SD33620

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

RONALD MALAM,

Employee/Appellant,

vs.

STATE OF MISSOURI / DEPARTMENT OF CORRECTIONS,

Employer/Respondent.

APPEAL FROM THE LABOR AND
INDSTRIAL RELATIONS COMMISSION

BRIEF OF RESPONDENT

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STATEMENT OF FACTS

Employer supplements Employee's Statement of Facts as follows:

Employee's Testimony

Employee testified that at the time of the take down he did not notice anything unusual, but did have an adrenalin rush. (Tr. 12)

On cross-examination by the Second Injury Fund, Employee confirmed that no one was ever on top of him during the incident on August 12, 2011. (Tr. 27, 28) He also testified that in the weeks leading up to the August 12, 2011 incident he had been drinking a lot of water, up to 10 liters a day. (Tr. 33) He also agreed with his statement in his deposition that the take down of the inmate did not take "that much exertion." (Tr. 32)

Cox Medical Records

Employee submitted the records from his hospitalization at Cox Hospital following the August 12, 2011 incident. (Tr. 43-475) The History and Physical of Dr. Timothy Woods states: "It was reported that patient fell and someone actually fell on the patient's chest. He was taken to Texas County Memorial Hospital where he was evaluated. They felt the patient had chest trauma and was transferred to Cox South for further evaluation." (Tr. 137) Dr. Woods noted an abrasion to Employee's left knee, but "no other external trauma [was] noted." (Tr. 138) Dr. Woods found "It does not appear

that the patient's disease process is related to trauma. It is likely that trauma precipitated the medical processes he has going on. Dr. Terrance Coulter from pulmonology and Dr. Mark Anderson from cardiology have been consulted with as well." (Tr. 139)

Also in the Cox records was Dr. Coulter's History and Physical which states: "Earlier this afternoon there was a large altercation with many inmates and guards. By report, he fell onto the ground and a prisoner fell on top of him landing on his chest." (Tr. 132) Dr. Coulter's Impressions after his review and assessment were as follows:

1. Acute pulmonary edema
2. Acute respiratory failure
3. Suspect acute left ventricular systolic heart failure due to underlying coronary artery disease
4. History of probably viral cardiomyopathy
5. Hypertension
6. Diabetes mellitus
7. Obesity
8. Probably obstructive sleep apnea syndrome
9. Mild transaminitis
10. Leukocytosis, likely due to demargination from stress.

(Tr. 134, 135)

Dr. Douglas Ham also treated Employee at Cox. In this report, Dr. Ham recited the history of the event as "He was in an altercation with a prison inmate who then fell on top of the patient." (Tr. 103) Dr. Ham specifically noted that there was no bruising on Employee's chest. (Tr. 104) Dr. Ham's Clinical Impression following his review and examination was as follows: "A 50-year-old male with significant congestive heart failure, pulmonary edema. It is unclear whether this was all related to a possible cardiac contusion tipping him into the congestive heart failure or whether he could have also had pulmonary contusion which worsened his respiratory and cardiac status or could have been secondary to the stress of the altercation." (Tr. 105) Dr. Ham also noted that Dr. Woods, from Trauma Surgery, had evaluated Employee and found "no traumatic injuries." (Tr. 105)

A Consultation Report from Dr. Mark Anderson is also included in the Cox Medical records. (Tr. 69) Dr. Anderson's recitations of the events leading to Employee's hospitalization are: "The patient presented for further evaluation of trauma to the chest. The patient apparently was in an altercation. He is a prison guard. He had a prisoner fall on his chest." (Tr. 69) Dr. Anderson noted that CT did not show any rib fracture or evidence of pulmonary contusion. (Tr. 69) He further notes that Employee's EKG was abnormal and he was asked to consult because of this and because

Employee's blood pressure was 252/140. (Tr. 69) Following his review and examination, Dr. Anderson's Impressions were:

