

**In the  
Supreme Court of Missouri**

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**MARAL ANNAYEVA,**

**Appellant,**

**v.**

**SPECIAL ADMINISTRATIVE BOARD  
OF THE TRANSITIONAL SCHOOL DISTRICT  
OF THE CITY OF ST. LOUIS,**

**Respondent**

**TREASURER OF THE STATE OF MISSOURI,  
AS CUSTODIAN OF THE SECOND INJURY FUND**

**Respondent, Additional Party.**

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**Appeal from the Labor and Industrial Relations Commission**

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**RESPONDENT TREASURER'S SUBSTITUTE BRIEF**

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## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                                          |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES.....                                                                                                                                                                                                                                                                | 3  |
| STATEMENT OF FACTS.....                                                                                                                                                                                                                                                                  | 5  |
| STANDARD OF REVIEW.....                                                                                                                                                                                                                                                                  | 9  |
| ARGUMENT.....                                                                                                                                                                                                                                                                            | 11 |
| I. The Labor and Industrial Relations Commission’s finding that Ms. Annayeva’s accident did not arise out of or in the course and scope of her employment is supported by substantial and competent evidence. (Responding to Points I, II, and III of Appellant’s Substitute Brief)..... | 11 |
| A. The Commission found not credible Ms. Annayeva’s freshly realized belief that the floor may have been wet or dirty.....                                                                                                                                                               | 12 |
| B. Ms. Anneyeva improperly asks this Court to revisit the Commission’s “conclusive and binding” findings of fact.....                                                                                                                                                                    | 16 |
| C. Ms. Anneyeva mistakenly relies on the location of the injury, rather than the risk source of the injury.....                                                                                                                                                                          | 18 |
| D. Ms. Anneyeva overlooks the clearly stated fact findings about medical causation made by the ALJ and the Commission.....                                                                                                                                                               | 22 |
| CONCLUSION.....                                                                                                                                                                                                                                                                          | 25 |
| CERTIFICATE OF SERVICE AND COMPLIANCE.....                                                                                                                                                                                                                                               | 26 |
| CERTIFICATION UNDER RULE 84.06.....                                                                                                                                                                                                                                                      | 26 |

## TABLE OF AUTHORITIES

|                                                                                                                       |            |
|-----------------------------------------------------------------------------------------------------------------------|------------|
| <i>Abel v. Mike Russell's Std. Serv.</i> , 924 S.W.2d 502 (Mo. banc 1996).....                                        | 18         |
| <i>Hampton v. Big Boy Steel Erection</i> , 121 S.W.3d 220 (Mo. banc 2003).....                                        | 9          |
| <i>Hornbeck v. Spectra Painting, Inc.</i> , 370 S.W.3d 624<br>(Mo. banc 2012).....                                    | 10,21,23   |
| <i>Johme v. St. John Mercy Healthcare</i> , 366 S.W.3d 509<br>(Mo. banc 2012).....                                    | 19, 20 ,21 |
| <i>Malam v. State Dep't of Corr.</i> , 492 S.W.3d 926 (Mo. banc 2016).....                                            | 19         |
| <i>Miller v. Missouri Highway and Transportation Commission</i> ,<br>287 S.W.3 <sup>rd</sup> 671 (Mo. banc 2009)..... | 19,20,21   |
| <i>Treasurer v. Witte</i> , 414 S.W. 3d 455 (Mo. banc 2013).....                                                      | 9,21       |
| <i>Birdsong v. Waste Mgmt.</i> , 147 S.W.3d 132 (Mo. App. S.D.2004).....                                              | 9          |
| <i>Brandenburg v. Treasurer of the State of Missouri</i> , 427 S.W. 3d 326 (Mo.<br>App. S.D. 2014).....               | 23         |
| <i>Cardwell v. Treasurer of the State of Missouri</i> , 249 SW.3rd 902<br>(Mo. App. E.D. 2008).....                   | 12         |
| <i>Claspill v. Fed Ex Freight East. Inc.</i> , 360 S.W.3d 894<br>(Mo. App. S.D. 2012).....                            | 12         |
| <i>Goodman v. St. Louis Auto Auction</i> , 677 S.W.2d 22 (Mo. App. E.D. 1984)....                                     | 18         |
| <i>Kunce v. Junge Baking Co.</i> , 432 S.W.2d 602 (Mo. App. S.D. 1968).....                                           | 19         |

