IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

NANCY GREENLEE, et al., as Dependants of Dennis Greenlee (Dec.), Appellant, vs. DUKES PLASTERING SERVICE & INSURANCE COMPANY OF NORTH AMERICA, Employer/Respondent,	))))))))))))	 Appeal No. ED79474 Appeal from the Labor & Industrial Relations Commission #89-099492

RESPONDENT'S BRIEF
ON BEHALF OF EMPLOYER/INSURER

Submitted by:

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JURISDICTIONAL STATEMENT

The claimant appeals from the Labor and Industrial Relations Commission's Order denying claimant's motion to reopen and modify the final award issued January 9, 1996.

The cause of action that is the subject of this appeal arose from an alleged accident which occurred in the County of St. Louis, Missouri, on July 24, 1989. This matter falls within the territorial jurisdiction of the Court's Eastern District pursuant to Section 477.050 R.S.Mo. 1978, as well as Section 287.495(1) of the Workers' Compensation Act.

Although Appellant seems to raise constitutional questions as a part of her appeal in this case, Respondent believes that this Court retains jurisdiction and further believes that these issues do not fall within the exclusive Appellant jurisdiction of the Supreme Court under Article 5, Section 3, Constitution of Missouri, 1945 (as amended 1982), since claimant's Constitutional claims are merely colorable and are not real and substantial.

Respondent incorporates by reference Respondent's Response to the Court's Order of August 20, 2001 filed with this Court on September 4, 2001 concerning jurisdiction.

INTRODUCTION

Dennis Greenlee sustained an injury by accident arising out of and in the course of his employment occurring in St. Louis County on July 24, 1989. The Labor & Industrial Relations Commission issued the final Award allowing compensation on January 9, 1996. On May 20, 1995, prior to the issuing of that final Award, Dennis Greenlee committed suicide by a self-inflicted gunshot wound to the head. Dennis Greenlee's dependents filed a Motion to Modify the previously issued Award praying for an Award of death benefits under the Workers' Compensation statute as a result of the claimant's suicide. After a remand hearing held on September 19, 2000, the Labor & Industrial Relations Commission issued their Order on April 4, 2001 denying claimant's Motion to Reopen the Final Award and specifically refusing to award death benefits in this claim. The Commission denied claimant's request for death benefits on three separate and distinct points: 1. That claimant's death was an intentional suicide thus barring death benefits under Section 287.120.3 R.S.Mo.; 2. That employer/insurer has an absolute defense to any death benefits by reason of Section 287.020.4 R.S.Mo. since claimant's death occurred over 300 weeks after the accident; and 3. That claimant has failed to demonstrate that the employee's suicide is medically causally related to the work accident on July 24, 1989. This appeal then followed.

STATEMENT OF FACTS

Respondent Employer/Insurer is not satisfied with Employee's Statement of Facts and offers the following correction of errors and omissions. Rule 84.04(f)

The uncontradicted evidence shows that on July 24, 1989, Dennis Greenlee, while in the employment of Duke's Plastering Service, sustained an injury by accident arising out of and in the course of employment occurring in St. Louis County. Tr. 1[1]

The claimant's case was initially heard on August 5, 1994 at the St. Louis Division of Workers' Compensation. The Findings of Fact by Judge Newcomb issued November 3, 1995 found that the claimant did sustain an accident on July 24, 1989. It further found that he was entitled to 5% PPD of the BAW referable to the neck as a result of this accident. The Award also provided for the payment of past medical aid not furnished by the employer and insurer and also a period of temporary total disability.

Those findings were eventually appealed to the Labor & Industrial Relations Commission who issued their opinion on September 13, 1995 and reissued it on January 9, 1996. The Commission found that "while he [Dennis Greenlee] was walking on a scaffold, he fell to the floor four feet below." LIRC Award P. 1. The claimant was sent to a neurosurgeon who performed brain surgery and removed a colloid cyst. Id. The Commission found that afer his surgery, "he has had severe headaches, severe neck pain, seizures, impotency, dizziness, sleeping problems, memory recall problems and has become suicidal." Id. The Commission

[1]Tr. refers to the Transcript from the Remand Hearing held on September 19, 2000.

concluded "the claimant's surgery and subsequent problems were caused by his fall from the scaffold." LIRC Award P. 2. The Commission then went on to find that, "after the accident and surgery he was depressed, suicidal, had difficulty concentrating, difficulty sleeping, treated people differently, had memory loss, would not engage in sustained activity for an eight hour day, had recurring headaches and seizures, was sullen, moody, withdrawn and not interested in social activity." LIRC Award P. 3. The Commission finally concluded, "after considering all the evidence, we find claimant is permanently and totally disabled as a result of his accident." Id.

The Final Award Allowing Compensation from the Labor & Industrial Relations Commission was appealed to the Eastern District Court of Appeals. Their opinion issued October 1, 1996 affirmed the Award of the Commission allowing compensation.

It was stipulated at the time of this remand hearing that the prior Award issued by the Commission has been paid including an Award for permanent total disability and medical expenses. Tr. 2.

It is undisputed that on May 20, 1995, Dennis Greenlee committed suicide by a self-inflicted gunshot wound to the head. The Certificate of Death filed as Claimant's Exhibit A confirms that fact as does the Jefferson County Medical Examiner's records filed as Claimant's Exhibit B. Tr. 106-111. In addition to listing the death as a suicide caused by the gunshot wound to the head, the records also document acute ethanol intoxication as a significant condition at the time of death. Tr. 111.

Leading up to employee's suicide, he had received treatment for his mental condition.

He was involuntarily committed to Malcolm Bliss Mental Health Center from August 10, 1993 through August 11, 1993. He was admitted on 8/10/93 after a suicide attempt by slashing his wrists. Tr. 192. He reported multiple stressors including losing his job in August, 1989 following an accident and separating from his wife for about two to three months prior to this admission. Id. He gave the hospital a history of trying to commit suicide several weeks prior to this admission by playing Russian Roulette, but he changed his mind at the last minute. Id. The day prior to this admission (8/9/93), he said that he tried to shoot himself but the gun did not go off and so he slashed his wrists instead. Id.

Further history obtained at the time of his admission indicated that he had been separating for the past two to three months from his wife and reported having an argument with his wife the day before the admission to Malcolm Bliss. Tr. 194. He stated that he drank a six-pack of beer after having the argument with his wife which led to a worsening of his depression. Tr. 194. Additionally, when questioned about his drinking habits, he said that he drank a six-pack of beer one to two times per week for the past several weeks. He indicated that he had been sober for several years prior to that but started drinking because "everyone was drinking." Tr. 194. He further reported a use of alcohol since the age of 14 up to a case of beer per day. Back of Tr. 194.

At the time of his discharge, the claimant was diagnosed with major depression; single episode with psychiatric features and alcohol abuse. Tr. 190.

