

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STEPHEN SMITH, DEC.

Appellant

v.

CAPITAL REGION MEDICAL CENTER

Respondent

DOCKET NUMBER WD75078

DATE: March 26, 2013

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Special Division

Gary D. Witt, P.J., Thomas H. Newton, J., and Zel M. Fischer, Sp. J.

Attorneys:

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Attorneys:

Richard Montgomery, Jr., Columbia, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STEPHEN SMITH, DEC., Appellant, v.
CAPITAL REGION MEDICAL CENTER, Respondent

WD75078

Labor and Industrial Relations Commission

Before Special Division Judges: Witt, P.J., Newton, J., and Fischer, Sp. J.

On behalf of her deceased husband Stephen Smith (Smith), Dorothy Smith (the claimant) appeals the Labor and Industrial Relations Commission's decision denying the claim for workers' compensation because the claimant failed to meet her burden of proof that her husband sustained an occupational disease arising out of and in the course of his employment with Capital Region Medical Center. The claimant contends that the Commission erred as a matter of law because it required her to prove a specific source of injury before work could be considered a substantial factor in causing Smith's occupational disease. She also asserts that the Commission erred in finding the medical opinion of employer's expert to be more credible than the medical opinion of her expert.

Reversed and remanded

Special Division Holds:

The Commission erroneously concluded that the claimant had to produce evidence that Smith was exposed to hepatitis C in the workplace to meet her burden of production. The claimant merely had to submit medical evidence establishing a *probability* that working conditions caused the hepatitis C. The testimony from the claimant's medical expert established the probability that Smith's working conditions caused his hepatitis C. Thus, such evidence was sufficient to meet the claimant's burden of production on the issue of causation.

Because the Commission employed the wrong standard in determining the claimant's burden of production in regard to causation, it would be premature for us to consider the Commission's credibility determinations. The unique circumstance of this case compels us to remand this case to the Commission for reconsideration in light of the correct standard regarding the claimant's burden of production as to causation.

Opinion by Thomas H. Newton, Judge

March 26, 2013

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