

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STEPHEN SMITH, DECEASED;
DOROTHY SMITH**

RESPONDENT,

**v.
CAPITAL REGION MEDICAL CENTER**

APPELLANT.

DOCKET NUMBER WD77043

DATE: December 23, 2014

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

John B. Boyd, Jason J. Iezzi, and Brianne Thomas, Independence, MO, for respondent.

Richard L. Montgomery Jr., Columbia, MO and Susan Ford Robertson, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STEPHEN SMITH, DECEASED;
DOROTHY SMITH,**

RESPONDENT,

v.

CAPITAL REGION MEDICAL CENTER,

APPELLANT.

No. WD77043

Labor and Industrial Relations Commission

Before Division Three: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Appellant Stephen Smith worked as a medical laboratory technician at Capital Region Medical Center from 1969 until March 2006. In April 2006, Stephen filed a claim with the Division of Workers' Compensation alleging that he had contracted the occupational disease of hepatitis C as a result of exposure through his work. Stephen was diagnosed with hepatitis in 1999 and died from complications of the disease on February 27, 2007. Smith established extensive contact with patients' blood and fluids through his work, much of which occurred prior to the implementation of safety precautions regarding contact with blood borne pathogens and prior to the ability to even test for hepatitis C. Stephen's wife was substituted as a party and proceeded with Smith's claim. The claim was originally denied by the Labor Industrial Relations Commission. Smith appealed, this court reversed the Commission's decision and remanded for further proceedings. *Smith v. Capital Region Med. Ctr.*, 412 S.W.3d 252, 254 (Mo. App. W.D. 2013). Following remand, the Commission, without taking additional evidence, reviewed the existing evidence, applied the correct legal standard and issued its decision in which it awarded Smith burial expenses of \$2,897.58, temporary total disability expenses of \$9,848.83 and weekly death benefits of \$675.90. Capital Region now appeals.

In its sole point, Capital Region argues that the Commission erred because its award following remand was against the weight of the evidence in that Smith did not prove by substantial evidence that Stephen's disease arose out of and in the course of his employment. It further alleges that the Commission "ignored precedent and misunderstood" our holding in *Smith I* to mean that the claimant did not have to provide evidence that hepatitis C was in fact present in the workplace. Last, it argues that the Commission erred in accepting Smith's expert's opinion regarding causation and rejecting Capital Region's expert's opinion regarding causation.

AFFIRMED

Division Three holds:

In *Smith I*, we held that Smith was not required to present evidence of specific exposure to an occupational disease in the workplace; rather, she was required to submit medical evidence establishing a *probability* that working conditions caused the disease. Because *Smith I* held that Smith had met her burden of establishing her cause of action, the doctrine of the law of the case applies. To the extent that Capital Region claims to be challenging the sufficiency of the evidence, the evidence which was found credible by the Commission, was sufficient to meet Smith's burden and prove her claim.

Opinion by Gary D. Witt, Judge

December 23, 2014

This summary is UNOFFICIAL and should not be quoted or cited.