Records from the Veterans Administration were also admitted into evidence as Employer/Insurer's Exhibit #3. Those records documented treatment which the employee

received from February, 1992 through March, 1995. Tr. 233-268. On 2/8/92, the employee indicated that he had a drastic change in his lifestyle since 1989 when he sustained a brain injury. Tr. 252. He followed up again in June and November, 1992 for complaints which he associated with that 1989 accident including depression, seizures, nervousness and aggravation. Tr. 253-257.

By 4/27/93, the claimant was seen after his wife told him that she was leaving him. The employee indicated that he was "worried about the wife leaving." Back of Tr. 250. The therapist noted that he had passive suicidal thoughts but was not a threat at the time of that examination. Id. The records from 5/26/93 and 6/17/93 deal with the problems the employee had with his wife moving out of their home. Tr. 249. The employee further admitted in the record dated 6/23/94 that his wife continued to date and he is upset but not as intently as he was before. Tr. 247. The note on 7/30/93 indicates that his wife and kids had moved out after he became verbally abusive with her over the phone. The note further indicated that he was "not clinically depressed. Not suicidal." Back of Tr. 249.

The records from the Veterans Administration also document treatment he received from the counselors there following his suicide attempt in August, 1993. In the note dated 9/9/93, the employee admitted that, "he became depressed because he drank beer and vodka on that day . . . this led to an argument with his wife and he attempted suicide." Tr. 265. The follow-up on 10/20/93 indicated that the employee had no suicidal ideations and was not clinically depressed. Tr. 64. In December, 1993 and January, 1994, he again had discussions with the therapist regarding the separation from his wife and his wife dating someone else. Tr.

263.

The note dated 10/28/94 indicated that the employee has had residual impairments in memory and judgment since the 1989 hydraucephalis. The note states that "patient has been severely depressed since then, exacerbated by wife's leaving him approximately one year ago." Tr. 242. The notes throughout 1995 continue to mention worries and hopes concerning reuniting with his wife despite their separation. Tr. 238 and 241.

Records from Jefferson Memorial Hospital from 5/10/95 through 5/12/95 documented another one of the employee's suicide attempts. Tr. 270-329. The history at the time of his admission on 5/10/95 indicated that according to his friends, Mr. Greenlee had been drinking alcoholic beverages most of that day. Later in the evening, he took three handfuls of Lorazepam over a 30 minute period. They believed he was "actively attempting to kill himself." Tr. 277.

By the employee's own history on May 11, 1995, "he states that he has been very unhappy because he received an ex parte from his wife to keep away from his property, 'that made me very depressed and I started drinking and attempted suicide'." Tr. 302. The chief complaint listed was "I want to just be dead, life is not worth it." Tr. 302.

The employee's mental status examination on May 11, 1995 revealed no delusions nor hallucinations. Tr. 302. He was oriented times three and his memory for recent and past events was grossly intact. Id. His concentration, attention and recall did seem to be poor, however. Id. Upon discharge on May 12, 1995, his discharge diagnosis was major depression, recurrent, alcoholism, learning disability, and seizure disorder by history. Tr. 299.

Dr. Wayne Stillings, a Board Certified psychiatrist, testified on behalf of the employer and insurer. His deposition testimony was admitted as Employer/Insurer's Exhibit #1. After a comprehensive review of the medical records as well as the trial transcripts from the initial hearing in this matter, Dr. Stillings found that Mr. Greenlee's demise by suicide on May 25, 1990 was not medically or psychiatrically causally related to or aggravated by this 7/24/89 work injury. Tr. 137. As a basis for that opinion, Dr. Stillings cited the six year gap between the work injury and the suicide. He indicated that if there is a specific event that is going to cause the suicide, that it would be very close in time to that actual suicide. In fact, Dr. Stillings did find that the suicide attempts were temporally related to his marital problems. Tr. 138.

Dr. Stillings went on to explain that he did not believe the suicide was medically or psychiatrically related to or aggravated by the 7/24/89 work injury because all alcoholics get depressed. Tr. 139. In fact, he cited that according to a study done at Washington University School of Medicine, male alcoholics who are depressed in their 40s and 50s have one of the highest suicide rates in the population independent of all other factors. He went on to explain that it is simply related to their age, their maleness and their drinking. Tr. 140.

Finally, Dr. Stillings provided the opinion to a reasonable degree of medical and psychiatric certainty that "Mr. Greenlee committed suicide when of sound mind and body with sufficient mental powers to know the purpose and effect of his actions, and therefore his suicide was clearly intentional." Tr. 141-142. As a basis of that opinion, Dr. Stillings cited that there was nothing in the medical and psychiatric records indicating that the claimant lacked sufficient mental faculties to be deemed legally insane. Instead, reviewing the Jefferson

Memorial Hospital records, he noted that they clearly document that he was not mentally incompetent or lacking sufficient mental capacity to prevent a decision to commit suicide. Tr. 142. Finally, Dr. Stillings believed Mr. Greenlee's suicide was clearly intentional because the employee chose one of the most lethal methods of suicide, namely a gunshot wound to the head. Dr. Stillings stated that "clearly he knew if he proceeded with this act that he would die, and therefore this proves beyond a reasonable doubt that his intent was willful, knowledgeable and with sufficient mental capacity to understand that he knew he would die by his action." Tr. 143.

Dr. Stillings was questioned on cross-examination about the inter-relation of alcohol to the employee's suicide attempt. He admitted, however, on redirect examination that the histories provided by the employee in all of the medical records document the fact that he had significant alcohol problems for 15 years prior to the work injury in July, 1989. Tr. 178. He also admitted that impaired judgement does not equal an inability to know the effect of one's actions or to know right from wrong. Tr. 179. Dr. Stillings admitted that even though someone could arguably have impaired judgement because of intoxication, they would still be found to be mentally competent in order to determine life and death issues and know right from wrong. Tr. 180.

At the time of the remand hearing on 9/19/00, Patricia Greenlee, Dennis Greenlee's daughter, testified to some instances when she was with her father when he seemed odd or was doing strange things. Tr. 10-11. She indicated that this strange behavior of his inability to remember her or her brother as well as his comments that she should throw her shoes away,

occurred approximately six months before he died. She further indicated that she was ten years old when he died on May 20, 1995. Tr. 13. Finally, she related another event when she was on the phone and her dad started screaming at her telling her to get out of the house and not to come back until 6:00. Tr. 13-14.

Also testifying at the remand hearing was Nancy Greenlee, the claimant's wife. She testified that she and Dennis were married on January 10, 1983 and she had two children by him; Adam James Greenlee and Patricia Ann Greenlee. Tr. 80. She further admitted that they were never legally separated before he committed suicide. Tr. 80.