|                                                                                               |          |
|-----------------------------------------------------------------------------------------------|----------|
| <i>McDowell v. St. Luke's Hosp. of Kansas City</i> , 572 S.W.3d 127 (Mo. App. W.D. 2019)..... | 12,22    |
| <i>Porter v. RPCS, Inc.</i> , 402 S.W.3d 161 (Mo. App. S.D. 2013).....                        | 21       |
| <i>Null v. New Haven Care Center, Inc.</i> , 425 S.W.3d 172 (Mo. App. E.D. 2014).....         | 9        |
| <i>Palmentere Bros. Cartage Service v. Wright</i> , 410 S.W.3d 685 (Mo. App. W.D. 2013).....  | 23       |
| <i>Pennewell v. Hannibal Reg'l Hosp.</i> , 390 S.W.3d 919 (Mo. App. E.D. 2013).....           | 10       |
| <i>Shaw v. Mega Indus., Corp.</i> , 406 S.W.3d 466 (Mo. App. W.D. 2013).....                  | 10       |
| <i>Thompson v. Treasurer</i> , 543 S.W.3d 890 (Mo. App. E.D. 2018).....                       | 10,17,18 |
| <i>Yaffe v. St. Louis Children's Hospital</i> , 648 S.W.2d 549 (Mo. App. E.D. 1982).....      | 18       |
| <i>Zahn v. Associated Dry Goods Corp.</i> , 655 S.W.2d 769 (Mo. App. E.D. 1983).....          | 18       |

## Statutes

|                                 |              |
|---------------------------------|--------------|
| Section 287.800 RSMo.....       | 10           |
| Section 287.020.3 (2) RSMo..... | 11,12,19,24  |
| Section 287.495 RSMo.....       | 9            |
| Section 287.495.1. RSMo.....    | 5,9,16,17,21 |

## STATEMENT OF FACTS

This case involves a fact-intensive question about the cause of a workplace fall and the credibility of witness testimony, an issue capably resolved by the ALJ and the Commission, and solely within their purview. Section 287.495.1 (“the findings of fact made by the commission within its powers shall be conclusive and binding” on appeal).

Maral Annayeva is a teacher for the St. Louis School District (Employer). On February 8, 2013, she fell while walking in a hallway at her school on her way to clock in for the day, breaking the fall with her hands and knees. After the fall, Ms. Annayeva went to the nurse’s office where she filled out an Employee Report of Injury. (Tr.22-24).<sup>1</sup> On the third page of the report, in response to the question “*describe how the injury occurred*,” Ms. Annayeva wrote: “I walked in as usual, said ‘Good morning’ to security lady and Mr. Allen. When I passed by security screening door, suddenly I fell down badly.” In response to the next question which asked, “*[w]hat if any events or conditions caused the accident: (i.e. wet floor, fight standing on unstable surface, etc.)*,” Ms. Annayeva wrote: “I could not determine the cause of the accident.” (Tr.1040-1042).

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<sup>1</sup> The transcript will be cited as “Tr.” The legal file will be cited as “L.F.”

Ms. Annayeva next went to the emergency room. (Tr. 25, 353). Intake notes from the emergency room (taken 3 to 5 hours after the fall) stated, “The fall occurred walking. She landed on a hard floor.” (Tr. 353).