1. Hypertensive crisis
2. History of a previous normal angiogram just 4 or 5 years ago
3. Acute renal failure
4. Respiratory failure
5. Hypotensive and shock following a hypertensive crisis

(Tr. 71)

Employee's discharge diagnoses from Cox were:

1. Methicillin-sensitive Staphylococcus aureus (MSSA) bronchitis
2. Nonischemic cardiomyopathy
3. Diabetes
4. Hypertensive emergency

(Tr. 73)

Employee's Past Medical History

In March 2005, Employee had a 30 pound weight gain over two weeks and was hospitalized with swelling, shortness of breath and dyspena. (Tr. 503) Employee was hospitalized and his discharge diagnoses following the 2005 hospitalization included congestive heart failure, hypertension, primary cardiomyopathy, pulmonary hypertension, left ventricular dysfunction, biventricular failure and morbid obesity. (Tr. 503, 504) Dr. Koprivica

confirmed with Employee that following this hospitalization and these diagnoses, Employee "was not aggressively managed from a cardiovascular standpoint." (Tr. 716)

Employee was hospitalized again in September 2009 for four days with acute gallstone pancreatitis, acute cholecystitis and chronic cholelithiasis. (Tr. 527) During this hospitalization he underwent a laparoscopic cholecystectomy. (Tr. 524, 525) Also during this hospitalization he was diagnosed with diabetes mellitus. (Tr. 527)

In March 2010, Employee was again hospitalized with severe acute pancreatitis, acute renal failure, obesity, hypertension, hypophosphoremia and uncontrolled diabetes mellitus. (Tr. 543) Employee was initially hospitalized at Ozark Medical Center, but was transferred to University of Missouri Medical Center in Columbia due to his condition. (Tr. 543, 544) His total hospitalization in March 2010 was from March 6 until March 17, with the exception of one day, March 15, when he had been discharged on the 14th, only to be readmitted on the 15th with acute necrotizing pancreatitis with pseudocyst formation. (Tr. 543, 622, 640, 657)

Dr. Koprivica's IME

Dr. Koprivica saw Employee at his attorneys request and had records regarding both his past medical history and the treatment following the August 12, 2011 take down. (Tr. 712-722) Dr. Koprivica noted that until the

incident in August 2011, Employee told him he was taking his medication regularly, had no swelling or weight gain and was not noticing shortness of breath. (Tr. 717) Dr. Koprivica's report does not mention that Employee was drinking several liters of water a day leading up to the August 2011 incident. (Tr. 712-722)

Dr. Koprivica took a history from Employee regarding the incident at SCCC on August 12, 2011. (Tr. 718) Dr. Koprivica's understanding and recitation of the events of August 12, 2011 are as follows:

> Mr. Malam was involved in an incident in which he had to take down an offender. In this event, in wrestling the individual and taking him to the ground, there was extreme exertion. He did suffer bruising.

(Tr. 718) Dr. Koprivica noted that the TCMH records showed that Employee's glucose was elevated at 293, his BUN was elevated at 21, his cardiac enzymes were normal and his white blood count was elevated at 17,900. (Tr. 718)

Dr. Koprivica opined that the take down on August 12, 2011 was the "direct, proximate and prevailing factor precipitating his hypertensive crisis." (Tr. 721) He also found that "but for the work injury, it would be impossible to predict that Mr. Malam would have developed the hypertensive crisis that has necessitated the care and treatment that have followed the event." (Tr. 721) Finally, Dr. Koprivica found that "clearly, Mr. Malan had an underlying

hypertensive cardiomyopathy identified as far back as 2005. Nevertheless, the prevailing factor precipitating the specific event was the unexpected emotional and physical stresses associated with restraining the offender." (Tr. 721)

Dr. Puricelli IME

Dr. Anne-Marie Puricelli, a practicing Medical Doctor and also a licensed attorney, saw Employee and reviewed his medical records to perform an IME at the request of Employer. (Tr. 787-792)