She basically testified that before his injury in 1989, she was never fearful of Dennis and he was always gainfully employed. Tr. 81. She said that although she did not consider his drinking a problem, she did prompt him to join Alcoholics Anonymous approximately two months before his 1989 injury. Tr. 81. She explained that she did this because she did not drink at all and she just thought any drinking at the time was no good. Tr. 81-82. She testified that no time prior to 1989 did he ever come home intoxicated to the point where she feared for her life or safety. Tr. 82.

Nancy Greenlee testified that her husband was a happy-go-lucky type of person prior to the injury and most of the time he had a big smile on his face and was joking around. Tr. 85. After the injury, however, he became an irritable person and was hard to be around. Tr. 86. He was physically abusing the kids by spanking them for things for which she didn't think they deserved any punishment. Tr. 86. She also said that it bothered him that he was not able to work and earn any money anymore. Tr. 87.

After his injury, she said he also began drinking and she ultimately had to serve him with an ex parte order of protection after she left. Tr. 87. She said that he was acting irrationally and it was not safe for him to be around her or the children. Tr. 87. She left in June or July, 1993. Tr. 87-88. She said that she had seen him exhibiting strange behavior on several occasions by telling her that people were supposedly after him. She said that he just didn't make a lot of sense. Tr. 89.

She went on to testify about the incident in 1986 when he drank too much and fell and hurt his head. Tr. 89. She said that he was at a friend's party and had over-indulged and fell down some very steep narrow steps. Tr. 89.

She also testified that there were several very short periods, perhaps overnight or a weekend, when she would have a physical separation from Mr. Greenlee. The last time that occurred before his injury was approximately two to three months before the 1989 fall. She got upset and went to her mother's house which prompted him to start going to AA and quit drinking. Tr. 93. She left to impress upon him her seriousness about his going to AA. Id.

On cross-examination, Nancy Greenlee admitted that when she separated from the employee in June or July, 1993, up until his death in May, 1995, she wasn't receiving any financial support from Mr. Greenlee. Tr. 95. She said that she was working on her own and supporting herself and her children. Id.

She flatly disagreed with the claimant's history in the Veterans Administration records that there were three to four month long periods of time for which they were separated before 7/24/89. Tr. 95. She believed that this discrepancy in the record was due to the fact that Mr.

Greenlee's perceptions of time frames were not good. Tr. 95-96.

She admitted that she has not been engaged to anyone else since 5/20/95 and has no plans of getting remarried at the current time. Tr. 99.

Finally, the claimant called F. Timothy Leonberger, Ph.D. to testify on her behalf at the hearing. Dr. Leonberger is a clinical psychologist with a specialty in neuro-psychology. Tr. 17. Based on a review of the medical records in this case, Dr. Leonberger testified that Dennis Greenlee's hydrocephalus, seizure disorder, and major depression were substantially related to his subsequent suicide. Tr. 24. He further testified that the claimant's accident in 1989 resulted in the marital problems which eventually led to his wife separating from him. Tr. 31. In turn, the separation then exacerbated his symptoms from his major depression. Tr. 31-32. Finally, he stated that the depression was also a trigger for the claimant to start drinking. Tr. 32.

Dr. Leonberger was also questioned quite extensively about alcohol intoxication. He believed that alcohol intoxication could cause an individual to suffer impaired judgement. Tr. 35. He also said that alcohol intoxication could cause hallucination. Id. He did admit that no one could say for certain whether or not the claimant was hallucinating at the time he pulled the trigger. Tr. 37-38. He did say though that the diagnosis of alcohol intoxication includes impairment in judgment and reasoning which impairs a person's ability to make decisions. Tr. 44. He also agreed with the Chief Medical Examiner that the claimant was suffering from alcohol intoxication at the time of his death that would impair judgement. Tr. 45.

On cross-examination, Dr. Leonberger summarized the causal connection portion of

his testimony in the following exchange:

> Q. Now , if I understand your opinion in this matter, the claimant had an accident on July 24, 1989; is that correct?
>
> A. That's correct. . .
>
> Q. And to that accident, you believed, caused his subsequent depression; is that correct?
>
> A. Subsequently, yes.
>
> Q. And that depression caused him to kill himself on May 20, 1995?
>
> A. Correct.

Tr. 49-50. Dr. Leonberger also admitted on cross-examination that he was aware of the three to four separations over the course of the marriage for a month at a time for each separation, but he didn't think those were significant marital problems. Tr. 51.

Regarding the claimant's pre-existing alcohol problems, the doctor characterized it as an "over-indulgence on some occasions." Tr. 52. He stated that although he put himself voluntarily into AA, the claimant was never diagnosed as having an alcohol problem prior to 7/24/89. Tr. 52-53. After referring back to the DSM 4, Dr. Leonberger also agreed that the claimant had a problem with alcohol intoxication prior to 7/24/89, although he would not agree to alcohol abuse. Tr. 54. Dr. Leonberger also agreed that impaired judgment is not the same as competency to know the effect of one's actions but rather it is a matter of degree. Tr. 75.

The Labor & Industrial Relations Commission issued their Order on April 4, 2001 denying the claimant's Motion to Modify and Reopen the Final Award issued January 9, 1996. In denying the claimant's Motion to Modify and Reopen the Final Award for the payment of

death benefits, the Commission found three separate and distinct reasons for denying those death benefits. First, the Commission found that the employee's intentional suicide barred the payment of any death benefits under Section 287.120.3 R.S.Mo. It also found that the employer/insurer had an absolute defense to the payment of any death benefits by reason of Section 287.020.4 R.S.Mo. since the employee's death occurred over 300 weeks after the accident. Finally, the Commission found that the claimant failed to demonstrate that the employee's suicide was medically causally related to the work accident on July 24, 1989. In making that finding, the Commission specifically relied on the opinions of Dr. Wayne Stillings, and also relied on the medical records documenting the treatment the employee had received at the Veteran's Administration, Malcolm Bliss Mental Health Center, and Jefferson Memorial Hospital. The Commission also clearly discounted the opinions of Dr. Leonberger and the employee's widow in making their finding on the lack of proof regarding medical causation.

POINTS RELIED ON

I. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION CORRECTLY HELD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT THE DEATH WAS MEDICALLY CAUSALLY RELATED TO THE CLAIMANT'S WORK ACCIDENT ON 7/24/89. THEIR FINDING AND ORDER WAS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE. THIS SUFFICIENTLY-SUPPORTED FINDING NEGATES ONE OF THE REQUIRED ELEMENTS OF A WORKERS' COMPENSATION CLAIM. THEREFORE, THE COMMISSION'S FINAL ORDER DENYING MODIFICATION AND DENYING DEATH BENEFITS SHOULD BE AFFIRMED.