Ms. Annayeva sought workers’ compensation benefits from both Employer and the Second Injury Fund (Fund). Neither the Report of Injury nor any medical records suggest that anything on the school’s hall floor was the cause of her accident. (Tr. 1042). Ms. Annayeva returned to work for a period of time after the fall, but eventually left the school district due to complaints she alleged were a result of the fall. Over time, she continued to seek medical and psychological treatment for her complaints.

A hearing was held before an Administrative Law Judge (ALJ) of the Division of Workers’ Compensation on Ms. Annayeva’s claim. On May 18, 2018, the ALJ issued an award denying compensation for benefits on the basis of lack of medical causation. The ALJ, who observed Ms. Annayeva’s testimony in person, specifically found her testimony not credible. The ALJ wrote:

*Initially, the Court finds, as to Claimant’s credibility, she has failed to provide credible testimony to this Court. It is clear Claimant’s description of her injuries and their subsequent effects verge on the point of malingering. As all, if not most, of Claimant’s medical expert testimony relies in substantial part on her own subjective description of her maladies, this Court finds the conclusions subsequently provided are equally specious. There is little or no objective medical finding to support any of Claimant’s anomalies. Claimant has not met her burden of showing the incident of January 8, 2013 was*

the prevailing factor causing the physiological and/or psychological complaints. This Court therefore shall deny this claim on the basis of lack of medical causation. Consequently, all other issues are therefore moot.

(L.F. p. 21, emphasis added).

Ms. Annayeva filed an application for review with the Labor and Industrial Relations Commission (Commission). The Commission affirmed the ALJ's award and incorporated it into its award. The Commission made additional specific credibility findings regarding the issue of whether the fall occurred in the course and scope of employment, writing:

*We also do not find credible that the condition of the hallway at the date of the injury presented a hazard or risk to employee.* When testifying about the condition of the floor at the hearing before the administrative law judge, employee initially indicated in her testimony that the floor was "normal." *Transcript*, page 20. After several follow-up questions by her attorney, employee further testified that the floor was dirty due to "foot traffic," including "some particles of dirt, ice, dust, moist." *Transcript*, page 20. Because employee did not focus on the alleged hazardous condition of the floor until specifically asked by her attorney, employee's testimony on the alleged hazardous condition is questionable. The record also does not corroborate employee's testimony regarding the alleged hazardous condition of the hallway floor at the time of the injury. Medical records do not indicate any mention of a hazardous condition regarding the hallway floor. The emergency room documents simply indicate that employee's "fall occurred walking." *Transcript*, pages 353. Likewise, medical records from two days later merely report that employee "entered school and slipped and fell forward on both knees and strained her low back." *Transcript*, pages 1043.

Similarly, when describing the event on employer's accident investigation report on the date of the injury,

employee did not mention any ice, salt, or dirt on the floor that caused her to slip, but stated that she “could not determine the cause of the accident.” *Transcript*, page 1042. Employee also stated that she “walked in as usual ... [and] suddenly ... fell down very badly.” *Id.* Without additional support in the record for the alleged hazardous condition of the hallway floor, we find that the only risk source in this matter was that of walking, one to which employee would have been equally exposed in normal non-employment life.

(L.F. p.35, emphasis added).

The Missouri Court of Appeals, Eastern District, reversed the Commission’s Award and found Ms. Annayeva’s injury to be compensable, in part overturning the Commission’s credibility findings. *Annayeva v. SAB of TSD of City of St. Louis and Treasurer of Missouri*, 2019 WL 3417286 (Mo. App. E.D. July 30, 2019).

The Fund and Employer sought transfer. In its Application for Transfer, the Fund noted that “[t]his court, and the Missouri Court of Appeals, have long held that in reviewing an award of the Commission, the Commission’s determination of credibility controls.” (Application for Transfer at 3). The Fund maintained that the “Eastern District disregarded this longstanding precedent and instead made its own determinations regarding the credibility of Ms. Annayeva.” (Application for Transfer at 4). This Court granted transfer.