Dr. Puricelli's history of the events of August 12, 2011 is fairly consistent with Employee's testimony at the hearing that he had an inmate against the wall, he took one arm and spun the inmate to the ground and placed handcuffs on him then he and another officer helped the inmate to his feet. (Tr. 787) There is one inconsistency in that Dr. Puricelli's history was that Employee remained standing during the entire event. (Tr. 787, 27, 28) Dr. Puricelli's history also included that Employee was "not injured at all by the inmate" and that on a scale of 0-10 regarding the amount of effort it took Employee to subdue the inmate, Employee told her it was a 1-2. (Tr. 787) Finally, Dr. Puricelli had the history from Employee of him drinking in excess of 5 liters of water a day due to thirst. (Tr. 788)

Dr. Puricelli had records regarding Employee's past medical conditions to review, as well as records regarding the treatment he received after the

August 12, 2011 incident. (Tr. 787-792) After her review of records and interview and physical of Employee, Dr. Puricelli diagnosed Employee with a history of hypertensive crisis with flash pulmonary edema which was cardiogenic in origin, congestive heart failure, and renal failure. (Tr. 791)

Dr. Puricelli opined regarding the August 11, 2011 event:

> It is my opinion that Mr. Malam went into acute hypertensive crisis and developed hemoptysis due to the elevated pulmonary capillary pressure that occurred due to his left ventricular failure secondary to the hypertensive crisis. He did not admittedly sustain any trauma. There was minimal exertion that occurred surrounding the subduing of the inmate. He had not been adequately treated for his hypertension of his cardiomyopathy and he was drinking, admittedly, excessive amounts of fluid per day, which in my opinion exacerbated both his hypertension and his underlying cardiomyopathy. It is my opinion that none of Mr. Malam's current diagnoses are related to any work event that occurred on August 12, 2011.

(Tr. 791) She also opined that "currently, [Employee] is not adequately treated regarding his hypertension and it is possible that another hypertensive crisis could occur at any time without adequate treatment." (Tr. 791, 792)

Workers' Compensation Awards

On February 13, 2014 the Administrative Law Judge (ALJ) Margaret Holden issued her award finding that Employee failed to prove that he had a compensable injury under Chapter 287 causing the need for the medical treatment incurred at Texas County Memorial Hospital and Cox Medical Center. All benefits were denied. (L.F. 37-39)

Following the award of the ALJ, Employee appealed to the Labor and Industrial Relations Commission (Commission). The Commission affirmed the award of the ALJ, finding that while Employee proved that he had an "accident" as defined in §287.020.2, he failed to prove that the accident was more than a "precipitating" factor in his resulting medical condition. (L.F. 40-42)

ARGUMENT

Standard of Review

Appellate review of a final award of the Commission is limited. Unless the issue involves a question of law, an award may be modified, reversed, remanded for hearing, or set aside only if: 1) the Commission acted without or in excess of its powers; 2) the award was procured by fraud; 3) the facts found by the Commission do not support the award; or 4) there was not sufficient competent evidence in the record to warrant the making of the award. §287.495.1[1]

An appellate court must examine the whole record to determine whether the Commission's award is supported by sufficient, competent and substantial evidence. Whether the award is supported by competent and substantial evidence is determined by examining the evidence in the context of the whole record. *Hampton v. Big Boy Steel Erection,* 121 S.W.3d 220, 222 (Mo. banc 2003)

Employee makes no argument in his brief that the Commission erred as a matter of law; therefore, the question before this Court is whether or not there is substantial and competent evidence to support the denial of benefits to Employee.

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[1] All references to the Missouri Revised Statutes are to the 2013 Cumulative Supplement unless otherwise specified.

I. The Labor and Industrial Relations Commission is correct in finding that Employee failed to prove he sustained a compensable injury under §287.020.2.

