FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
with Supplemental Opinion)

Injury No.: 15-103652

Employee: Austin Reiter

Employer: Kansas City Police Department

Insurer: Board of Police Commissioners KC MO

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the parties' briefs, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Injury arising out of and in the course of the employment[1]

The parties asked the administrative law judge to determine whether employee sustained injuries arising out of and in the course of the employment when he fell while navigating employer's obstacle course during off-duty hours. The administrative law judge concluded that employee's injuries did arise out of and in the course of the employment. We agree with this result, but discern a need to provide some supplemental analysis to address the effect of the 2005 legislative changes to the Missouri Workers' Compensation Law.

In 2005, the Missouri legislature enacted a sweeping abrogation of prior workers' compensation case law with § 287.020.10 RSMo, which provides as follows:

> In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA, S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

[1] Although the parties and administrative law judge framed the issue as whether employee sustained an "accident" arising out of and in the course of the employment, we note that the appropriate statutory test is whether employee's "injury" arose out of and in the course of the employment. "An injury, for purposes of workers' compensation, has its own definition which is not identical to the definition of an accident. In applying the statute, courts must not blur together the meanings of 'accident' and 'injury.'" *Clark v. Dairy Farmers of Am.*, No. SD34826, at *6 (Jan. 25, 2018). From their briefs, at least, it is clear to us that the parties do not now dispute whether employee sustained an "accident," as defined under § 287.020.2 RSMo, but instead ask us to resolve the issue whether employee's *injury* arose out of and in the course of the employment for purposes of § 287.020.3(2) RSMo.

In her analysis, the administrative law judge cited numerous pre-2005 case law decisions for propositions such as the following: (1) "arising out of the employment" and "in the course of the employment" are two separate tests subject to different proof and analysis; (2) an injury does not occur in the course of the employment unless it is within the period of employment at a place where the employee may reasonably be; and (3) compensability in certain cases may depend on whether an employee's acts are undertaken in good faith to advance the employer's interests. See *Award*, pages 6 and 7. Giving effect, as we must, to § 287.020.10, we can no longer endorse these propositions derived from abrogated case law decisions. Accordingly, we hereby disclaim that portion of the administrative law judge's analysis relying on pre-2005 case law interpretations of the meaning or definition of "arising out of and in the course of the employment."

Instead, "section 287.020.3(2) must control any determination of whether [an] injury shall be deemed to have arisen out of and in the course of [the] employment." *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504, 509 (Mo. 2012). Section 287.020.3(2) RSMo provides as follows:

> An injury shall be deemed to arise out of and in the course of the employment only if:
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> (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
>
> (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

There is no contention that employee's fall on employer's obstacle course was not the prevailing factor causing employee's right knee injury—the parties effectively stipulated the accident was the medical cause of employee's injury. We conclude, therefore, that § 287.020.3(2)(a) above is satisfied.

Turning to § 287.020.3(2)(b), our initial task is to appropriately identify the "hazard or risk" from which employee's injuries came. See *Johme*, 366 S.W.3d at 511. Employer, in its brief, fails to specifically address the statutory test under § 287.020.3(2)(b), or to identify the particular hazard or risk from which it believes employee's injuries came. As best we can determine, employer seems to suggest we should view the relevant hazard or risk as that of voluntarily undertaking an athletic endeavor.

We are not persuaded. In the *Johme* case, the court very clearly cautioned us against dwelling upon the particular activity (there, making coffee) the employee was undertaking at the time of injury, and instead urged us to carefully identify the particular causative forces (there, slipping off one's sandal) that actually produced the employee's injury. See *Johme*, 366 S.W.3d at 511-12. Here, after careful consideration of the entire record, we find, as a factual matter, that the relevant hazard in this case was the

obstacle (i.e. the hurdle) placed in employee's intended path, which created the risk of landing awkwardly, which risk directly led to employee's injury.

The next question for purposes of § 287.020.3(2)(b) is whether this hazard or risk was "unrelated to the employment." As thoroughly detailed in the administrative law judge's award, employee was running employer's obstacle course for no other purpose than that he worked for employer, and was encouraged, as part of the employment relationship, to run the course, with the incentive of an employment-related reward in the form of additional benefits. We find that the hazard or risk of landing awkwardly after attempting to clear a hurdle on employer's obstacle course was related to the employment.