## STANDARD OF REVIEW

On appeal this Court reviews “only questions of law,” and will only “modify, reverse, remand for rehearing, or set aside the award” upon one “of the following grounds and no other:”: (1) the Commission acted in excess of its powers, 2) its award was procured by fraud, 3) “the facts found by the Commission do not support its award,” or 4) “there was not sufficient evidence in the record to warrant the making of the award.” Section 287.495 RSMo; see *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 222, 223 (Mo. banc 2003).

On appeal “no additional evidence shall be heard and, in the absence of fraud, the findings of facts made by the Commission within its powers shall be conclusive and binding.” Section 287.495.1.<sup>2</sup> This Court defers to the Commission on issues involving the credibility of witnesses and the weight to be given their testimony. *Treasurer v. Witte*, 414 S.W. 3d 455, 460 (Mo. banc 2013); *Null v. New Haven Care Center, Inc.*, 425 S.W.3d 172 (Mo. App. E.D. 2014) citing *Birdsong v. Waste Mgmt.*, 147 S.W.3d 132,137 (Mo. App. S.D. 2004) “This Court may not substitute its judgment on the evidence, and

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<sup>2</sup> All statutory references are to RSMo Cumulative Supp. 2012, unless otherwise indicated.

when the evidence before an administrative body would warrant either of two opposed findings, the reviewing court is bound by the administrative determination, and it is irrelevant that there is supportive evidence for the contrary finding.” *Thompson v. Treasurer of Missouri*, 545 S.W.3d 890, 893 (Mo. App. E.D. 2018) (quoting *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 629 (Mo. banc 2012)).

Since Employee’s injury occurred after August 28, 2005, the provisions of the Chapter 287 are to be strictly construed. Section 287.800. Section 287.800 requires that “any reviewing courts shall construe the provisions of this [workers’ compensation] chapter strictly.” Strict construction means that “the statute can be given no broader an application than is warranted by its plain and unambiguous terms.” *Pennewell v. Hannibal Reg’l Hosp.*, 390 S.W.3d 919, 923 (Mo. E.D. App. 2013). “The legislature is presumed to have intended what the statute says, and if the language used is clear, there is no room for construction beyond the plain meaning of the law.” *Shaw v. Mega Indus., Corp.*, 406 S.W.3d 466, 469 (Mo. App. W.D. 2013).

## ARGUMENT

### I.

The Labor and Industrial Relations Commission's finding that Ms. Annayeva's accident did not arise out of or in the course and scope of her employment is supported by substantial and competent evidence. (Responding to Points I, II, and III of Appellant's Substitute Brief)

Ms. Annayeva challenges the Commission's determination that her slip-and-fall injury did not arise out of and in the course of her employment with Employer. The Fund does not dispute that Ms. Annayeva fell in the hallway at her workplace while she was walking toward the room where she would clock in for the day. However, simply because Ms. Annayeva fell at work does not mean she met her burden to show that she is entitled to workers' compensation benefits. The substantial and competent evidence on the record supports the Commission's findings that: (1) the risk source, walking on a flat surface, was one to which she is "equally exposed . . . in normal non-employment life," *see* section 287.020.3; (2) Ms. Annayeva failed to establish that some condition in the hallway presented a hazard or risk greater than she is exposed to in her normal non-employment life; and (3) Ms.

Annayeva failed to establish that her accident was the “prevailing factor” in causing her medical condition and disability, *id.*<sup>3</sup>

**A. The Commission found not credible Ms. Annayeva’s freshly realized belief that the floor may have been wet or dirty.**

An employee in a workers’ compensation case has the burden of proving all elements of the claim to a reasonable degree of probability. *Cardwell v. Treasurer of the State of Missouri*, 249 SW.3d 902, 911 (Mo. App. E.D. 2008). To be entitled to workers’ compensation benefits, the employee has the burden of proving that his or her injury was caused by a work-related accident. *Claspill v. Fed Ex Freight East. Inc.*, 360 S.W.3d 894, 903 (Mo. App. S.D. 2012).