Davis v. Research Medical Center, 903 S.W.2d 557, 571 (Mo.App. W.D. 1995)

Blankenship v. Columbia Sportswear, 875 S.W.2d 937, 938 (Mo.App. S.D. 1994)

Boring v. Treasurer of Missouri, 947 S.W.2d 483, 489 (Mo.App. E.D. 1997)

Carron v. Ste. Genevieve School Dist., 800 S.W. 2d 64, 67 (Mo.App. 1990)

Gilley v. Raskas Dairy, 903 S.W.2d 656, 658 (Mo.App. E.D. 1995)

Mo. Rev. Stat. §287.495

II. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION CORRECTLY HELD THAT THIS CLAIM FOR DEATH BENEFITS IS BARRED BY SECTION 287.020.4 BECAUSE CLAIMANT'S DEATH ON 5/20/95 OCCURRED MORE THAN 300 WEEKS AFTER THE WORK ACCIDENT ON 7/24/89, THUS PROVIDING AN ADDITIONAL AND INDEPENDENT REASON FOR DENYING DEATH BENEFITS PURSUANT TO THE CLAIMANT'S MOTION TO MODIFY THE FINAL AWARD.

Mo. Rev. Stat. §287.020.4

Mo. Rev. Stat. §287.063

Mo. Rev. Stat. §287.067

Manley v. American Packing Company, 363 Mo. 744, 255 S.W.2d 165 (Mo. 1952).

III. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION CORRECTLY HELD THAT THE CLAIMANT'S DEATH RESULTED FROM AN INTENTIONAL SELF-INFLICTED GUNSHOT WOUND TO THE HEAD THUS ALLOWING THIS CLAIM TO BE DENIED UNDER SECTION 287.120.3. THAT DECISION OF THE COMMISSION IS AGAIN SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE. THEREFORE, THE COMMISSION'S FINAL ORDER DENYING DEATH BENEFITS UNDER THIS STATUTE SHOULD ALSO BE AFFIRMED.

Mo. Rev. Stat. §287.120.3

Mershon v. Missouri Public Service Corp., 222 S.W.2d 165, 359 Mo. 257 (Mo. 1949)

IV. APPELLANT'S OTHER ADDITIONAL POINTS REGARDING THE CONSTITUTIONALITY OF SECTION 287.020.4 AND 287.120.3 AS WELL AS QUESTIONING THE PROCEDURAL ACTIONS TAKEN BY THE COMMISSION IN ARRIVING AT THEIR FINAL ORDER DENYING DEATH BENEFITS TO THE CLAIMANT, ARE ALSO WITHOUT MERIT, THUS LEAVING NO REASON FOR THIS COURT TO DO ANYTHING BUT AFFIRM THE ORDER OF THE COMMISSION DENYING DEATH BENEFITS IN THIS CASE.

Mo. Const. Article I Section 30

State ex rel. Doe Run Company v. Brown, 918 S.W.2d 303, 306 (Mo.App. E.D. 1996)

Blacks Law Dictionary

Carron v. Ste. Genevieve School Dist., 800 S.W.2d 64, 67 (Mo.App. 1990)

ARGUMENT

I. **THE LABOR AND INDUSTRIAL RELATIONS COMMISSION CORRECTLY HELD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT THE DEATH WAS MEDICALLY CAUSALLY RELATED TO THE CLAIMANT'S WORK ACCIDENT ON 7/24/89. THEIR FINDING AND ORDER WAS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE. THIS SUFFICIENTLY-SUPPORTED FINDING NEGATES ONE OF THE REQUIRED ELEMENTS OF A WORKERS' COMPENSATION CLAIM. THEREFORE, THE COMMISSION'S FINAL ORDER DENYING MODIFICATION AND DENYING DEATH BENEFITS SHOULD BE AFFIRMED**.

The statute governing Appellant review in a workers' compensation case provides in relevant part that in the absence of fraud, the Findings of Fact made by the Labor and Industrial Relations Commission within its powers shall be conclusive and binding. Mo. Rev. Stat. §287.495 (1986). The Court, on appeal, shall review only questions of law and may in relevant part disturb an award only if the Commission acted without or beyond its powers or there was not sufficient competent evidence in the record to warrant the making of the Award. Id.

The Court of Appeals examines the whole record, viewing the evidence and all reasonable inferences drawn therefrom in the light most favorable to the Award. **Davis v. Research Medical Center**, 903 S.W.2d 557, 571 (Mo.App. W.D. 1995). In reviewing questions of fact, an appellate court's inquiry is limited to whether, upon the whole record and considering the evidence in the light most favorable to the Commission's findings, the Commission could have reasonably made such findings and reached the result it did. **Blankenship v. Columbia Sportswear**, 875 S.W.2d 937, 938 (Mo.App. S.D. 1994). In essence, this review results in a two step procedure for determining whether the Commission

could have reasonably made its findings and award. **Boring v. Treasurer of Missouri**, 947 S.W.2d 483, 489 (Mo.App. E.D. 1997). First, after examining the record and all the inferences drawn therefrom, the Court determines whether the findings on award are supported by competent and substantial evidence. Id. Second, even if the Award and findings are supported by competent and substantial evidence, the Court next determines whether they are clearly contrary to the overwhelming weight of the evidence. Id.

Additionally, the Commission is the sole Judge of the credibility of the witnesses and the weight and value to be given to the evidence. **Carron v. St. Genevieve School Dist**., 800 S.W.2d 64, 67 (Mo.App. 1990). The Labor and Industrial Relations Commission is entitled to disbelieve the testimony of any witness even though no contradicting or impeaching evidence appears. **Gilley v. Raskas Dairy**, 903 S.W.2d 656, 658 (Mo.App. E.D. 1995).

The claimant bears the burden of proving that the suicide was medically causally related to the employee's original accident on 7/24/89. In that respect, the claimant has failed to meet her burden of proving this case, and the Commission's Order should be affirmed.

The claimant's only evidence that Mr. Greenlee's suicide on 5/20/95 was medically causally related to the 7/24/89 accident, is the testimony of Dr. Leonberger and of Nancy Greenlee, Mr. Greenlee's wife. The testimony offered by those two individuals was discounted by the Commission because it was at times directly contradictory to the claimant's medical treatment records that were admitted into evidence in this case. In that respect, their testimony and opinions lack the proper foundation to allow them to be used as a basis for a medical causal connection finding in this matter. Thus, the Commission correctly found that

their testimony was not credible and relied instead on the testimony of Dr. Stillings and the medical treatment records.

Dr. Leonberger testified that the accident on 7/24/89 caused the depression and the depression subsequently caused the employee's suicide. He also testified that the employee's alcohol problems were related to the 7/24/89 accident.

After a review of the histories which the employee gave in the various treatment records that were admitted into evidence in this case, Dr. Leonberger had to admit that the employee had a problem with alcohol intoxication prior to 7/24/89, but he would not agree that the employee had a problem with alcohol abuse. Tr. 54. He only characterized the employee's pre-existing alcohol problem as a "overindulgence on some occasions." Tr. 52.