Finally, we will examine whether this employment-related hazard or risk was one to which employee was equally exposed outside of and unrelated to the employment, in normal nonemployment life.[2] It does not appear that employer's obstacle course was open to members of the general public, or that the risks or hazards of the obstacle course were akin to any risk or hazard that employee, or workers generally, would face in equal measure outside the context of an employment relationship with employer. We find that employee was not equally exposed, outside the employment in his normal, nonemployment life, to the risk of coming down awkwardly after attempting to clear a hurdle on employer's obstacle course.

Employer, as we have noted, does not address the statutory test in its brief, or advance any evidence that would persuade us to make factual findings contrary to those we have provided above. Instead, employer's appeal turns entirely on its contention that employee's injury simply cannot be deemed to have arisen out of and in the course of employment given the nature of the activity in which he was engaged when he fell. We cannot give effect to this argument, however, where the courts have very recently declared that "[t]he focus of the equal exposure analysis should be not on *what the employee was doing* when the injury occurred, but rather on whether the *risk source* of the injury was one to which the employee is exposed equally in his or her nonemployment life." *Mo. Dep't of Soc. Servs. v. Beem*, 478 S.W.3d 461, 467 (Mo. App. 2015)(emphasis in original).

Because we find each of the elements of the statutory test under § 287.020.3(2)(b) to be satisfied in this case, we conclude that employee's injury arose out of and in the course of the employment.

Recreational activity forfeiture

We turn now to employer's affirmative defense that the forfeiture provision pertaining to certain recreational activities under § 287.120.7 applies to this case. We are not persuaded. To the contrary, employer's evidence has failed to convince us to make a

[2] See, however, *Pile v. Lake Reg'l Health Sys.*, 321 S.W.3d 463, 467 (Mo. App. 2010) and *Young v. Boone Elec. Coop.*, 462 S.W.3d 783, 790 Fn.9 (Mo. App. 2015), holding that once an injury is shown to be "related" to the employment, there is no need to undertake the "equal exposure" prong of analysis. We nevertheless address the "equal exposure" test in order to complete the record for any reviewing authority that may disagree with the holdings in *Pile* and *Young*, et al.

factual finding that employee's participation in a "recreational activity or program" was the prevailing cause of employee's injury. This threshold evidentiary showing is necessary to trigger the forfeiture provisions under § 287.120.7.

In our view, activities designed and incentivized by an employer, engaged in on the employer's premises, with the specific purpose of enhancing an employee's job performance, which activities are not entertaining, refreshing, or restorative, are not recreational. Because employer has failed to persuasively demonstrate, as a factual matter, that employee's participation in a recreational activity or program was the prevailing cause of employee's injury, our analysis under § 287.120.7 ends here.

Because we need not consider whether any of the enumerated statutory exceptions to the recreational activity forfeiture provision are applicable in this case, we hereby disclaim the administrative law judge's analysis with regard to same.

Purported waiver/agreement re "non-duty related injuries"
Finally, we will briefly address employer's reference to a purported waiver employee signed before running employer's obstacle course on December 10, 2015. Employer's Exhibit 2 shows employee's signature on a document that includes the following language:

> I understand that any injury or illness suffered as a result of my participation in [employer's Aerobics Program or Physical Fitness Award Program] will be treated as a NON-DUTY RELATED INJURY.

Transcript, page 193.

To the extent employer advances employee's signature on its Exhibit 2 as precluding employee from filing a workers' compensation claim, employer is, in effect, arguing that employee waived his rights under Chapter 287 when he signed Exhibit 2. We are not, however, authorized to give effect to such an agreement, because § 287.390.1 RSMo plainly declares that "no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid[.]" Accordingly, we conclude the purported waiver is not valid, and is of no effect in this proceeding whatsoever.

Conclusion
We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Emily S. Fowler, issued July 27, 2017, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

The Commission approves and affirms the administrative law judge's allowance of an attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 12th day of April 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT
Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Austin Reiter Injury No: 15-103652

Dependents: N/A

Employer: Kansas City Police Department

Insurer: Board of Police Commissioners KC MO

Hearing Date: May 31, 2017 Checked by: ESF/lh

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes

2. Was the injury or occupational disease compensable under Chapter 287? Yes

3. Was there an accident or incident of occupational disease under the Law? Yes

4. Date of accident or onset of occupational disease: December 10, 2015

5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson, Missouri

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes

7. Did employer receive proper notice? Yes

8. Did accident or occupational disease arise out of and in the course of the employment? Yes

9. Was claim for compensation filed within time required by Law? Yes

10. Was employer insured by above insurer? Yes

11. Describe work employee was doing and how accident occurred or occupational disease contracted: landed awkwardly after clearing a hurdle in an obstacle course.