Here, the Commission adopted the ALJ’s Award, and also issued a detailed supplemental opinion finding Ms. Annayeva’s version of events not credible. In addition to incorporating the ALJ’s findings that Ms. Annayeva had failed to establish medical causation, the Commission further found that her injury did not occur in the scope and course of her employment.

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<sup>3</sup> The Commission’s award does not expressly discuss the “prevailing factor” standard outlined in section 287.020.3. Nevertheless, the Commission’s Award “attached and incorporated” the Award of the ALJ to the extent it was not inconsistent with its supplemental opinion. “To the extent that the Commission affirms and adopts the ALJ’s findings and conclusions, [this Court] review[s] the ALJ’s findings and conclusions.” *McDowell v. St. Luke's Hosp. of Kansas City*, 572 S.W.3d 127, 131 (Mo. App. W.D. 2019).

Specifically, the Commission was unpersuaded by Ms. Annayeva's testimony at hearing regarding the alleged hazardous condition on the floor. (L.F.35) The Commission found not credible Ms. Annayeva's testimony regarding a hazard on the floor where she fell. (L.F. 35)

The Commission also determined that Ms. Annayeva's testimony—about a hazardous condition on the floor where she fell—conflicted with her own previous testimony. (L.F. 35). When counsel first asked her what type of floor was in the building she answered "linoleum tile." (Tr. 19) When first asked about the condition of the floor was she replied, "normal, I think." (Tr.20) When asked to clarify by her counsel she reaffirmed her answer.

Q. Did you say "normal"?

A. Yes.

(Tr. 20) Upon even further questioning by her counsel, she continued to deny any hazardous condition on the floor.

Q. And was there any, anything broken or chipped anything like that?

A. I didn't mention it, I didn't see it.

(Tr.20)

As noted by the Commission, it was only after several more follow-up questions from her counsel that Ms. Annayeva finally testified that the floor was dirty with some particles of "dirt, ice, dust, moist." (Tr. 20) Because Ms.

Annayeva did not mention the alleged hazardous condition of the hallway floor until specifically asked by counsel—and in fact had described the condition as “normal”—the Commission found her testimony regarding the alleged hazardous condition to be questionable. (L.F. 35)

Ms. Annayeva bears the burden of proof to show that her injury arose out of and in the course and scope of her employment. The only evidence she offered of a hazardous condition causing or contributing to her fall at work was her own testimony that the floor was dirty. The Commission simply did not find her testimony credible. In reaching its conclusion, the Commission reviewed the Employer’s Accident Investigation Form and the medical records related to the injury. (L.F. 35) As noted above, Ms. Annayeva completed this form shortly after her fall. In responding to a question about any conditions that caused the accident, such as a “wet floor,” she responded, “I could not determine the cause of the accident.” (Tr. 1042) The Commission correctly noted that this answer does not support Ms. Annayeva’s hearing testimony that the floor’s allegedly wet or dirty condition caused the fall there was a hazard on the floor where she fell. (L.F. 35)

The Commission also reviewed the medical records from the treatment Ms. Annayeva had following the fall. These records likewise support the Commission’s finding that Ms. Annayeva failed to mention to any medical provider that her fall was caused by hazardous conditions on the hallway

floor. The medical records from the emergency room at St. Mary's Hospital the morning of the injury make no mention of any hazard on the floor and instead merely say that "[t]he fall occurred walking. She landed on a hard floor." (Tr.353). The medical records go on to say that "[p]atient states that she was walking at the time of injury and is unsure what caused her to fall. Patient fell forward and landed on her hands and knees." (Tr. 353)

Similarly, the records from her follow-up appointments do not reference any hazard on the floor. When seen by Dr. Patel at Concentra several days later on January 11, 2013, Ms. Annayeva's patient history stated that she entered the school and slipped, fell forward on both knees, and strained her lower back. Ms. Annayeva, however, gave no history of there being a hazard on the floor. (Tr. 1043) Likewise, when she visited Dr. Bowens one week later, Ms. Annayeva made no mention of any hazardous conditions on the floor. (Tr.729)