A review of the medical records, however, paints a different picture. In the medical records, from Malcolm Bliss Hospital, where the patient was admitted on 8/10/93 following his first suicide attempt, Mr. Greenlee reported a "history of alcohol use since age 14 up to a case of beer [per] day. Back of Tr. 194. He also gave them a history of blackouts in the past. Id. Further, he gave the hospital "a history of arrest for fighting and felonious assault where he shot another person in a drunken brawl . . ." Tr. 195. Similarly, the records of the Veterans Administration contain a history given by the employee of alcohol abuse to 1989 but none since 8/89. Back of Tr. 250. Finally, in the history that the employee gave to Jefferson Memorial Hospital, he said "he has a problem with alcohol since the age of 20. He has been attending AA meetings." Tr. 302.

Although Dr. Leonberger would like to believe that the employee's alcohol problems

stemmed from the 7/24/89 accident, and that his prior problems with alcohol were mere over indulgences, the medical records do not bear out those assertions. By the employee's own history to these various hospitals, he has had problems with alcohol many years prior to the 1989 accident. He has been involved in drunken brawls and been arrested. He was even attending Alcoholics Anonymous to quit drinking prior to the 7/24/89 accident. All of this evidence points to the fact that the employee did have prior problems with alcohol, and they are not attributable to the 7/24/89 accident at work.

Mrs. Greenlee's testimony on this subject is also not credible. She testified that she did not believe that the employee had a problem with alcohol but yet, she left the house and insisted that he go to AA before she would come back so that he knew she was serious about it. It makes no sense for Mrs. Greenlee to say that the employee did not have a problem with alcohol but yet she insisted that he attend Alcoholics Anonymous meetings to quit drinking. Whether she wanted to admit it at trial or not, the records were replete with the employee's prior drinking problems. Her insistence that he attend Alcoholics Anonymous prior to the 7/24/89 accident, and her further action of leaving the house until he agreed to attend the AA meetings, only further points to the employee's pre-existing drinking problems which are not in any way attributable to the 7/24/89 accident.

Dr. Stillings testified that the employee's pre-existing alcoholism, was one of the reasons he believed the employee's suicide on 5/20/95 was not in any way medically or psychiatrically causally related to or aggravated by the 7/24/89 work injury. Tr. 137. He cited a study done at Washington University School of Medicine that male alcoholics who are

depressed in their 40's and 50's have one of the highest suicide rates in the population independent of all other factors. He went on to explain that this correlation is simply related to their age, the fact that they are male, and the fact that they are alcoholics. Tr. 140. In other words, according to Dr. Stillings and the study done at Washington University School of Medicine, the fact that the employee was a male alcoholic in his 50's was enough in and of itself to place him at a high risk for suicide.

Dr. Stillings also found it important that there was a six year gap in time between the work injury and the suicide. That gap in time he believed pointed to the lack of a causal connection between those two events. He said that if there is a specific event that is going to cause a suicide then it would be very close in time to the actual suicide. Rather, Dr. Stillings found that the suicide attempts were temporally related to his marital problems. The medical records back up Dr. Stillings' opinion in that regard.

Reviewing the medical records from Malcolm Bliss Mental Health Center, one cannot help but notice that the stated reason the employee gave for attempting suicide in 1993 was drinking "a six pack of beer yesterday after having an argument with his wife which led to a worsening of his depression" after which he slashed his wrist. Tr. 194. The records from Malcolm Bliss discuss the employee's marital problems and in fact, the employee himself draws a direct connection between the argument with his wife and his attempted suicide at that same time.

Additionally, the counseling and treatment records from the Veterans' Administration provide instance after instance where the employee is concerned and upset over the strained

relations with his wife, including her eventually leaving him, and moving out of his house. Finally, the treatment records from Jefferson Memorial Hospital on 5/11/95 also give a history of the employee's suicide attempt following problems with his wife. In his history to the hospital, he states "that he has been very unhappy because he received an ex parte from his wife to keep away from his property, 'that made me very depressed and I started drinking and attempted suicide'." Tr. 302.

The employee in all of these records is very clear about why he is attempting suicide. He is attempting suicide the first time after an argument with his wife. He goes to repeated counseling sessions because of strained relations with his wife and his wife moving out on him, and he attempts the last suicide in May, 1995 after he received an ex parte order from his wife. None of these actions by his wife have anything to do with the work injury on 7/24/89. These are independent marital problems that caused the claimant additional stress and sent him to the brink of committing suicide.

At the time of the remand hearing, Mrs. Greenlee also testified regarding her marital problems with the employee. Her testimony was again contradictory to the histories that the employee himself gave to the doctors in the medical records. She testified that they really had no problems with their marriage prior to 7/24/89. Yet Mr. Greenlee himself on 4/27/93 told the counselor at the Veterans Administration that he had a history of three to four separations for one month each over the last 15 years. Back of Tr. 250. Despite denying any prior marital problems, she did have to admit, however, that she left the house to impress upon him the importance of going to Alcoholics Anonymous. Tr. 93.

When comparing Dr. Leonberger's opinions to the medical records as well as comparing Nancy Greenlee's testimony to the medical records, those opinions and testimony are just not credible. On the other hand, Dr. Stillings, after carefully reviewing all of the testimony from the employee and Nancy Greenlee at the prior hearing, as well as thoroughly reviewing all of the medical treatment records in this case, did credibly find that the suicide on May 20, 1995 was not medically or psychiatrically causally related to or aggravated by the 7/24/89 work injury. Tr. 137. This opinion, and all of the bases for this opinion that are stated above, serve to show the lack of medical causal connection that the claimant needed to prove in order to make this case compensable.

The Commission's finding that the claimant failed to meet her burden of proof on medical causation is based on competent and substantial evidence in the record. Additionally, the decision of the Commission is not clearly contrary to the overwhelming weight of the evidence. In fact, the overwhelming weight of the evidence including the treatment records and the opinion of Dr. Stillings, supports the findings and order of the Commission denying death benefits in this case. Accordingly, this decision by the Commission should be affirmed by this Court.

II THE LABOR AND INDUSTRIAL RELATIONS COMMISSION CORRECTLY HELD THAT THIS CLAIM FOR DEATH BENEFITS IS BARRED BY SECTION 287.020.4 BECAUSE CLAIMANT'S DEATH ON 5/20/95 OCCURRED MORE THAN 300 WEEKS AFTER THE WORK ACCIDENT ON 7/24/89, THUS PROVIDING AN ADDITIONAL AND INDEPENDENT REASON FOR DENYING

DEATH BENEFITS PURSUANT TO THE CLAIMANT'S MOTION TO MODIFY THE FINAL AWARD.