12. Did accident or occupational disease cause death? No Date of death? N/A

13. Part(s) of body injured by accident or occupational disease: right knee

14. Nature and extent of any permanent disability: 20% at the 160-week level

15. Compensation paid to-date for temporary disability: None

16. Value necessary medical aid paid to date by employer/insurer? $0

17. Value necessary medical aid not furnished by employer/insurer? $30,486.30

18. Employee's average weekly wages: $1,180 per week per stipulation of the parties

19. Weekly compensation rate: $786.71/$464.58.

20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: Employer to pay to Employee 20% permanent partial disability to the right lower extremity totaling 32 weeks of disability at a rate of $464.58 for a total of $14,866.56. Employer to pay to Employee medical expenses in the amount of $30,486.30. Employer to pay to Employee 3.25 weeks of temporary total disability equating to an amount of $2,556.81.

22. Second Injury Fund liability: NA

23. Future requirements awarded: Employer shall provide to Employee such future medical care that shall serve to cure and relieve symptoms from which Employee suffers as a result of his work injury of December 10, 2015.

The compensation awarded to the claimant shall be subject to a twenty-five percent (25%) lien in favor of Mike Stang, Attorney, for necessary legal services plus expenses.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Austin Reiter Injury No: 15-103652

Dependents: N/A

Employer: Kansas City Police Department

Insurer: Board of Police Commissioners KC MO

Hearing Date: May 31, 2017 Checked by: ESF/lh

On May 31, 2017, the parties appeared for final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Austin Reiter, appeared in person and with counsel, Mr. Mike Stang. The Employer/Insurer appeared through counsel, Ms. Kelly Postlewait.

STIPULATIONS

The parties stipulated that:

1. that on or about December 10, 2015, Austin Reiter ("Employee") was an employee of the Kansas City Missouri Police Department and was working under the provisions of the Missouri Workers Compensation Law;
2. that on or about December 10, 2015, Employer was an employer operating under the provisions of the Missouri Workers Compensation Law and was insured by the Board of Police Commissioners KCMO;
3. that on December 10, 2015 Employee sustained an injury in Kansas City, Missouri;
4. that Employer had timely notice of Employee's alleged injury;
5. that Employee's claim for Compensation was filed within the time allowed by law;
6. that the average weekly wage was $1,180.00 and the rate of compensation for temporary total disability is $786.71 and the rate of compensation for permanent partial disability is $464.58;
7. that Employer has paid $0 in temporary total disability;
8. that Employer has paid $0 in medical benefits;
9. that Employee has sustained 20% permanent partial disability to the knee at the 160-week level, resulting in 32 weeks of disability.
10. that Employee has incurred $30,486.30 in medical benefits and that the amounts billed are fair and reasonable and represent treatment reasonably necessary to cure

and relieve the effects of Employee's injuries.

ISSUES

The parties requested the Division to determine:

1. whether Employee's accident arose out of and in the course of his employment;
2. whether Employer is liable for past medical costs incurred by Employee;
3. whether Employer is liable for future medical;
4. whether Employer is liable for temporary total disability.

The parties agreed that if this Court finds that Employee sustained an accident arising out of and in the course of employment that they would stipulate that employer would owe the following benefits;

1. 20% permanent partial disability to the right lower extremity at the 160 week level.
2. $30,486.30 in medical bills;
3. 3.25 weeks of temporary total disability

FINDINGS

Employee testified on his own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

Exhibit A – Report of Dr. James Stuckmeyer, dated September 22, 2016
Exhibit B – Letter from Katie Dumit, dated January 10, 2016
Exhibit C – Medical Bills and Summary

Employer did not present any witnesses to testify and presented the following exhibits, all of which were admitted into evidence without objection:

Exhibit 1 – Personnel Policy 811-4
Exhibit 2 – Physical Abilities Test

Based on the above exhibits and the testimony of Employee, I make the following findings:

Employer, Kansas City Missouri Police Department, owns and maintains an obstacle

course on its academy's premises in Kansas City, Missouri. The obstacle course is used as a training tool for the department's cadets and includes eleven obstacles designed to mimic actual physical circumstances an officer may face while on patrol. Included in the course are obstacles that require running, jumping, climbing stairs, carrying dead weight, navigating a balance beam, and crawling through windows.