(Responding to Appellant's Point I)

Employee seeks benefits under Chapter 287 for payment of his medical bills incurred at Texas County Memorial Hospital and Cox Medical Center for treatment commencing on August 12, 2011, and ending on August 23, 2011. In order for these bills to be the responsibility of Employer under workers' compensation, Employee had to prove (1) he suffered an accidental work related injury and (2) the accident was the prevailing factor in causing both the resulting medical condition and disability. *Armstrong v. Tetra Pak*, 391 S.W.3d 466, 472 (Mo. App. S.D. 2012) Employee bears the burden of proving each element of his claim. *Lawrence v. Joplin R-8 Sch. Dist.,* 834 SW 2d 789, 793 (Mo. App. S.D. 1992)

A. Employee did not sustain a "compensable injury."

The Commission found that while Employee sustained an "accident" as defined in §287.020.2, he failed to establish medical causation between the "accident" and his resulting medical condition. (L.F. 41, 42) The Commission found that Dr. Koprivica's report was "at best, equivocal with regard to whether the accident was the prevailing factor causing both the resulting hypertensive crisis and disability." (L.F. 41)

Employee argues that the Commission required too much of Dr. Koprivica's report and erred in its reading of it. (Appellant's brief p. 30, 31, 34, 35) He also states that the Commission "specifically reversed the ALJ's credibility determinations regarding the physicians, finding Dr. Koprivica more credible than Dr. Puricelli." (Appellant's brief p. 22) This is not true.

While the Commission did specifically note that it disagrees with the ALJ finding Dr. Puricelli's opinions more persuasive regarding the cause of Employee's hypertensive crisis, it did not specifically find Dr. Puriceilli to be not credible, nor did it make any specific findings affirming the credibility of Dr. Koprivica. (L.F. 41, 42) In fact, the Commission noted, like Dr. Puriceilli, Dr. Koprivica "relied on incorrect facts" in reaching his opinions. (L.F. 42, footnote 1) What the Commission did find regarding Dr. Koprivica's opinions, the only ones offered by Employee to prove his case, is that they were not explained, and "his relevant opinion is rendered in [a] purely conclusory fashion." (L.F. 42)

B. Dr. Koprivica's opinion is equivocal.

Employee spends almost the entirety of his brief arguing that the Commission misunderstood Dr. Koprivica's opinions and that his opinions are unambiguous. However, as the Commission found, Dr. Koprivica uses the term "prevailing factor," but qualifies it with the term "precipitating." (Tr. 721) He states specifically in paragraph one of his opinion that the event of

August 12, 2011, "is felt to represent the direct, proximate and prevailing factor *precipitating* his hypertensive crisis." [2] (Tr. 721 *emphasis added*) He says the same thing again in paragraph two where he notes Employee's "underlying hypertensive cardiomyopathy" and states "the prevailing factor *precipitating* the specific events were the unexpected emotional and physical stresses associated with restraining the offender." (Tr. 721 *emphasis added*) The statue clearly states "An injury is not compensable because work was a triggering or precipitating factor." §287.020.2. Despite Employee's contentions, even Dr. Koprivica's opinions do not support a finding that Employee had a compensable injury on August 12, 2011.

Employee urges this Court to disagree with the findings of the Commission with respect to the weight it gave Dr. Koprivica's opinions. However, the Commission is free to accept or reject an expert opinion as well as to determine the weight to be given an expert's testimony. *Copeland v. Thurman Stout Inc.*, 204 S.W.3d, 737, 743 (Mo. App. S.D. 2006) *citing*

[2] Employee cites this quotation in his brief on page 29; however, he adds the word "in" between "factor" and "precipitating," making the statement read "it is felt to represent the direct proximate and prevailing factor in precipitating his hypertensive crisis." (Appellant's brief p. 29) The quotation, found on page 721, actually reads as quoted above and does not include the word "in."

