultimate conclusion on this issue was supported by substantial and competent evidence. For this reason, the Commission's decision is reversed, and the case is remanded to the Commission for the entry of more specific findings addressing the facts necessary to support a reduction under § 287.120.5.

Carver also argues that § 287.120.5 is unconstitutional. His equal protection argument is foreclosed by our decision in *Thompson v. ICI Am. Holding*, 347 S.W.3d 624, 635-36 (Mo. App. W.D. 2011), which addressed the identical claim. Further, we conclude that § 287.120.5 provides sufficiently definite standards governing the Commission's decision whether to impose a reduction, and the extent of any reduction which is justified in the circumstances. Finally, we conclude that the Commission's discretion to determine the size of any reduction does not violate the "strict construction" principle of § 287.800.1.

Before: Division One: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, Judges

Opinion by: Alok Ahuja, Judge

**September 11, 2012**

**THIS SUMMARY IS UNOFFICIAL AND  
SHOULD NOT BE QUOTED OR CITED.**