In addition to using the course to train its cadets and measure their level of physical fitness, Employer offers its current officers the opportunity to complete the obstacle course in exchange for two E-days, which is the equivalent of two days paid vacation. The caveat is that the officer must complete the course under a pre-determined time in order to qualify for the E-days. In addition, successful completion will earn the officer a physical fitness ribbon for his or her uniform. Officers must pre-schedule their obstacle course appointment during off-duty hours and must sign a form indicating that any injuries incurred will be treated as "non-duty related injur[ies]".

Employee, Officer (now-Detective) Austin Reiter testified that he scheduled his turn on the obstacle course to take place during off-duty hours on December 10, 2015. After filling out the necessary paperwork, he started the obstacle course. Unfortunately, he lept over a hurdle on the very first obstacle and testified that he came down awkwardly on his right knee, hearing a pop and then falling to the floor. He was immediately assisted by two officers who were administering the obstacle course testing. After gathering himself, he then immediately drove to Liberty Hospital for an initial evaluation.

Employee received treatment in the emergency department at Liberty Hospital and was referred to orthopedic specialist, Dr. Santosh George. Prior to his appointment, Employee returned to the employer and discussed the accident with his superior officer. A discussion was had in which Employee asked whether he should fill out an accident report. Employee's superior officer discussed the matter with another superior officer and notified Employee that any claim for workers compensation would be denied based upon Employer's position that the accident was a "non-duty related injury." In light of that determination, Employee then began a course of treatment at his own expense.

Dr. George recommended an MRI which identified a full thickness tear of the anterior cruciate ligament at its femoral attachment. Employee was then referred to Dr. Ryan Snyder who performed a right knee anterior cruciate ligament reconstruction with bone-patella-bone auto graft.

Post-surgery, Employee was prescribed narcotic pain medication and physical therapy. Although he was eventually provided accommodated light duty, he testified that he used 130 (3.25 weeks) hours of vacation time during his recovery. The bills incurred throughout his treatment ultimately amounted to $30,486.30 which the parties have agreed are reasonable and represent treatment reasonably necessary to relieve the effects of the injury. In addition, the parties have agreed that Employee suffered 20% permanent partial disability to the right knee.

Employer admits the accident happened on its premises but has taken the position that the accident did not arise out of and in the course of Employee's employment because the accident happened while off duty and during a recreational activity, any workers compensation claim arising from which is forfeited under RSMo 287.120.7. Employee testified that the only reason he participated in the activity was in order to obtain remuneration in the form of two E-days. He specifically testified that, but for the prospect of being paid, he would not have participated in the activity and knows of no fellow officers that have run the obstacle course for recreational purposes. He also testified that Employer derives significant benefit from the activity by encouraging its officers to maintain a high level of fitness as well as providing safe practice for physically taxing activities its officers will likely experience in the field

RULINGS

After review of the evidence this Court finds there are two aspects of this case which need review in order to determine whether this injury is compensable under the law. The first aspect to be reviewed is whether this activity was considered to have occurred "in the course and scope of his employment." And secondly whether the activity was recreational and if so whether it falls under one of the exceptions to RSMO 287.120.7.

Arising Out of Employment In the Course of Employment

An injury arises "out of" employment when there is a causal connection between the nature of the employee's duties or the conditions under which he is required to perform them and the resulting injury. *Ford*, 677 S.W.2d at 901. More specifically, "`[a]n injury "arises out of the employment if 1) the injury results from a natural and reasonable incident of the employment, a rational consequence of some hazard connected therewith or a risk reasonably inherent in the particular conditions of the employment and 2) if the injury is the result of a risk peculiar to the employment or enhanced thereby.'" *Jordan*, 699 S.W.2d at 126 (quoting *Dillard v. City of St. Louis*, 685 S.W.2d 918 (Mo.App.1985)).