The first time in any record that Ms. Annayeva tells anyone about having walked through salt, snow, ice and dirt on her way from the parking lot was two weeks after the fall, when she visited her provider at Logan College of Chiropractic's Montgomery Health Center. Even then, the notes do not indicate that those substances were also inside the building and that they created some sort of hazard on the floor where she fell, or that they in any way contributed to her fall. (Tr.547)

**B. Ms. Annayeva improperly asks this Court to revisit the Commission's  
"conclusive and binding" findings of fact.**

Ms. Annayeva is asking this Court to do what the law prohibits: revisit the Commission's findings of fact. She is asking that this Court ignore—or revisit—the Commission's findings that her testimony regarding the alleged hazardous conditions on the hall floor was not credible and is unsupported by the evidence. But for purposes of this appeal, those findings of fact are "conclusive and binding." Section 287.495.1.

Ms. Annayeva spends much of her brief re-litigating the factual evidence by arguing, among other things, the following: that the Commission denied her case based what they perceived was a "Freudian slip" when she testified that the floor was "normal"; that English is not her primary language (despite the fact she teaches English as a second language and holds two master's degrees); and that the school failed to follow protocol when she completed her Report of Injury. (Appellant's Brief p. 49-54, 64) But all of this was in the record and considered first hand by the ALJ and the Commission, which are in a better position to make credibility determinations. That is why the scope of appellate review is statutorily limited: "no additional evidence shall be heard and, in the absence of fraud, the findings of facts made by the Commission within its powers shall be conclusive and binding." Section 287.495.1.

Nor can she argue that the Commission somehow exceed its “powers” when making these determinations. *Id.* Despite Ms. Annayeva’s numerous arguments and theories regarding her capacity to testify and fill out forms, the Commission’s decision to disbelieve her testimony is well within its authority. Ms. Annayeva’s arguments ignore the Court’s standard of review and fail to give deference to the Commission’s credibility determinations, which longstanding precedent and black letter law require.

A case on point, for example is *Thompson v. Treasurer*, 545 S.W.3d 890 (Mo. App. E.D. 2018). In *Thompson*, the Eastern District held it had to defer to the Commission’s credibility findings based on the longstanding precedent requiring it to do so, rather than revisit the substantial evidence going against the Commission’s findings. *Thompson* is strikingly similar to this case. There, the ALJ found the claimant not credible and denied benefits based on a claim there was something on the floor where the claimant fell.

The Commission, however, reversed the holding and granted benefits, finding the claimant’s revised testimony, given seven months after her fall, more credible than her testimony at the time of the fall and also more credible than the testimony of seven other witnesses who testified there was no wet spot on the floor where she fell.

The Eastern District affirmed the Commission’s award of permanent total disability benefits to the claimant, specifically holding: “This Court

defers to the Commission on issues involving the credibility of witnesses and the weight given to testimony.” *Id.* at 893. “This court may not substitute its judgment on the evidence when the evidence before an administrative body would warrant either of two opposed findings, the reviewing court is bound by the administrative determination and it is irrelevant that there is supportive evidence for the contrary finding.” *Id.* “The testimony of one witness, even if contradicted by the testimony of other witnesses, may be sufficient competent evidence to support an administrative decision.” *Id.* at 893. This case should be affirmed for the same reason the Eastern District affirmed the Award in *Thompson*.

