



Missouri Court of Appeals
Southern District

In Division

GORDON JOHNSON,

Plaintiff-Appellant,

v.

RBX TRANSPORTATION,

and,

TREASURER OF MISSOURI,
CUSTODIAN OF THE SECOND
INJURY FUND,

Respondents-Respondents.

No. SD38724

Filed: October 29, 2025

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

AFFIRMED

Gordon Johnson (“Appellant”) appeals the decision of the Labor and Industrial Relations Commission (“Commission”) denying him workers’ compensation benefits for a COVID-19 infection and related disabilities as a claimed occupational disease allegedly from his employment at RBX Transportation (“RBX”). Appellant presents three points on appeal: (1) that the Commission erred in denying Appellant’s claim because Appellant could not determine a “specific source” of COVID-19 at RBX before he was infected; (2)

that the Commission erred in determining Appellant's COVID-19 infection did not arise out of or in the course of his employment with RBX because there was nothing unique about his job that would have put him at risk for developing COVID-19; and (3) that the Commission erred in determining Appellant failed to establish his employment was the cause of his COVID-19 infection and disabilities. Because we hold that COVID-19 was an ordinary disease of life as of October 2020 and because there is sufficient competent and substantial evidence to support the Commission's decision in light of the whole record, we affirm.

Facts and Procedural History

Appellant worked for RBX from August 2007 to October 2020. At the end of his employment, Appellant was 65 years old and worked as a load coordinator and evening dispatcher. Appellant's job duties consisted of talking to customers over the phone, planning the loads on trucks, communicating with drivers after hours and other similar responsibilities. Appellant worked from 7:00 am to 7:00 pm four days a week and from 7:00 am to 4:30 pm one day a week.

In 2020, the Springfield area, as well as the rest of the world, was dealing with an outbreak of COVID-19. Appellant testified that he never wore a mask while at work in the RBX office. Appellant further stated he did not recall anyone else wearing a mask and there was no formal policy regarding masks. His work space in the RBX office consisted of four desks in a group where Appellant had his work station. There was another group of five desks across from Appellant's desk. There were three enclosed offices in the workspace where the office manager, operations manager, and a salesperson sat.

Three days before Appellant began showing symptoms of COVID-19, Appellant's manager, Scott Chastain ("Chastain"), came into the office sneezing, coughing, and running a fever. Chastain had an enclosed office and did not wear a mask. Appellant did not extensively interact with Chastain during this time. He testified he interacted with him "just normal time to maybe stick my head [in] his office to ask a question." Appellant did have one five-minute conversation with Chastain while sitting down in his office less than six feet away from him. Chastain never tested positive for COVID-19. Another coworker of Appellant, Zach Mayes ("Mayes"), worked as the night dispatcher and interacted with Appellant for about 15 to 20 minutes a day within three or four feet of him. Truck drivers employed by RBX also frequently walked through the office space, some wearing masks and some not. The drivers traveled throughout the southeast United States while working for RBX.

Other witnesses painted a different picture of how the office operated during this time. They claimed that RBX had masks stationed at the front door and the lead purchase manager, Dee Prater ("Prater"), had masks available in his office for drivers and office employees. RBX also "fogged" the buildings and trucks two or three times a week to disinfect them. Prater testified that masking inside the building was mandatory for employees and visitors and there was a sign next to the masks at the front door stating that. Prater also testified he "assumed" Appellant was wearing a mask while in the building because "everybody else out there in that area, because it's a big, open area, they wore masks." Prater further testified that the majority of employees wore a mask. Ed Castillo ("Castillo") testified that Appellant wore a mask, along with everyone else

because it was required. Appellant's coworker, Derek Mortensen ("Mortensen"), also reported seeing Appellant wearing a mask on a daily basis. All of these allegations were disputed by other testimony in the record.

Appellant reports wearing a mask outside of work "any [sic] place I always had to wear a mask." He testified he would stop at a Kum & Go gas station every morning before work to get coffee for about two minutes and wore a mask while social distancing. Additionally, he stopped into a public place (such as a Kum & Go or Walmart) during his lunch about three times a week, also while wearing a mask and social distancing. At the time of his COVID-19 infection, Appellant testified he spent "an hour or less" per week visiting public places outside of work. In October 2020, there was a "major increase" in COVID-19 infections in Springfield, and there were approximately 100 new reported cases per day in Greene County.