The Commission, in its order dated April 4, 2001, correctly held that the employer/insurer has an absolute defense by reason of Section 287.020.4 R.S.Mo. since the claimant's death occurred more than 300 weeks after the work accident. As the Commission correctly applied the facts of this case to the law and also correctly interpreted the law, this ruling too should be affirmed by this Court.

Section 287.020.4 specifically defines death as used in the balance of the workers' compensation law. That Section states:

> "Death when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within 300 weeks after the accident; except that in cases of occupational disease, the limitation of 300 weeks shall not be applicable.

According to this Section, then when an accident is the basis of the workers' compensation claim, the death must occur within 300 weeks of the accident in order to be compensable as a part of that accident.

In essence then in order for an employer and insurer to avail themselves of the defense provided in Section 287.020.4, they must prove two things: 1) That there was an accident as the basis of the workers' compensation claim; and 2) That the death occurred more than 300 weeks after that accident. In this case, the competent and substantial evidence establishes both prongs of that defense and so, therefore, the motion to modify was properly denied because there is no compensable death under the workers' compensation statute.

The Judge at the remand hearing took judicial notice of the calendar to prove that there

was more than a 302 week lapse in time between the employee's accident on 7/24/89 and his eventual death on 5/20/95. It should also be noted that there was no contradictory evidence presented by the claimant to dispute that in fact over 302 weeks elapsed between the employee's accident on 7/24/89 and his death on 5/20/95. That being said, it is therefore a matter of record that the employer met their burden of showing that the death occurred over 300 weeks after the accident on 7/24/89.

It is also a matter of record that we are actually dealing with an accident case and not an occupational disease case. One need look no further than the Labor & Industrial Relations Commission's own Award dated September 13, 1995 in this case. The description of the events on July 24, 1989 are clearly those of an accident. The Commission found that "while he was walking on a scaffold, he fell to the floor four feet below." LIRC Award P. 1. The Commission goes on to find that the claimant "is permanently and totally disabled as a result of his accident." LIRC Award P. 3. They also find that "after the accident and surgery he was depressed ..." LIRC Award P. 3. No where in the Commission's findings is there any reference to the fact that this is an occupational disease case. It is clear that the Commission finds all of the employee's problems were related to the accident on 7/24/89.

Additionally, the claimant's own psychiatric expert at the time of the remand hearing, agreed that the accident on 7/24/89 caused the depression which he in turn believed caused the employee's suicide. Tr. 49-50. Quite frankly, there is no competent or substantial evidence that supports the proposition that this is an occupational disease case which would exclude it from Section 287.020.4. Therefore, since the competent and substantial evidence points to

the fact that this was an accident and that the death occurred more than 300 weeks after the accident, this motion to modify was properly denied under Section 287.020.4, and that decision should be affirmed by this Court.

The claimant has argued that we are actually dealing with an occupational disease case and not an accident despite the contradictory evidence even given by her own medical expert. Her argument though to attempt to commute this accident case into an occupational disease case is without merit.

In order to make this an occupational disease case which would circumvent the death definition in Section 287.020.4, the claimant would need to show that the death resulted from an occupational disease contemplated by Section 287.063 and 287.067. Section 287.067 provides the definition of the term "occupational disease."

> 'Occupational disease is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment.'

Section 287.063 goes on to state that "an employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however, short, he is employed in an occupation or process in which the hazard of the disease exists. . ." In order to invoke these occupational disease provisions then, the claimant must prove some connection between his alleged occupational disease and his employment. In this case the claimant's only connection between his alleged occupational disease and his employment is the **accident** on 7/24/89. Therein lies the faultiness of the claimant's logic. In order to find the work-relatedness of the alleged occupational disease, the claimant must attribute it to the

accident that occurred on 7/24/89. However, case law is clear in this area that any injury in the initial accident's chain of causation is attributable to the initial accident. **Manley v. American Packing Company**, 363 Mo. 744, 255 S.W.2d 165 (Mo. 1952.). Therefore, once the claimant alleges that the depression is related to the accident on 7/24/89, that depression becomes part of the accident case. It is not an independent occupational disease claim which claimant can then allege circumvents the death definition in 287.020.4.

Additionally, the Labor & Industrial Relations Commission in their prior award, has already ruled that this is an accident case. Their description of the events meets the standards set by the Statute that there must be some violence and resultant effect in order to make it an accident. The violence in this case was the slip and fall from the scaffolding. The resultant effect as the Commission previously found was the need for the surgery and the other resultant problems which the claimant had following that accident. The fact that this was already ruled an accident negates the possibility that we could be dealing with an occupational disease case.

If one would follow claimant's argument to its logical end, then there would never be a case where 287.020.4 could be applied in any accident case. In spite of the fact that an accident caused the claimant's problems, a claimant would need only allege that instead it's actually an occupational disease, and thus make 287.020.4 inapplicable. Clearly the Legislature could not have intended for an employer to be responsible for a claimant's death many years after the original accident simply by re-characterizing their condition as an occupational disease after it has already been ruled an accident. The intent of the Legislature was clear in Section 287.020.4. When an employee has an accident, as was the case here, the

employer is potentially responsible only for the death of the claimant if it occurs in the first 300 weeks after that accident. In that way, the Legislature has rationally set a closed period of time for which the employer can potentially be responsible for his injured employee's death. To allow death benefits in this case to be awarded would clearly circumvent the Legislature's intent when the passed Section 287.020.4.

In summary then, we are dealing with only one claim here, an accident claim as previously determined by the prior ruling of the Labor & Industrial Relations Commission. An accident that occurred on 7/24/89. Even assuming that the claimant is right and the death was caused by the claimant's depression which resulted from that accident on 7/24/89, it is all one accident case and since 300 weeks passed between the date of the accident and the death of the claimant, that death is not compensable under Section 287.020.4. The claim for modification to award death benefits was properly denied on that basis, and should be affirmed by this Court.

III THE LABOR AND INDUSTRIAL RELATIONS COMMISSION CORRECTLY HELD THAT THE CLAIMANT'S DEATH RESULTED FROM AN INTENTIONAL SELF-INFLICTED GUNSHOT WOUND TO THE HEAD THUS ALLOWING THIS CLAIM TO BE DENIED UNDER SECTION 287.120.3. THAT DECISION OF THE COMMISSION IS AGAIN SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE. THEREFORE, THE COMMISSION'S FINAL ORDER DENYING DEATH BENEFITS UNDER THIS STATUTE SHOULD ALSO BE AFFIRMED.

The workers' compensation law gives employers/insurers an affirmative defense to deny claims when they are caused by an employee's intentional self-inflicted injury. Under Section 287.120.3:

> No compensation shall be allowed under this Chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

Under this Section, an employer/insurer has the burden of proving that the claimant's death resulted from an intentional self-inflicted injury. Once the employer/insurer meets that burden, the claimant's death is not compensable under the workers' compensation law.