Employee's participation in the obstacle course could arguably fall under either prong of the definition. Employee testified to the physical nature of his job and the need to stay fit. Employer's placing him in an inherently dangerous activity is a reasonable incident of his employment, even if his participation was not mandatory. Had he injured himself at his private gym, on his own time, while trying to reach the fitness level for which Employer was willing to pay him to achieve, it is arguable that such injury would not be considered compensable as working out would not be an activity considered incident to his employment. However, once Employer places him in a hazardous environment to test his level of fitness and does so with the promise of remuneration, the incidence to his employment becomes significant and explicit

The "in the course of employment" test refers to the time, place, and circumstances under which the injury is received. *Ford v. Bi-State Dev. Agency*, 677 S.W.2d 899, 901(Mo.App.1984). An injury occurs "in the course of employment" if it occurs "within the period of employment at a place where the employee may reasonably be, while engaged in the furtherance of the

employer's business or if he is injured in doing an act reasonably incidental to the performance of his duties, of which his employer might reasonably have knowledge or reasonably anticipate.'" *Jordan v. St. Louis County Police Department,* 699 S.W.2d 124, 125-26 (Mo.App.1985) (quoting *Dillard v. City of St. Louis,* 685 S.W.2d 918 (Mo.App.1985)). Under certain circumstances the period of employment may include periods when an employee voluntarily comes to work to perform activities that are reasonably incidental to the employment. *Page v. Green,* 686 S.W.2d 528, 535 (Mo.App.1985).

In *Coy v. Sears, Roebuck & Co.,* 363 Mo. 810, 253 S.W.2d 816 (1953), the supreme court affirmed an award of compensation where a Sears appliance salesman was killed in a train accident while en route to a sales call at 10:30 p.m. His working hours were supposed to be 8:30 a.m. to 5:30 p.m., but Sears admitted that any orders the salesman took outside those hours would be filled. In *Coy* the court applied the rule from 58 Am.Jur. § 224 that an injury sustained outside regular working hours may be compensable in some circumstances, particularly if the employee was at the time engaged in some service for the benefit of the employer in connection with his regular duties. *Coy,* 253 S.W.2d at 819.

In each of the above cases, the reviewing court recognized that at the time of the off-duty injury the employee was engaged in some service for the benefit of the employer in connection with his regular duties. *Page,* 686 S.W.2d at 535; *Coy,* 253 S.W.2d at 819; *Blair v. Armour and Company,* 306 S.W.2d 84,86 (Mo.App.1957). These cases are consistent with the general rule that "[a]n act outside an employee's regular duties which is undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment." 1A Larson's Workmen's Compensation Law, § 27.00 (1993). Case law in Missouri makes clear that injuries suffered by off-duty police officers are frequently found to be compensable.

The purpose of the obstacle course is to measure the fitness of the officers and reward those officers who had achieved a level of fitness arbitrarily set by Employer. Employer created the obstacles to mimic real life situations encountered by its officers and then set an arbitrary deadline for completion of the course, based on what Employer determined was a level of fitness it desired to see in its officers. The course was on police property, overseen by officers and not open to the public. He never ran the course for actual recreation but only when given the remuneration of extra paid leave. Although he signed a waiver that said the activity was considered off duty, he did not believe it meant not compensable under workmen's compensation. He stated he had received workmen's compensation for injuries sustained while he was doing off duty security work before. Completing the course benefits the employer in that it allows employer to determine the fitness of its officers, which are then publicly lauded for their fitness by having the ribbons handed out by the department's media relations unit. The employer also required Employee to do this activity during his off duty time. Employee's participation was simply his agreement to be tested to see if he had reached the fitness level requested by his employer and in return he would receive remuneration in the form of two days of paid leave and a commendation of a ribbon for his uniform. There was no other reason for Employee to have taken the risk requested of him by Employer on that date and time. Based upon the above and foregoing the Court finds that Employee was injured in the course and scope of his employment.

With regard to the second line of thought, RSMo 287.120.7 reads:

> Where the employee's participation in a recreational activity or program is the prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when:
>
> (1) The employee was directly ordered by the employer to participate in such recreational activity or program;
>
> (2) The employee was paid wages or travel expenses while participating in such recreational activity or program; or
>
> (3) The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

First it is important to note that the statute does not define "recreational activity". Merriam-Webster's Dictionary defines "recreation" as, "Refreshment of strength and spirits after work; *also*: a means of refreshment or diversion." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 23 June 2017. In the absence of a statutory definition, words will be given their plain and ordinary meaning as derived from the dictionary. *State v. Eisenhouer*, 40 S.W.3d 916, 920 (Mo.banc 2001).