Appellant testified he started feeling symptoms of COVID-19 the evening of October 8, 2020. This was three days after Appellant interacted with Chastain. Appellant tested positive for COVID-19 the next day, the same day Mayes also received a positive test. On October 16, Appellant was hospitalized for 91 days because he was having trouble breathing. Appellant was intubated and put into an induced coma for three weeks after his hospitalization. Appellant is now on oxygen at all times and has limitations with how much he can move. Appellant has not worked since his COVID-19 infection due to his limited ability to talk, carrying around his oxygen concentrator, and his general discomfort.

Appellant was diagnosed with diabetes before his COVID-19 diagnosis, but testified COVID-19 worsened his condition and required him to go on insulin. Additionally, Appellant was subsequently diagnosed with pulmonary fibrosis, a potential complication of COVID-19. Appellant worked from home for a short period of time before he contracted COVID-19, but was not given that option after his diagnosis and hospitalization. Appellant testified he would no longer be open to work-from-home employment because his condition never improved.

Appellant and RBX presented competing medical expert testimony regarding the causation of Appellant's COVID-19 infection.

Dr. P. Brent Koprivica

Dr. Koprivica, Appellant's expert, is a physician who has been board certified in occupational medicine since 1996 and board certified in emergency medicine from 1984-2013. He is neither an infectious disease specialist, nor has he done any specialized training or work in COVID-19 research.

Initially, Dr. Koprivica's expert opinion was that Mayes was the most likely source of exposure for Appellant's COVID-19 infection. Dr. Koprivica formed this opinion relying on the fact that Mayes "predated [Appellant] in terms of symptoms and being COVID positive," which is not supported by the record here. As the case progressed, Dr. Koprivica shifted his opinion to state that Chastain was the most likely source of exposure. Dr. Koprivica stated that when he wrote his initial report detailing his expert opinions, he was not given dates of when Appellant's coworkers tested positive for COVID-19, just that they tested positive. Dr. Koprivica agreed that the risk of Appellant

contracting COVID at his employment was “not inherent to the nature of his work itself,” and that COVID-19 was an “ordinary disease of life to which the general public is exposed outside of employment.”

The Administrative Law Judge’s (“ALJ”) Findings of Fact and Conclusions of Law, which were incorporated into the Commission’s Final Award Denying Compensation, found that Dr. Koprivica’s opinion that Appellant’s COVID-19 infection was the result of his employment with RBX was “based on an inadequate foundation and carried no weight” because it was based on “inaccurate facts.” This was the only explicit credibility finding for any of the expert testimony presented.

Dr. Russell Cantrell

Dr. Cantrell, one of RBX’s experts, is a physician who often treats patients who are “doctors, nurses, nurse practitioners, firefighters, police officers...who have been presumed to have developed COVID as a result of a workplace exposure.”

Dr. Cantrell stated that Appellant’s employment with RBX was not the prevailing factor of his COVID-19 infection. This was because Appellant’s diagnosis was before any vaccines were available, because COVID-19 was an ordinary disease of life and because transmission “can occur just in the normal course of living[.]” Dr. Cantrell did not “believe that it is a disease that is applicable to the workplace specifically,” and that it is “essentially impossible” to determine the source of a viral infection such as COVID-19 if the infected person went out in public.

Dr. David McKinsey

Dr. McKinsey, RBX's other expert, is a physician board certified in internal medicine and infectious diseases. Dr. McKinsey testified there was a "major increase" in COVID-19 cases in Springfield in October 2020, and it was "really everywhere in the world at that time." He also stated COVID-19 was an "ordinary disease of life" in October 2020 and there were around 100 new cases every day in Greene County. He found that there was no evidence that Appellant contracted COVID-19 at RBX.

Dr. McKinsey stated the affidavits of Mayes, Castillo, and Prater created a timeline of the onset of illness. He could rule out Mayes as the source of exposure because he fell ill the same day as Appellant. Both Castillo and Prater fell ill the day after Mayes and Appellant, so Dr. McKinsey could rule them both out as the sources of exposure. Dr. McKinsey came to these conclusions because the incubation period for COVID-19 "varied between two days and twelve days with a median of five and a half days." Dr. McKinsey stated it is "impossible to determine where [Appellant's] infection was initiated" and there is no evidence that would show Appellant contracted COVID-19 at work or anywhere else in the community. Dr. McKinsey testified that Appellant's job was a "low risk occupation" and that there was nothing unique about it that would be a risk connected to his employment for the contraction of COVID-19.