In this case, there can be no dispute that the employee's fatal gunshot wound to the head was self-inflicted. The records of the Jefferson County Medical Examiner clearly document that the employee committed suicide by a self-inflicted gunshot wound to the head. Tr. 106-111. The real issue in allowing the employer/insurer to use the defense afforded it in Section 287.120.3, is whether or not the employee's self-inflicted gunshot wound to the head was intentional.

In **Mershon v. Missouri Public Service Corp**., 222 S.W.2d 165, 359 Mo. 257 (Mo.

1949), the Supreme Court ruled that, "self destruction is never prompted by a normal mind, yet if done with sufficient mental power to know the purpose and effect of the act, even though dominated by a disordered mind, it is intentional suicide." Mershon at 169. In other words, the employee may have a disordered or less than normal mind at the time he commits suicide, but if he still has sufficient mental power to know and understand the purpose and effect of his actions, then it is an intentional act which excludes the case from the workers' compensation statute under Section 287.120.3.

The other important aspect of Section 287.120.3 is the fact that the employer/insurer bears the burden of proving that the employee's self-inflicted injury was intentional. In this case, the Commission correctly found that the employer/insurer has met their burden of proof in that regard.

The employer/insurer presented the testimony of Dr. Wayne Stillings, a Board Certified psychiatrist, who examined all of the testimony from the first trial, as well as all of the medical records in connection with this case. After that examination, Dr. Stillings was able to offer the opinion that "Mr. Greenlee committed suicide when of sound mind and body with sufficient mental powers to know the purpose and effect of his actions, and therefore his suicide was clearly intentional." Tr. 141-142. Dr. Stillings cited many bases for that testimony. First, he noted that there was nothing in the medical and psychiatric records indicating that the employee lacked sufficient mental faculties to be deemed legally insane. In fact, the records of Jefferson Memorial Hospital, where he was seen and examined approximately one week before his suicide, clearly document that he was not mentally incompetent or lacking sufficient

mental capacity to prevent a decision to commit suicide. Tr. 142.

If anything, a close look at the records from Jefferson Memorial Hospital from May 10, 1995 through May 12, 1995, only bolsters the proposition that the employee knew exactly what he was doing when he actually killed himself approximately one week later. Those records also support the contention that the employee was mentally competent and was of sound mind and body to understand the purpose and effect of his actions.

The employee's own history to the hospital on May 11, 1995 stated, "I started drinking and attempted suicide." Tr. 302. His chief complaint at the time was listed as "I just want to be dead, life is not worth it." Tr. 302. The employee's own statements on May 11, 1995 indicate that he clearly understood that he was attempting to commit suicide to take his own life. The mental status examination at that time further confirmed that the employee was mentally competent and knew the purpose and effect of his actions. That examination revealed no delusions nor hallucinations. Tr. 302. He was oriented times three and his memory for recent and past events was grossly intact. Tr. 302. There is no indication in the records of Jefferson Memorial Hospital that employee was insane or was unable to appreciate the consequences of his actions. If anything, the records clearly show that the employee completely understood what he was doing when he attempted to kill himself.

Although we may think any attempts to kill oneself clearly show an incompetent mind, the Supreme Court has said otherwise in the Mershon case. The Supreme Court recognized that an individual who attempts to kill himself probably does have a disordered mind, but that is not enough to make his act unintentional. As long as the claimant understood the purpose

and effect of his action, his action was intentional. There can be no doubt, based on Dr. Stillings' testimony as well as the contemporaneous medical records from Jefferson Memorial Hospital, the employee understood that he wanted to be dead and he was trying to kill himself.

As another basis for Dr. Stillings' opinion in this case that Mr. Greenlee's suicide was clearly intentional, he cited the fact that the employee used one of the most lethal methods of suicide, namely a gunshot wound to the head. Dr. Stillings believed that "clearly he knew if he proceeded with this act that he would die, and therefore this proves beyond a reasonable doubt that his intent was willful, knowledgeable and with sufficient mental capacity to understand that he knew he would die by his action." Tr. 143. Although claimant's expert at the time of trial argued over whether or not a gunshot wound to the head was one of the most lethal methods of suicide, common sense tells us that a gunshot wound to the head is meant to end a life.

It is also important to put this suicide attempt in perspective with the other suicide attempts which the employee previously had. In 1993 he attempted to slash his wrists, but that was not successful. Later, in May, 1995, he attempted to take an overdose of medications with alcohol, but that again was not successful. Finally, carrying out his self-stated intention that "I just want to be dead . . .", he did in fact choose the most lethal method of suicide by shooting himself in the head. Tr. 302. After viewing the competent and substantial evidence in this case, including Dr. Stillings' opinion and the contemporaneous medical records from Jefferson Memorial Hospital, there can be no doubt that the employer/insurer has met their burden of proving that the employee's action was intentional and so, therefore, the Commission correctly found that his suicide is not compensable under Section 287.120.3.

The claimant has argued that the fact that Mr. Greenlee was drinking at the time of his suicide and the fact that he had an elevated blood alcohol content, somehow indicates that he was less than capable of making life and death decisions and of knowing the purpose and effect of his actions. The competent and substantial evidence, however, does not bolster that contention. Dr. Leonberger testified that he believed that alcohol intoxication could cause an individual to suffer impaired judgment. Tr. 35. However, he also had to admit that impaired judgement is not the same as competency to know the effect of one's actions. Tr. 75. In other words, although the alcohol may have impaired the employee's judgement according to Dr. Leonberger's testimony, that does not necessarily mean the alcohol impeded his ability to know right from wrong and to know the purpose and effect of his actions. Dr. Stillings also testified on this very same issue. He agreed that impaired judgement does not equal an inability to know the effect of one's actions or to know right from wrong. Tr. 179. But Dr. Stillings also went on to explain that even though someone could arguably have impaired judgement because of intoxication, they would still be found to be mentally competent in order to determine life and death issues and to know right from wrong. Tr. 180.

In this case, we are talking about a life and death decision. We are talking about the employee's ability to determine whether or not he was intentionally ending his own life. By both experts' accounts, life and death issues are the biggest decisions that an individual can make. In making that big decision, impaired judgement because of intoxication does not equal mental incompetence or an inability to know right from wrong.

In fact, there is no evidence in that record that shows that the claimant was mentally

incompetent or unable to determine those life and death decisions, or to know the difference between right and wrong. The alcohol intoxication then, while it could be a factor, is not the deciding factor in this case. It may have impaired judgement, but it did not impair competency and so therefore, based on all of the substantial and competent evidence admitted in the record, the claimant's death resulted from an intentional self-inflicted gunshot wound to the head and this case was properly denied under Section 287.120.3. That ruling should be affirmed by this Court.