The threshold question for the Court to answer is whether the obstacle course participation by Employee constituted a "recreational activity" thereby giving rise to a defense of the claim based on the statute cited above. Based on the plain meaning of the word, the Court finds that Employee's activities did not constitute "recreation" as it is commonly understood. Employee testified that his sole purpose for participating in the obstacle course was to receive the remuneration available upon a successful completion. He had completed it successfully previously and was confident that he would again. He testified that he lived an active lifestyle and worked out regularly and that those activities were for the purpose of refreshment or diversion. The obstacle course is not comparable to a company softball game or a company picnic which commonly take place outside of work hours and are intended to provide salubrious enjoyment as a counterpoint to work, which can often be tedious. Based on the plain meaning and understanding of "recreation", it is clear the above statute was aimed at accidents arising from those types of activities, which are easily distinguished from the obstacle course which gave rise to Employee's injuries. While participation was not required, participation by Employee provided the department with a legitimate benefit, so much so, that it was incentivized with pay in the form of two days of paid leave. However, it clearly was not designed to bring "refreshment" or "diversion" and so RSMo 287.120 would not apply.

However even if participation in the running of the obstacle course by the Employee were to be considered a "recreational activity" and RSMO 287.120.7 were applied, this Court

determines that the injury would still be compensable. Employer argues that the Missouri General Assembly added paragraph 7 to section 287.120 after the findings of *Seiber v. Moog Automotive, Inc.*, 773 S.W.2d 161 (Mo. App. 1989) (employee injured while playing basketball on employer's premises during unpaid break deemed to have arisen out of and in the course and scope of employment). *Seiber* created a burden shifting analysis were the employee must establish compensability under one of the exceptions in paragraph 7. *Miles v. Lear Corp.*, 259 S.W. 3d 64, 67 (Mo. App. 2008). The amendment, adding paragraph 7, was enacted to enable employers to limit their liability for recreational injuries that otherwise would have been incidental to the employment. *Id.* In this case it appears that the exception lies under subsection (2) *The employee was paid wages or travel expenses while participating in such recreational activity or program*. Employee was incentivized by the award of extra paid leave as remuneration as well as recognition by awarding ribbons. The remuneration for undertaking this course was 2 days paid leave. This gives those who undertake and complete the course as required two additional days of wages they would not have had otherwise. Had employee not injured himself he would have ostensibly finished the course and been given his additional leave time. The offer of two days of paid leave to any officer who completes the course is clearly "paid wages" as set out in the statute.

Wherefore, based upon the above and foregoing, I conclude that Employee has established that he suffered a personal injury by accident arising out of and in the course of his employer. Section 287.120.1 dictates that the employer is liable to employee for workers' compensation benefits, including medical benefits, temporary total disability, and permanent partial disability.

Regarding medical benefits, Employee testified as to what medical care he underwent and that the bills represented the extent of that medical care. Dr. Stuckmeyer felt that the medical treatment Employee received was appropriate. Further as the parties have agreed that if this Court finds the injury compensable employer shall be liable for the medical bills. This Court awards $30,486.30 to be paid by the employer to claimant.

Regarding temporary total disability benefits, Employee testified that he was off work for 3.25 weeks while he was recovering from his injuries after medical treatment. As the parties have agreed that if this Court finds the injury compensable employer shall be liable for the temporary total disability benefits, this Court awards 3.25 weeks of benefits at a rate of $786.71 totaling $2,556.81

Regarding permanent partial disability, the parties agreed that if this Court finds the injury compensable, employer shall be liable for permanent partial disability of 20% to the right lower extremity at the 160 week level. This Court therefore awards 32 weeks of benefits at $464.58 per week for a total of $14,866.56.

The compensation awarded to Mr. Reiter shall be subject to a lien in the amount of 25 percent of the money award payable in favor of Mike Stang for necessary legal services rendered.

Emily S. Fowler
Administrative Law Judge
Division of Workers' Compensation