Procedural History

This case was heard before the ALJ on September 6, 2023. The ALJ determined (1) Appellant did not sustain an occupational disease that arose in or out of the course and scope of his employment with RBX; (2) Appellant did not sustain an occupational

disease that arose out of the course and scope of his employment which caused any alleged injuries or disabilities; (3) RBX and their insurer, Dakota Truck Underwriters (“Dakota”), are not responsible for Appellant’s past medical expenses; (4) RBX and Dakota are not responsible for future medical expenses or treatment; (5) RBX and Dakota are not responsible for any compensation for past temporary disability; (6) Appellant is not entitled to compensation for permanent total disability; and (7) the Second Injury Fund (“Fund”) is not liable for any benefits. The case was submitted to the Commission for review, and its Final Award Denying Compensation was issued on September 17, 2024. This appeal followed.¹

Standard of Review

On appeal, this Court reviews the decision of the Commission and not the ALJ.

Robinson v. Loxscreen Company, Inc., 571 S.W.3d 247, 249 (Mo. App. S.D. 2019).

¹ RBX alleges that Appellant’s Statement of Facts and his points challenging the sufficiency of the evidence do not comply with applicable legal standards because they omit numerous material facts that support the decision of the Commission. We tend to agree that Appellant’s Statement of Facts is deficient under Rule 84.04 and that those points addressing the sufficiency of the evidence are also deficient for omitting numerous facts that in fairness should have been included to properly analyze these claims. Some of these facts left out include, but are not limited to: Mortensen’s testimony that he saw Appellant wearing a mask every day in the office; testimony that masks were available at the front door and management required them to be worn inside the building; and testimony from management regarding a mandatory masking policy and seeing employees wearing masks in the office. “While not condoning noncompliance with the rules, a court will generally, as a matter of discretion, review on the merits where disposition is not hampered by the rule violations.” *Smith v. Capital Region Medical Center*, 412 S.W.3d 252, 258 (Mo. App. W.D. 2013) (quoting *Lewis v. Biegel*, 204 S.W.3d 354, 364 n.10 (Mo. App. W.D. 2006)). As the deficiencies in Appellant’s Brief do not hamper our analysis of the issues on the merits, we continue on to the analysis of Appellant’s claims.

Under §287.495.1,²

[a] reviewing court may modify, reverse, remand for rehearing, or set aside a workers' compensation award upon a finding that: (1) the commission acted without or in excess of its powers; (2) the award was procured by fraud; (3) the commission's factual findings do not support the award; or (4) there was not sufficient competent evidence in the record to warrant the making of the award.

Lankford v. Newton County, 517 S.W.3d 577, 583 (Mo. App. S.D. 2017) (citing *Malam v. Dep't of Corr.*, 492 S.W.3d 926, 928 (Mo. banc 2016)). This Court reviews questions of law in workers' compensation cases *de novo*. *Id.* We defer to the Commission's findings on factual issues, witness credibility, and the weight given to conflicting evidence. *Id.* While the Commission's decision is given substantial deference, this Court determines whether there is sufficient competent and substantial evidence to support the decision in light of the whole record. *Id.*

Analysis

We note that while Appellant has asserted three points on appeal, he cites many of the same arguments to support those points. For ease of analysis, we will address the arguments raised by Appellant, as they are generally applicable to each of his points.

Appropriate Standard Under §287.067

As an initial matter, the parties disagree as to whether Appellant's COVID-19 infection should be analyzed as a communicable or contagious disease under §287.067.7, or whether it is an "ordinary disease of life" as contemplated by §287.067.1. Appellant

² Unless otherwise indicated, all statutory references are to RSMo 2016, as amended through September 17, 2024.

contends that whether COVID-19 is an “ordinary disease of life” or not is irrelevant because §287.067.7 should apply because COVID-19 is a contagious disease. Such argument, however, completely ignores the plain language of §287.067.1, which specifically carves out an exception for “ordinary diseases of life” as ineligible for compensation because the general public is exposed to them outside of a specific workplace. The only exception to this is “where the [ordinary diseases of life] follow as an incident of an occupational disease as defined in this section.” *Id.* Nowhere in the statute does it imply or state that a communicable or contagious disease cannot also qualify as an “ordinary disease of life.”