Alexander v. D.L Sitton Motor Lines, 851 S.W. 2d 525, 527 (Mo.1993). *Royal v. Advantica Restaurant Group Inc.,* 194 S.W.3d 371, 376 (Mo. App. W.D. 2006) The Commission is free to choose between experts, and the court will not reverse such choices even if the other expert is worthy of belief. *Payne v. Thompson Sales Co.,* 322 S.W.3d 590, 593 (Mo.App. S.D. 2010) Furthermore, the Commission correctly found that at best Dr. Koprivica's opinions were ambiguous and equivocal. His deposition was not taken and he did not explain what he meant by the use of any of the terms he uses, including "prevailing" and "precipitating."

C. Other medical records support the award.

Also, while not mentioned specifically by the Commission, it must be noted that at least one of the treating doctors at Cox Medical Center opined it was Employee's underlying medical conditions, not a trauma, which led to the health crisis on August 12, 2011. Dr. Timothy Woods wrote "It does not appear that the patient's disease process is related to trauma. It is likely that trauma *precipitated* the medical processes he has going on." (Tr. 139 *emphasis added*) Dr. Woods' opinion that any trauma sustained in the take down "precipitated the medical process," also establishes that this is not a compensable injury under §287.020.2. This opinion is more evidence that supports the award of the Commission, establishing that it should be affirmed.

D. Employee had much more than just a hypertensive crisis.

Finally, Employee mentions only the "hypertensive crisis" described by Dr. Koprivica as being related to the accident, however, Employee had much more than just a "hypertensive crisis" on August 12, 2011. The records from Cox Medical Center, where Employee was treated after the August 12, 2011 incident, establish that he was diagnosed with much more than just hypertensive crisis and his treatment included much more than just a heart catheterization, as Employee mentions in his Statement of Facts. (Appellant's brief p. 19)

The impressions Dr. Coulter, medical doctor at Cox Medical Center, had for Employee following this event were:

1. Acute pulmonary edema
2. Acute respiratory failure
3. Suspect acute left ventricular systolic heart failure due to underlying coronary artery disease
4. History of probably viral cardiomyopathy
5. Hypertension
6. Diabetes mellitus
7. Obesity
8. Probably obstructive sleep apnea syndrome

Dr. Anderson, medical doctor at Cox Medical Center, had the following impressions after the August 12, 2011 event:

1. Hypertensive crisis
2. History of a previous normal angiogram just 4 or 5 years ago
3. Acute renal failure
4. Respiratory failure
5. Hypotensive and shock following a hypertensive crisis

(Tr. 71)

Employee's discharge diagnoses from Cox Medial Center after this event were:

1. Methicillin-sensitive Staphylococcus aureus (MSSA) bronchitis
2. Nonischemic cardiomyopathy
3. Diabetes
4. Hypertensive emergency

(Tr. 73)

Employee culls out only one of his many post-August 12, 2011, diagnoses - hypertensive crisis - and attempts to argue that because Dr. Koprivica gave an equivocal opinion about that one diagnosis being caused by his work event, that all of the rest are also related. The Commission did not find this and its award denying Employee's claim is supported by substantial and competent evidence and should not be overturned.

Leake v. City of Fulton, 316 S.W.3d 528 (Mo. App. W.D. 2010) appears to be the only published case where the issue was whether a heart attack suffered shortly after heavy exertion at work was a compensable injury under §287.020.3. The facts of *Leake* are vastly different from the facts in this case. Leake, a firefighter was involved with rescue and clean up of two back-to-back motor vehicle accidents. The weather was poor and the conditions surrounding both rescues and clean up caused the employee to use extreme exertion. A co-worker of Leake who was on the scene at both of the accident sites, working side- by-side with Leake described the day's work as the "most physically demanding and emotionally challenging that he had experienced" in his twelve years as a police officer. *Id.* at 530. Unlike Employee here, Leake had no history of any prior medical problems involving his heart. *Id.*