IV APPELLANT'S OTHER ADDITIONAL POINTS REGARDING THE CONSTITUTIONALITY OF SECTION 287.020.4 AND 287.120.3 AS WELL AS QUESTIONING THE PROCEDURAL ACTIONS TAKEN BY THE COMMISSION IN ARRIVING AT THEIR FINAL ORDER DENYING DEATH BENEFITS TO THE CLAIMANT, ARE ALSO WITHOUT MERIT, THUS LEAVING NO REASON FOR THIS COURT TO DO ANYTHING BUT AFFIRM THE ORDER OF THE COMMISSION DENYING DEATH BENEFITS IN THIS CASE.

Although this Court can dispose of this appeal without even reaching the Constitutional questions raised by the claimant, the claimant has also argued that Section 287.120.3 conflicts with Article I, Section 30 of the Missouri Constitution and so, therefore, it should not be appealed. However, claimant's argument in that regard is without merit.

Article I, Section 30 of the Missouri Constitution provides in relevant part that "the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death . . ." In this case, contrary to claimant's assertions, the benefits being disputed here are not a part of Mr. Greenlee's estate so as to bring this case under Article I, Section 30 of the Missouri Constitution. Further, Article I, Section 30 of the Missouri Constitution does not address benefits that a person may or may not be entitled to, but only addresses the disposition of their estate. "The fundamental rule of statutory interpretation is to ascertain the intent of the Legislature from the language used to give effect to that intent if possible and to consider the words used in their plain and ordinary meaning." **State ex rel. Doe Run Company v. Brown**, 918 S.W. 2d 303, 306 (Mo.App. E.D. 1996). It is therefore important to look at the plain and ordinary meaning of the words used in the statute as well as the Constitutional provision.

The word "estate" is defined as "the degree, quantity, nature, and extent of interest which

a person has a real and personal property." Blacks Law Dictionary, 547 (1990). On the other hand, "benefit" is defined as "advantage; profit; privilege; gain; interest." Blacks Law Dictionary, 158 (1990). It is clear by looking at just the definitions of these two words, that benefits are not contemplated as a part of an individual's estate under Article 1, Section 30 of the Missouri Constitution. Nowhere in the definition of estate is there any mention of an inclusion of a person's benefits or potential benefits. Likewise, nowhere in the definition of benefit is there any contemplation that it is to be construed as an interest in land or property or even a possession or an asset or liability.

It also seems relevant to this discussion that an individual cannot even apply for these workers' compensation death benefits, until the employee has died. Certainly, if one cannot even apply for the benefits until the death has occurred, they cannot be considered a part of the person's real or personal property at the time of their death. These benefits are afforded as a part of a statutory creation of the workers' compensation law. Since they are a creation of the Legislature under the workers' compensation law, the Legislature has the ability to set the parameters under which these benefits are awarded. Therefore, there is no violation of the Missouri Constitution and this argument is merely a red herring offered by the claimant in order to shift the focus away from the fact that she is not entitled to these benefits by virtue of Section 287.020.4 and Section 287.120.3.

Additionally, the claimant has also argued that Section 287.120.3 and Section 287.020.4 violate the equal protection clause of the Missouri Constitution and the Fourteenth Amendment of the United States Constitution. This argument, like the prior constitutional

argument, is also without merit.

The claimant has argued that depriving her of death benefits as a result of Section 287.120.3, or Section 287.020.4 improperly deprives her of benefits that any other spouse would be entitled to under the workers' compensation statute for an individual who was killed in the course and scope of their employment. However, claimant's argument fails to realize that it was Mr. Greenlee's own actions of taking his life intentionally that caused her claim for these benefits to fail. The claimant's argument also assumes that Mr. Greenlee's death occurred in the course and scope of his employment and so, therefore, she is being improperly denied these benefits. However, that is not the case here. The Legislature has the ability to set the parameters under which benefits are awarded. The Legislature defines what the course and scope of employment is and in this case, it is exactly that definition of course and scope of employment that claimant finds troublesome.

The claimant has gone on to argue that that definition of course and scope of employment which excludes compensation for intentional self-inflicted injuries, is arbitrary and does not serve a legitimate and rational purpose. This also is incorrect. The Legislature has a very legitimate and rational basis in not allowing claimants to profit from their own intentional self-inflicted injuries. Although claimant argues to the contrary, clearly the Legislature intended to place the cost for those intentional self-inflicted injuries on the person who committed the intentional act, the claimant himself. This Legislative intent that forms the basis of Section 287.120.3 is neither arbitrary nor without a rational basis. These statutes, therefore, are not unconstitutional.

In addition to these red herring constitutional arguments, the Appellant also seems to argue that the Administrative Law Judge's failure to pass on the credibility of the witnesses before them somehow invalidates the Commission's statutory authority to make the ruling in the case that they did. In so far as the Commission ruled on the credibility of Mrs. Greenlee and Dr. Leonberger, and also assigned the weight and value to their testimony without actually seeing them testify live, and insofar as the claimant is not happy with that ruling according to point 2 of her brief, it is a well established principle that the Commission is the sole judge of the credibility of the witnesses and the weight and value to be given to the evidence. **Carron v. St. Genevieve School Dist**., 800 S.W.2d 64, 67 (Mo.App. 1990). Appellant cites statutes and regulations that discuss the proper procedures for original hearings, when in this case, by the time the case was sent to Judge Schewendemann for a hearing, this was a remand hearing, not an original hearing. Point 2 should therefore be denied on this basis.

CONCLUSION

The employer/insurer requests that the Eastern District Court of Appeals affirm the Order of the Labor and Industrial Relations Commission in this case and deny death benefit compensation from the employer/insurer to the claimant since the claimant failed to meet her burden of proving that this death was medically causally connected to the employee's accident at work on 7/24/89. Additionally, this Court should affirm the Order of the Labor and Industrial Relations Commission since the employee's death occurred more than 300 weeks after his injury on 7/24/89, thus giving the employer/insurer an absolute defense under Section 287.020.4. Finally, this Court should affirm the Order of the Labor and Industrial Relations Commission denying death benefits in this case since the employee's death resulted from an intentional self-inflicted gunshot wound to the head which is in violation of Section 287.120.3. As any one of these defenses in and of themselves would be enough of a basis to deny this claim independent of the others, the fact that the Labor and Industrial Relations Commission found that a denial was appropriate under all three of these defenses, is a strong indication that their opinion is supported by competent and substantial evidence and not clearly contrary to the overwhelming weight of the evidence. Respondent respectfully requests this Court to affirm the Order of the Labor and Industrial Relations Commission.

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

A copy of the foregoing mailed to Kenneth Leeds, Attorney for Employee, 222 S. Central, Suite 1010, Clayton, Missouri 63105, by placing same in the U.S. Mails, postage pre-paid, this 28th day of September, 2001.

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