As the record establishes, COVID-19 was extremely common to the general Southwest Missouri area in October 2020, and anyone who went out into the general public at that point in time put themselves at a high risk for contracting COVID-19. Dr. McKinsey testified that in October 2020, the data showed one in ten people in Missouri had been infected with COVID-19. Appellant attempts to distinguish COVID-19 as a “novel” virus, despite all of the medical experts for Appellant and RBX agreeing that COVID-19 was an “ordinary disease of life.” Based on the uncontroverted medical evidence, we hold that COVID-19 was an “ordinary disease of life” as of October 2020, and proceed to analyze Appellant’s claim under §287.067.1.

“To support a finding of occupational disease, an employee must provide substantial and competent evidence that they have contracted an occupationally induced disease rather than an ordinary disease of life.” *Cheney v. City of Gladstone*, 576 S.W.3d

308, 315 (Mo. App. W.D. 2019) (quoting *Greenlee v. Dukes Plastering Service*, 75 S.W.3d 273, 277 (Mo. banc 2002)). This involves two separate issues:

(1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort.

Id. (affirming a decision to award benefits where the Commission found that conflicting medical evidence more credibly supported that a firefighter's non-Hodgkin's lymphoma was an occupational disease due to the claimant's exposure to specific toxic chemicals in the course of his employment.).

Appellant testified his job duties consisted of

talking on the phone to customers getting freight, doing computer loads, planning the loads on trucks for the southeast area of the state -- or of the country. And then after hours I would be in communication on the phone with drivers that were having problems or needed help and things like that.

None of these described job duties involve exposure or risk connected with contracting COVID-19 outside of anything the general public was also experiencing during October 2020. Further, the record does not disclose any recognizable link between COVID-19 and some "distinctive feature" of Appellant's job that is common to all jobs of that type.

Therefore, Appellant has failed to establish any risk connected with employment where his COVID-19 infection would have flowed from that source as a rational consequence.

Appellant relies heavily on occupational disease cases where the court found the disease at issue was not an ordinary disease of life. One of these cases is *Vickers v. Missouri Dep't of Public Safety*, 283 S.W.3d 287, 295-96 (Mo. App. W.D. 2009), where the court found that *clostridium difficile* ("C diff"), a rare bacterial infection that is only

present in one to three percent of the population, was not an ordinary disease of life the public was exposed to outside of the claimant's employment. The key difference between this case and *Vickers* is that all experts in this case agreed that COVID-19 is an ordinary disease of life that the general public was exposed to outside of Appellant's employment at RBX in October 2020.³ See *id.*

After reviewing the entire record, this Court finds that the Commission did not err in finding that COVID-19 was an ordinary disease of life as of October 2020, and thus Appellant's illness is only compensable if it follows as an incident of an occupational disease under §287.067.1. Appellant has not established he had a greater or different exposure to the disease than the general public had in October 2020 or that there was a "recognizable link" between his exposure and features of his job that were common to all jobs of that type. See *Cheney*, 576 S.W.3d at 315 (quoting *Greenlee*, 75 S.W.3d at 277). Here, and unlike in *Cheney*, the Commission resolved the conflicting medical evidence in favor of RBX, and this Court is bound by those factual determinations. *Clark v. Harts*

³ Appellant also cites extensively from *Smith*, 412 S.W.3d at 252, to support his argument that he need only establish a "probability" that his working conditions caused his COVID-19 infection. In *Smith*, the employee was alleged to have contracted hepatitis C through his job as a laboratory technologist where he frequently worked with "blood and blood products." *Id.* at 254. The employee did not wear gloves while he was working and prepared blood slides by using a "pipette" tool that involved him placing his mouth on one side of the pipette to suction in blood through the other end. *Id.*

Smith is distinguishable from this case. Hepatitis C was not found by the *Smith* court to be an "ordinary disease of life," and we are not aware of any Missouri court making such a finding. In addition, a laboratory technician's job of handling blood indicates a significant causal connection between working conditions and a hepatitis C infection. *Smith*, 412 S.W.3d at 262. In the instant case, Appellant mostly performed office work from a desk and a computer, which tasks do not carry with them any sort of increased risk that a natural and reasonable incident of performing such work would be contracting COVID-19 beyond what the general public was exposed to.

