OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

GARY M. WEIBRECHT, Claimant/Appellant, vs. TREASURER OF MISSOURI AS CUSTODIAN OF SECOND INJURY FUND, Respondent.	)	No. ED109591 Appeal from the Labor and Industrial Relations Commission Filed: December 21, 2021

Gary Weibrecht ("Claimant") appeals the decision of the Labor and Industrial Relations Commission affirming and adopting the decision of the Administrative Law Judge, which denied his claim for benefits from the Second Injury Fund. In his four points on appeal, Claimant challenges the ALJ's denial of his post-hearing motions to reopen the record and submit additional evidence after the hearing was concluded, but prior to the ALJ's decision. He contends that after the hearing, the Supreme Court issued an opinion that changed which subsection of § 287.220 governed the Fund's liability in this case and he should have been given an opportunity to present additional evidence under the newly applicable subsection.

REVERSED AND REMANDED.

Division Three holds:

(1) The power to reopen a closed record after a hearing and take additional evidence at a subsequent hearing, before the ALJ has entered an award, is not expressly conferred by statute, but falls well within the scope of the ALJ's broad statutory authority under § 287.610.5 to "hear and determine claims upon original hearing." The relevant regulations also implicitly give the ALJ the power to take the action requested by Claimant for good cause shown and when the ALJ who conducted the hearing determines the additional evidence is necessary for a full and complete hearing. *See* 8 CSR 50-2.010(11).

(2) *Gattenby v. Treasurer of Missouri–Custodian of the Second Injury Fund*, 516 S.W.3d 859 (Mo. App. W.D. 2017) was the controlling judicial interpretation of § 287.220 at the time of the hearing and, pursuant to that holding, Claimant's claim was governed by § 287.220.2. Therefore, evidence relating to the stricter requirements for Fund liability in § 287.220.3 was not relevant at the time of that hearing and Claimant had no reason to present any such evidence at the hearing. After the hearing, but before the ALJ's decision, the Supreme Court abrogated *Gattenby* in *Cosby v. Treasurer of State*, 579 S.W.3d 202 (Mo. banc 2019). There is no dispute that under *Cosby*, Claimant's claim is now governed by § 287.220.3 and evidence pertaining to the requirements thereunder is now relevant.

(3) Under the circumstances in this case, including the unique timing of events, this change in the law meets the "good cause shown" requirement in 8 CSR 50-2.010(11). The ALJ must decide on remand whether the particular evidence proffered by Claimant actually pertains to the requirements of § 287.220.3 and whether that evidence is necessary to provide a full and complete record.

Opinion by: Colleen Dolan, J.

Philip M. Hess, P. J., and Angela T. Quigless, J., concur.

Attorney for Appellant: Jack H. Knowlan, Jr.

Attorney for Respondent: Keyla S. Rhoades

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.