In *Leake,* the Court evaluated the opinions of two cardiologist. Dr. Kennett opined that the underlying cardiac problems unknown to Leake were the prevailing factor in causing his death by heart attack within minutes of completing his last rescue. *Id.* Dr. Schuman, on the other hand, opined that the "significant, unusual physical exertions on the day in question, emotional stress associated with responding to a severe car accident, and hot and humid weather in which the body cannot dissipate heat, and that all of those factors combined to increase demand on the cardiovascular system for enhanced

cardiac output," was the prevailing factor in the heart attack suffered by Leake. *Id.* at 530, 531

The Court in *Leake* found that the determination of whether work was the "prevailing factor" in causing the employee's heart attack was a factual question that came down to which cardiologist was found most credible. *Id.* at 532 The Court then found the reasoning behind the Commission's reliance on Dr. Schuman to be sound given the lack of past medical history for Leake and the extreme conditions under which he was working just prior to the heart attack. *Id.* at 533 They pointed specifically to Dr. Schuman's opinion that he could "absolutely say to a reasonable degree of medical certainty, that Leake would not have had the cardiac event if he had not been exposed to the extraordinary physical and mental stress related to performing his work duties on April 30, 2006." *Id.* The same cannot be said for Employee's expert in this case.

Dr. Koprivca's report states that "but for the work injury, it would be impossible to predict that Mr. Malam would have developed the hypertensive crisis that had necessitated the care and treatment that followed that event." (Tr. 721) Note that Dr. Koprivica does not say that absent the events at work on August 12, 2011 Employee would "absolutely not" have developed the hypertensive crisis. *Id.* Dr. Koprivica has this opinion most likely because Employee had in the past developed, and been hospitalized with, congestive

heart failure, hypertension, primary cardiomyopathy, pulmonary hypertension, left ventricular dysfunction, bi- ventricular failure, acute gallstone pancreatitis, acute cholecystitis and chronic cholelithiasis, acute renal failure, hypotesion and hypophosphatmia, all without any known precipitating event. (Tr. 716, 717) The written opinions of Dr. Koprivica do not rise to the level of those given by Dr. Schuman in the *Leake* case.

Considering Employee's own words that the take down really did not take "that much exertion," that there was no evidence of any trauma having occurred to Employee's body during the take down, and considering his vast medical history of serious problems with his heart, lungs and renal system, the events at work on August 12, 2011 simply are not the "prevailing factor" in causing both Employee's resulting medical condition and disability, and he is not entitled to benefits for it under the workers' compensation system. (Tr. 773); *Armstrong*, 391 S.W.2d at 472

This proposition is even more evident in light of the fact that Employee's medical conditions after the accident included much more than the hypertensive crisis, which is the only medical condition that Dr. Korpivica even attempted to tie to the accident.

II. The Commission corrected found Employer was not responsible for payment of any of Employee's medical bills from treatment received on and immediately following August 12, 2011

(Responding to Appellant's Point II)

Employee contends that once he has proven he had a compensable injury his employer is responsible to provide all of the necessary medical treatment that flows from that injury. (Appellant's brief p. 38) Employee relies on *Tillotson v. St. Joseph Medical Center,* 347 S.W.3d 511 (Mo. App. W.D. 2011), for support for his claim. (Appellant's brief p. 23) Employee argues that the Commission erred in not awarding payment of his medical expenses since it found that an accident did occur. (Appellant's brief p. 36) Employee fails to recognize the limitations *Armstrong v. Tetra Pak*, 391 S.W.3d 466, 472 (Mo. App. S.D. 2012), had on the holding of *Tillotson.*

Employee states that there is objective evidence that Employee had difficulty breathing and was spitting up blood and that these "medical condition" were sustained as a result of the take down at the prison. (Appellant's brief p. 37, 38)

Employee points to bruising on his chest as evidence of an injury; however, the medical records do not support that Employee had a bruise on his chest as a result of the take down. (Appellant's brief p. 38)

