IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

ROBERT MARCH,

Appellant,

v.

TREASURER OF THE STATE OF MISSOURI - CUSTODIAN OF THE SECOND INJURY FUND,

Respondent.

DOCKET NUMBER WD84377

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: August 31, 2021

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division Three: Ardini, P.J., and Pfeiffer and Thomson, JJ. CONCURRING.

ATTORNEYS

Jerry Kenter, Sedalia, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, and Alexandra E. Wilson, Assistant Attorney General, Kansas City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ROBERT MARCH, Appellant,
v.
TREASURER OF THE STATE OF MISSOURI - CUSTODIAN OF THE SECOND INJURY FUND, Respondent.

WD84377 **Labor and Industrial Relations Commission**

Before Division Three Judges: Edward R. Ardini, Jr, Presiding Judge, and Mark D. Pfeiffer and W. Douglas Thomson, Judges

Robert March ("Employee") challenges the sufficiency of evidence to support the Labor and Industrial Relations Commission's ("Commission") Final Award Denying Compensation ("Final Award"). Employee asserts that the issue determining Second Injury Fund liability was one of causation, there was only one uncontradicted expert medical opinion on the topic of causation, the Commission first credited that expert medical opinion as plausible, but then the Commission erroneously asserted its own lay opinion on the topic of causation to deny compensation to Employee in its Final Award and such error requires reversal.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Three holds:

In this case, there was only one qualified expert medical opinion on the issue of causation: that Employee's qualified preexisting medically documented disability (bilateral lower extremity disability), when combined with the primary injury (bilateral upper extremity disability), resulted in Employee's permanent total disability. Though the Commission could have adopted the ALJ's finding that the expert medical opinion on causation was not credible or believable, it expressly chose not to do so, stating instead in its Final Award that "we disavow these findings" by the ALJ. In so doing, the Commission credited the medical expert's testimony and necessarily concluded that the medical expert's opinion on causation was "equally likely" as the Commission's contrary conclusion—that "employee's preexisting injuries [alone] resulted in employee's permanent and total disability."

The Commission's causation opinion was not supported by any expert medical opinion and was, instead, nothing more than the Commission's personal opinion. Accordingly, the Commission's Final Award on the issue of causation was not supported by sufficient competent evidence to warrant the making of the Final Award and must be reversed. The case is remanded to the Commission for entry of proper findings on the medical causation of Employee's injuries and consistent with the uncontradicted expert medical testimony.

Opinion by: Mark D. Pfeiffer, Judge August 31, 2021

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