



HARRIS DOWELL FISHER & YOUNG L.C.

Management Labor-Employment Law/
Workers Compensation Defense

THE MISSOURI INDUSTRIAL COMMISSION – WHY IT MATTERS



By J. Bradley Young

WHO AM I ?

- **Contributing Writer for WorkersCompensation.com**
- **Defending Employers and Insurance Companies for over 25 years**
- **Worked with the Missouri House of Representatives to draft and pass the overhaul of the Missouri Workers Compensation Act in 2005 and 2018**
- **KMOX Legal Analyst**



What is the Industrial Commission

- 3 Person Panel: Employer Rep, Employee Rep, and the “neutral” Chairman of the Commission.
- Why, historically, the Chairman is rarely neutral.
- Elections have consequences – even in Labor Law.



Recent Changes at the Industrial Commission

- Reid Forrester was appointed to the Employer's Rep position in May, 2018, filling a seat that had been empty for more than 18 months.
- Why is an empty Employer Rep seat significant?



Recent Changes at the Industrial Commission

- At the end of August, 2018, Gov. Mike Parson appointed Robert Cornejo to a six (6) year term as the Chairman of the Industrial Commission.
- Chairman Larson was continuing to serve even though his term ended at the end of June.



Recent Changes at the Industrial Commission

- Schoen v. Mid Missouri. (Oct. 10, 2018)
Claimant inhaled bug spray at work. About a week after the inhalation she was sent to a doctor for an examination. There was a dog in the waiting room. As the claimant was walking back to see the doctor, she tripped over a service dog in the lobby and fell, aggravating her pre-existing knee problems and her pre-existing back problems.



Schoen v. Mid Missouri.

- The ALJ awarded perm total disability, past medical expenses of \$40k, and future medical care for the rest of her life, stating: “There is no question that the May 8, 2009 exposure to (bug spray) is the prevailing factor in the cause of the pulmonary and upper respiratory irritation that Claimant has experienced. The incident at Dr. Runde's office, resulting in a fall, is part and parcel of the May 8, 2009 work accident.”



Schoen v. Mid Missouri.

- The new Industrial Commission reversed, found that the claimant's problems from inhaling the bug spray resolved with no PPD, and determined that the fall in the doctor's office was NOT compensable. Award of Perm Total benefits reversed and no additional benefits were awarded.

- How would this case have been decided by prior Industrial Commissions?



Schoen v. Mid Missouri.

- Missouri law is very clear on this....injuries that occur as a result of medical care provided for work injury is part of the original work injury. For example, if claimant has compensable knee surgery and the claimant develops a blood clot on the surgery table and dies, the death is considered compensable because it occurred **DURING** medical care.



Schoen v. Mid Missouri.

- In the present case, claimant's trip and fall in the doctor's waiting room did NOT occur during the course of medical care. It occurred while she was walking through the doctor's office which, last time I checked, was not considered medical care.

- This case HAS been appealed to the Court of Appeals.



What Does The Industrial Commission Actually Do?

- 1st level of appeal for all unemployment compensation cases and workers compensation cases.
- After a decision from an Administrative Law Judge, the case can then be appealed to the Industrial Commission.
- Briefs are filed and oral arguments are held to decide workers compensation claims.



Why Is The Industrial Commission So Important?

- First, the Commission has what is called “de novo” authority over any appealed claim. This means that the Industrial Commission has complete authority to review the decision of an administrative law judge in any workers compensation claim.



Why Is The Industrial Commission So Important?

- Where appropriate, the Commission determines:
- The credibility of witnesses and the weight of their testimony
- Resolves any conflicts in the evidence
- Reaches its own conclusions on factual issues independent of the Admin. Law Judge.



Why Is The Industrial Commission So Important?

- Upon its own motion or upon the application of any party in interest, the Commission may end, diminish, or increase the compensation awarded by the administrative law judge in the Commission's final award.

- So, how limited is the Industrial Commission in deciding ANY appealed workers compensation claim?



Why Is The Industrial Commission So Important?