The Cox records are replete with doctors noting no bruising on Employee's chest. Dr. Woods found an abrasion on Employee's left knee, but "no other external trauma was noted." (Tr. 138) Dr. Ham specifically noted no bruising on Employee's chest. (Tr. 104) Furthermore, and most notably, there is no mention in the TCMH records that he had any bruising on his chest. (Tr. 565-602) Specifically on the page of TCMH records where the emergency room personnel were to "indicate area of injury" there are no markings of any areas of "contusion" or "abrasion." (Tr. 571)

The fact that Employee had a bruise just below his ribcage at some point later does not mean that the bruise was from the take down event. Recall, Employee has no memory of events for a full week following the take down. (Tr. 15) Employee underwent numerous medical procedures, including being intubated and placed on a ventilator; it is certainly possible a medical procedure was the cause of the bruising Employee noticed a week later. This seems even more probable when considering that several medical personnel, including EMTs, doctors and nurses at both TCMH and Cox Medical Center were evaluating Employee for what they believed was a trauma to the chest, but found no bruising during the initial treatment and evaluation following the take down.

Employee attempts to shoestring his case together, arguing that 1) he was involved in a take-down; 2) he suffered difficulty breathing and was

spitting up blood, therefore he had an "accident" and compensable injury; 3) he then had a hypertensive crisis; 4) he was treated at Cox Medical Center after the take down resulting in $138,010.15 in medical expenses (Tr. 52) and 5) this is all related to the take down such that Employer is responsible for all of his medical bills. However, his reasoning is flawed. As the Commission found, he did not have a compensable injury. (L.F. 42) Even if he did have a compensable injury in the form of difficulty breathing and spitting up blood, treatment for those conditions did not result in $138,010.15 in medical expenses.

The court in *Armstrong* found there is a difference between determining what medical treatment a claimant is entitled to once a compensable injury has been found, and whether or not a compensable injury occurred. *Armstrong,* 391 S.W.3d at 472 As with *Armstrong*, the issue in this case is whether or not Employee sustained a compensable injury. As the *Armstrong* court pointed out, to decide the issue of compensability, one must apply the "statutory tests set out in §287.020." *Id.*

Section 287.020.2 defines "accident:"

> The word 'accident' as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury

caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor. Section 287.020.3 defines "injury:"

(1) In this chapter the term 'injury' is hereby defined to be an injury which has arisen out of and in the course of employment. *An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability.* 'The prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if: (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment and normal non-employment life.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

(Emphasis added)

The mere fact that Employee is able to point to an event at work which he had complaints following does not in and of itself establish a compensable injury, and that Employer is responsible for all of the medical bills incurred following the event.[3] The court in *Armstrong*, held that the Commission correctly found that the claimant did not sustain a compensable injury because the accident was not the prevailing factor in causing both his resulting medical condition and disability. The same is true with Employee's claim. While Employee was involved in a take-down of an inmate prior to the onset of his complaints and eventually he had acute renal failure and respiratory failure, the evidence does not establish that the take down was the "prevailing factor in causing both the resulting medical condition and disability." 287.020.3(1)

Because Employee failed to prove a compensable injury, he is not entitled to have his medical bills incurred following August 12, 2011 paid by Employer. Furthermore, even if the take down incident of August 12, 2011 did result in some compensable injury, the bills which Employee seeks

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[3] *See, Armstrong*. On May 12, 2010, the claimant, while reaching for cardboard overhead, "felt a sharp, deep pain in his right shoulder" yet claimant was found not to have sustained a compensable injury. 391 S.W.3d at 468.

payment from Employer are not related to that compensable injury and thus are not the responsibility of Employer.

CONCLUSION

For the foregoing reasons, the decision of the Labor and Industrial Relations Commission should be affirmed.

Respectfully submitted,
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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that on this 18th day of March 2015, a true and correct copy of the foregoing was filed electronically via Missouri CaseNet to:

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I further certify that this brief contains 5,231 words in compliance with the limitation in Rule 84.06(b), it contains the signature and required information in compliance with Rule 55.03, and I have signed the original.

/s/Cara Lee Harris
Assistant Attorney General