Auto Repair, 274 S.W.3d 612, 617 (Mo. App. W.D. 2009) (citing *ABB Power T&D Co. v. Kempker*, 236 S.W.3d 43, 49 (Mo. App. W.D. 2007)). Even when Missouri’s workers’ compensation laws were interpreted liberally, which is no longer the applicable standard,⁴ courts were not allowed to “read into the statute a provision that all diseases incurred during employment are occupational diseases.” *Greenlee*, 75 S.W.3d at 277 (holding that claimant’s depression did not qualify as an occupational disease because his job of hanging drywall did not expose him to a risk of depression that was greater than that of the public generally, nor was there evidence of a link between depression and some distinctive feature of hanging drywall that was common to all jobs of that sort.). In this instance, Appellant’s illness from COVID-19, an ordinary disease of life, is excluded from compensation pursuant to §287.067.1.

Commission Did Not Place Improper Heightened Burden of Proof on Appellant

In conjunction with his arguments that the decision of the Commission was not supported by sufficient competent evidence, which we have addressed above, Appellant further argues the Commission improperly heightened his burden of proof beyond establishing “reasonable probability” because it found that he “would have to identify a source of [COVID-19] that existed at RBX before he contracted [COVID-19].”

As an initial matter, we note that Appellant’s argument ignores the uncontroverted medical evidence that COVID-19 was an “ordinary disease of life” in October 2020. As

⁴ §287.800 was amended in 2005 to require that the provisions of the Missouri Workers’ Compensation law be construed strictly, as opposed to liberally, by administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers’ compensation, and any reviewing courts.

discussed above, for Appellant to be eligible for compensation he was required to prove that: (1) he was subject to an exposure to the disease which was greater than or different from that which affects the public generally; and (2) that there was a recognizable link between the disease and some distinctive feature of his job which is common to all jobs of that sort. Appellant's argument as to "reasonable probability" does not enter into this analysis.

Appellant's argument relies heavily on *Hayden v. Cut-Zaven, Ltd.*, 614 S.W.3d 44 (Mo. App. E.D. 2020), which Appellant claims is "analogous" to this case. We disagree. In *Hayden*, the Commission denied claimant an award of benefits because the claimant's expert did not base his opinions on epidemiological studies. *Id.* at 57. The appellate court reversed, holding that such a requirement improperly elevated the claimant's burden by requiring her expert to base his medical opinions on something beyond a "reasonable degree of medical certainty." *Id.*

In this case, the Commission did not impose any standard beyond that required in §287.067. The Commission's decision (which incorporated the findings of the ALJ) notes that it discounted Dr. Koprivica's opinion, Appellant's medical expert, due to the "inaccurate facts" the opinion was based upon, not due to the lack of epidemiological studies. RBX's medical expert testimony was also not based on an epidemiological study, as RBX's expert noted he did not perform a formal outbreak investigation. Therefore, the Commission did not impose an improperly heightened burden of proof on Appellant. All three of Appellant's Points are denied.

No Second Injury Fund Liability

Respondent Second Injury Fund requests that we affirm the Commission's denial of Fund liability because (1) Appellant has not raised or preserved the issue of Fund liability on appeal and (2) the Commission was correct in finding Appellant "did not sustain a compensable primary occupational disease arising out of and in the course and scope of his employment."

Under subparagraph b of §287.220.3(2)(a), there must be a "subsequent compensable work-related injury that, when combined with the preexisting disability...results in a permanent total disability as defined under this chapter" to hold the Fund liable for compensation of said injury. An injury by occupational disease constitutes an "injury" for purposes of Fund liability under §287.220. *Kirkpatrick v. Missouri State Treasurer as Custodian of Second Injury Fund*, 404 S.W.3d 327, 330 (Mo. App. S.D. 2012) (citing *Treasurer of State-Custodian of Second Injury Fund v. Stiers*, 388 S.W.3d 217, 220 (Mo. App. W.D. 2012)). As stated previously, we affirm the Commission's judgment was supported by competent and substantial evidence that Appellant has not satisfied his burden of establishing his COVID-19 infection is an occupational disease and is, therefore, not compensable. Under those circumstances, the Fund has no liability to Appellant, and thus we need not reach the issue of whether Appellant has waived such claim as it is moot.

Conclusion

While we are sympathetic to the substantial injuries that Appellant has suffered due to contracting COVID-19, Missouri law dictates that benefits for injuries resulting

from ordinary diseases of life are not compensable except in certain limited circumstances. The record in this case does not support a finding that this is one of those circumstances. The decision of the Commission is affirmed.

MATTHEW P. HAMNER, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

DON E. BURRELL, J. – CONCURS