**C. Ms. Annayeva mistakenly relies on the location of the injury, rather than the risk source of the injury.**

Ms. Annayeva next asserts that her injury occurred in the scope of her employment because it occurred at her place of work. This position is simply outdated and wrong. Many of the cases cited by Ms. Annayeva for support of her position that her fall arose in the course of her employment involved injuries and applications of the law prior to the 2005 amendments to Chapter 287. *Abel v. Mike Russell's Std. Serv.*, 924 S.W.2d 502 (Mo. banc 1996); *Yaffe v. St. Louis Children's Hospital*, 648 S.W.2d 549, (Mo. App. E.D. 1982); *Zahn v. Associated Dry Goods Corp.*, 655 S.W.2d 769 (Mo. App. E.D. 1983; *Goodman v. St. Louis Auto Auction*, 677 S.W.2d 22 (Mo. App. E.D. 1984);

*Kunce v. Junge Baking Co.*, 432 S.W.2d 602 (Mo. App. S.D. 1968).

(Appellant's Substitute Brief p. 29, 69-71). These cases are all based on a materially different version of Missouri's Workers' Compensation Law than applies to Ms. Annayeva's case.

At least under current law, an injury has not "arisen out of and in the course of employment" simply because it occurs at work. Section 287.020.3; *Malam v. State, Dep't of Corr.*, 492 S.W.3d 926, 928 (Mo. banc 2016). Rather, Section 287.020.3(2) controls the determination of whether an injury is deemed to have arisen out of and in the course of employment. *Johme v. St. John Mercy Healthcare*, 366 S.W.3d, 504 509 (Mo banc 2012). Section 287.020.3(2) reads as follows:

An injury shall be deemed to arise out of and in the course of 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
- B. 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 in normal non employment life.

This Court's own recent cases illustrate the flaw in Ms. Annayeva's argument. In *Miller v. Missouri Highway and Transportation Commission*, this Court held that the claimant's injury was not covered under workers' compensation even though it occurred while he was at work, walking where he needed to be walking, doing what he was supposed to be doing for his

employer. 287 S.W.3d 671, 674 (Mo. banc 2009). Walking is a hazard or risk *anywhere*—at work or not—so it is risk “unrelated to” employment absent some other risk factor. *Id.* at 673 (“[T]he uncontested facts show that [the] injury occurred at work, in the course of employment, but that it did not arise out of employment”). Similarly, in *Johme v. St. John’s Mercy Healthcare*, this Court denied benefits to the claimant even though she was in a workplace breakroom during business hours at the time of her injury. 366 S.W.3d 504 (Mo. banc 2012). What mattered was not simply *where* the injury occurred or even “what the employee was doing” at the time, but the “risk source of [the] injury.” *Id.* at 511. The injury was not compensable because “the cause of her injury—turning and twisting her ankle and falling off her shoe” had no “causal connection to the work activity other than the fact that it occurred in her office’s kitchen.” *Id.*

Ms. Annayeva essentially argues that the Workers’ Compensation Law still allows recovery for *any* injury that occurred “within the time and place where the employee may reasonably be engaged in either fulfilling the duties of her employment, or something incidental thereto.” (Appellant’s Substitute Brief, Point II, p.66). This argument is incorrect.

Ms. Annayeva’s argument has no merit as this Court has made clear that “[a]n injury will not be deemed to arise out of employment if it merely happened to occur while working but work was not a prevailing factor and

the risk involved—here, walking—is one to which the worker would have been exposed equally in normal non-employment life.” *Miller*, 287 S.W.3d at 674. As a result, Ms. Annayeva is wrong in her assertion that just because she had arrived at the school, everything and anything she did, or that happened to her is covered under workers’ compensation.

Under the guidance of *Miller* and *Johme*, Ms. Annayeva’s injury is compensable only if her alleged injury had a causal connection to her work activity other than the fact it occurred at work. *Porter v. RPCS, Inc.*, 402 S.W.3d 161 (Mo. App. S.D. 2013) Ms. Annayeva failed to prove there was a causal connection between her work activity (walking on a smooth flat surface) to her alleged injury, other than the fact it occurred at work. As discussed above, the Commission made explicit, detailed credibility and factual determinations finding that Ms. Annayeva failed to establish her injury arose out of and in the course of her employment. This Court is bound by the findings of fact made by the Commission within its powers. Section 287.495.1. Longstanding precedent from this Court establishes that the reviewing Court must defer to the Commission concerning the credibility of witnesses and the weight given their testimony. *Witte*, 414 S.W.3d at 460; *Hornbeck*, 370 S.W.3d at 629. Here, the Commission’s findings are supported by substantial evidence. The Commission had de novo review and properly

reviewed Ms. Annayeva's testimony to determine her credibility as to the factual issue of the condition of the hallway floor.

