

Summary of SC98948, Gary Boothe Jr. v. DISH Network Inc.

Appeal from the labor and industrial relations commission

Argued and submitted September 14, 2021; opinion issued December 21, 2021

Attorneys: Boothe was represented by Patrick J. Platter and Britton D. Jobe of Neale & Newman LLP in Springfield, (417) 882-9090. DISH Network was represented by Daniel N. Allmayer and Lloyd W. Raber of Swanson Bernard LLC in Kansas City, (816) 410-4600.

Several entities filed briefs as friends of the Court. The Missouri Association of Trial Attorneys was represented by Scott A. Wilson of The Hines & Wilson Law Firm in Columbia, (573) 443-4500. The state was represented by several attorneys with the attorney general's office, (573) 751-3321: Kimberly R. Fournier in Kansas City; Eric M. Doner in St. Louis; and Sheila B. Skulsborstad in Springfield. The Missouri Organization of Defense Lawyers was represented by John M. Reeves of Reeves Law LLC in St. Louis, (314) 775-6985.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals from the labor and industrial relations commission's decision denying workers' compensation benefits for injuries he sustained in an accident while driving the company van on his way to an installment job. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the commission's decision. The man was not entitled to workers' compensation benefits because his injury did not arise out of and in the course of his employment; he failed to establish his injury's risk source was related to his employment, and he was not equally exposed to that risk in nonemployment life.

Facts: Gary Boothe has worked as a service technician for DISH Network Inc. for 12 years. He lives in Licking but his rural service area spans to towns approximately two hours away. One morning in July 2017, Boothe checked in at 7:15 a.m. from his home. His first appointment was approximately 30 minutes away in Plato. After loading the company van, he stopped at a convenience store and purchased a breakfast sandwich, then proceeded to the job in Plato. While driving, he choked on the breakfast sandwich, blacked out, ran off the road and struck a concrete pillar, suffering chest contusions in the accident. Boothe filed a workers' compensation claim; following a hearing, an administrative law judge awarded him benefits. DISH appealed to the labor and industrial relations commission, which concluded Boothe's injuries were not compensable because the accident did not arise out of or in the course of his employment. Boothe appeals.

AFFIRMED.

Court en banc holds: Boothe failed to establish his injuries arose out of and in the course of his employment. To be eligible for workers' compensation benefits, a claimant must establish the risk was related to the employment and the claimant would not have been equally exposed outside of and unrelated to the employment in normal nonemployment life. The injury's risk source is key. Boothe's injury's risk source was eating while driving, which created a risk of

choking and led to the accident resulting in injury. Eating while driving was not related to Boothe's employment, as DISH did not require him to eat breakfast during the workday and, as he acknowledged, he could have had breakfast beforehand despite a tight schedule. Furthermore, although Boothe alleged he ate at home when not working, he otherwise failed to establish he was not equally exposed to risk of injury from eating while driving in nonemployment life. Accordingly, his injury was not compensable.