- Second, the Court of Appeals has only limited power to review decisions from the Industrial Commission. *“We may only modify, reverse, remand for rehearing, or set aside the award of the Commission if we determine: 1) the Commission acted without or in excess of its powers; 2) the award was procured by fraud; 3) the facts found by the Commission do not support the award; or 4) there was insufficient competent evidence to warrant making the award.” (Missouri Court of Appeals)*



Why Is The Industrial Commission So Important?

- Unlike the Industrial Commission, which has “de novo” (virtually unlimited) power to decide a case, the Court of Appeals only has LIMITED jurisdiction.
- If the Court of Appeals only has a limited ability to overturn a decision from the Industrial Commission, what does that tell you about the ability of the Commission to “make law”?



Why Is The Industrial Commission So Important?

- Third, the most vital authority of the Industrial Commission is to determine the facts of a claim and the credibility of the witnesses. *“We (the Court of Appeals) must defer to the findings of fact, the credibility of the witnesses, and the weight given to conflicting evidence as determined by the Commission.”*
Gleason, 455 S.W.3d at 497.



Why Is The Industrial Commission So Important?

- ***“In the absence of fraud, the commission's findings of fact shall be conclusive and binding.”*** Section 287.495.1.



Why Is The Industrial Commission So Important?

- In fact, all appellate courts in Missouri, including the Missouri Supreme Court, must “*defer to the commission's findings on issues of fact, the credibility of the witnesses, and the weight given to conflicting evidence.*” Greer v. Sysco Food Service, 475 S.W.3d at 664 (Mo SupCt 2015).



Why Is The Industrial Commission So Important?

- What is so significant about the Court of Appeals being limited in what they can do?
- How does this limitation affect the ability of the Court of Appeals to reverse decisions based on the credibility of the witnesses? (pigeon case)



Why Is The Industrial Commission So Important?

- If the Industrial Commission determines that the claimant is NOT credible and is lying, can the Court of Appeals reverse that conclusion?
- If the Industrial Commission determines that the orthopedic surgeon hired by the Employer is LESS credible than the chiropractor hired by the Employee, can the Court of Appeals reverse that conclusion?



The Commission FINALLY understands the 2005 Amendment

- Danny Harris v. Ralls County (Jan. 15, 2019)
- Here, claimant had extensive pre-existing degenerative changes at the lumbar spine. The work injury consisted of a sprain strain, and no medical professional could point to any objective evidence of injury....merely increased subjective complaints of pain and evidence of pre-existing degenerative conditions.



Danny Harris v. Ralls County

- The ALJ awarded PTD benefits plus a lifetime of medical care.
- The ALJ seemingly ignored this statutory section that was contained within the 2005 Workers Compensation Reform Law: §287.190.6(2): *“In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings.”*



Danny Harris v. Ralls County

- The Commission REVERSED the ALJ, found that claimant merely suffered a sprain/strain, and awarded 5% PPD. The Commission stated: *“(T)he objective evidence did not show an identifiable source of the radicular symptoms into the legs as complained of by the employee. The treating doctors did not identify clear evidence of acute injury. No doctor identified a specific condition from the imaging studies which could directly be traced to the work incident as the prevailing factor.”*



Danny Harris v. Ralls County

- This is one of the most common fact patterns - - claimant presents with subjective complaints but there is no objective evidence of a work injury, only pre-existing degenerative changes.
- §287.190.6(2): *“In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings.”*



Danny Harris v. Ralls County

- For the first time in more than a decade, the Industrial Commission gets it - - there must be **SOME** objective evidence of injury.
- Prior Commissions would not have rendered this award.
- The Commission based its decision on the credibility of the expert witnesses so it cannot be overturned by the Court of Appeals.



Why Is The Industrial Commission So Important?

- The Industrial Commission is important enough to justify the time I have spent over the past 2 years recruiting qualified candidates for all 3 positions on the Commission.
- Chairman Cornejo will be the Chairman of the Commission for the next 6 years, regardless of who the Governor may be.





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Questions?

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