**D. Ms. Annayeva overlooks the clearly stated fact findings about medical causation made by the ALJ and the Commission.**

The same deference to the Commission applies to Ms. Annayeva's third point on appeal. In her third point, Ms. Annayeva maintains that she is uncertain whether "the Commission has also determined the medical causation issue." (Appellant's Supplemental Brief, p. 74.)

Close review of the Commission's award shows that it did determine medical causation. The Commission expressly stated, "we affirm and adopt the award of the administrative law judge as supplemented herein." (L.F. 36) It then attached and incorporated the ALJ's award "to the extent not inconsistent with this supplemental decision." (L.F. 36)

Again, "[t]o the extent that the Commission affirms and adopts the ALJ's findings and conclusions, [this Court] review[s] the ALJ's findings and conclusions." *McDowell*, 572 S.W.3d at 131. Because the Commission affirmed and adopted the award of the ALJ, with its supplemental opinion, it implicitly held that Ms. Annayeva failed to meet her burden to prove by substantial and competent evidence that her fall is the prevailing factor causing her subsequent medical condition.

Ms. Annayeva contends, however, that the Commission “substituted its own judgment for that of the medical witnesses.” (Appellant’s Substitute Brief, p. 74.) In making this argument, Ms. Annayeva primarily focuses on the diagnoses of the psychiatric medical experts, Drs. Bassett and Harbit. (Appellant’s Substitute Brief, p. 77) The fatal flaw in Ms. Annayeva’s argument is that she disregards Dr. Harbit’s contrary testimony that the fall at work was not the prevailing factor causing her medical psychiatric condition, which would include any somatization diagnosis. (Tr. 1226, 1228) “Whether to accept conflicting medical opinions is a fact issue for the Commission.” *Hornbeck*, 370 S.W.3d at 632.

As discussed throughout this brief, “the Commission is the judge of the weight to be given to conflicting evidence and the credibility of witnesses.” *Brandenburg v. Treasurer of State, Custodian of Second Injury Fund*, 427 S.W.3d 326, 333 (Mo. App. S.D. 2014) citing, *Palmentere Bros. Cartage Service v. Wright*, 410 S.W.3d 685, 691 (Mo. App. W.D. 2013). This Court does not reweigh that evidence. *Id.* Ms. Annayeva asks this Court to reweigh the evidence. Ms. Annayeva specifically spends a great deal of time under her third point arguing that Dr. Bassett’s opinion is more persuasive than Dr. Harbit’s. (Appellant’s Substitute Brief, p. 78-83) In finding that Ms. Annayeva failed to meet her burden to prove medical causation the ALJ, and subsequently the Commission, simply disagreed that Dr. Bassett’s opinion is

more persuasive than Dr. Harbit. There is substantial competent evidence that supports the finding of the Commission and it is free to make that finding. Its determination should not be overturned by this Court.

This provides an independent basis to affirm the Commission. Ms. Annayeva failed to establish both prongs of Section 287.020.3(2)'s causal test. The ALJ and the Commission found not credible her newly-realized belief that the fall was caused by some risk factor related to work, rather than the everyday risk of falls "to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life." *Id.* In addition, the ALJ and the Commission found that her fall not the "prevailing factor" in causing her injuries. *Id.*

## CONCLUSION

The Commission's decision should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

We hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06, and contains 5276 words as calculated pursuant to the requirements of Supreme Court Rule 84.06, as determined by Microsoft Word 2016 software; and
2. That a copy of this notification was sent through the eFiling system on this 30th day of December, 2019, to:

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