Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 16-051794

Employee: Lois McDowell

Employer: St. Luke's Hospital of Kansas City

Insurer: Self-Insured/Thomas McGee, LC

The above-entitled 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 and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 2, 2018. The award and decision of Administrative Law Judge Emily S. Fowler, issued March 2, 2018, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of 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 22nd day of August 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

DISSENTING OPINION FILED
Reid K. Forrester, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

Employee did not establish that the accident was causally connected with her employment because the risk source was one which employee would be equally exposed to in normal nonemployment life. See *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504 (Mo. 2012).

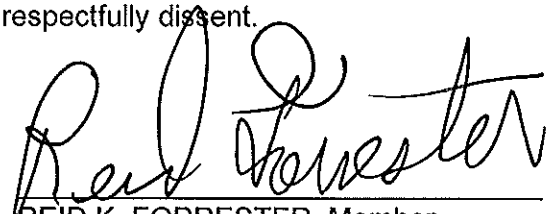
In *Johme*, the risk source was "turning and twisting her ankle and falling off her shoe." *Id.*, at 511. The court held that "no evidence showed that [employee] was not equally exposed to the cause of her injury—turning, twisting her ankle, or falling off her shoe—while in her workplace making coffee than she would have been when she was outside of her workplace in her 'normal nonemployment life.'" *Id.* An opposite example is found in *Gleason v. Treasurer of the State*, 455 S.W.3d 494 (Mo. App. 2015), where the risk source was falling 20-25 feet off of a railcar, which was a risk employee was not exposed to in nonemployment life. *Id.* at 500.

In this matter, the risk source was catching a two-wheeled cart on a doorway and falling. Like *Johme*, no evidence showed that employee was not equally exposed to the cause of her injury – catching a two-wheeled cart on a doorway and falling – while walking from the parking garage to her work than she would have been when she was outside of her workplace, such as walking from her home driveway into her house after returning from work. Just because employee was at work does not mean that employee's injury was connected to work.

Furthermore, the evidence does not support that the nature of the doorway in the parking garage established any additional risk that employee would not otherwise face in her nonemployment life. For example, in *Conagra Foods, Inc. v. Phillips*, 527 S.W.3d 74 (Mo. App. 2017), the court upheld benefits when an employee fell while walking down an unguarded ramp at work. *Id.* at 82. Similarly, a court upheld benefits when an employee slipped off "a steep drop off on [a] sidewalk – a risk source that she would not have been equally exposed to outside of the workplace in normal nonemployment life." *Lincoln University v. Narens*, 485 S.W.3d 811, 818 (Mo. App. 2016).

Because the evidence did not show that employee was not equally exposed to the risk of catching the cart on a doorway while in her nonemployment life, there was no causal connection between the accident and employee's work.

I would reverse the administrative law judge's award allowing benefits. Because the Commission majority has decided otherwise, I respectfully dissent.



REID K. FORRESTER, Member

FINAL AWARD

Employee: Lois McDowell Injury No: 16-051794

Employer: St. Luke's Hospital of Kansas City

Insurer: Self-Insured/Thomas McGee, LC

Hearing Date: January 22, 2018 Checked by: ESF/pd

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: July 13, 2016

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

6. Was employee an employee 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 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: Employee, while in the course and scope of employment, was in a parking garage owned and controlled by employer on her way to work when she sustained injuries in a fall after a cart she was pulling containing her lunch, purse, medicines, and work paperwork caught on a doorway frame in a congested entryway.

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: Left hand, left wrist, and left upper extremity.

14. Nature and extent of permanent disability: 25% disability at 200 week level of the left upper extremity.

15. Compensation paid to date for temporary disability: $0

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

17. Value necessary medical aid not furnished by employee/insurer?

18. Employee's average weekly wage: $1,456.18

19. Weekly Compensation rates: $911.27 for TTD/ $477.33 for PPD

20. Method of wages computation: Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	$27,893.62
6 weeks and 2 days of temporary total disability:	$5,727.98
50 weeks of permanent partial disability:	$23,866.50
Total:	**$57,488.10**

22. Future Medical Requirements Awarded: Employer is to provide employee with future medical care reasonably necessary to cure and relieve the symptoms related to the injury of July 13, 2016 or to address complications or other issues arising from the implanted hardware.

The Court awards attorney fees in the sum of 25% of all benefits herein to Claimant's attorney Brett J. Coppage and Edelman & Thompson, LLC, for services rendered.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Lois McDowell Injury No: 16-051794

Employer: St. Luke's Hospital of Kansas City

Insurer: Self-Insured/Thomas McGee, LC

Hearing Date: January 22, 2018 Checked by: ESF/pd

FINDINGS OF FACT AND RULINGS OF LAW

On January 22, 2018, the parties appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. Lois McDowell, the employee, appeared in person and with counsel, Brett Coppage. The employer, St. Luke's Hospital, was represented by Matthew Stretz.

STIPULATIONS

The parties stipulated to the following:

1. That Claimant was employed subject to the Missouri Workers' Compensation Law;

2. That employer was operating subject to the Workers' Compensation Act;

3. That notice was given and a claim filed within the time allowed by law;

4. That injury by accident occurred in Kansas City, Missouri;

5. That on July 14, 2016, Employer, by and through its third-party claims administrator Thomas McGee, L.C., denied Claimant's worker's compensation claim arising from the July 13, 2016 accident;

6. That Claimant's Average Weekly Wage is $1,456.18, resulting in a TTD rate and PPD rate of $911.27 and $477.33, respectively

7. That Claimant incurred $27,893.62 in medical expenses for medical treatment which was necessary to cure and relieve the injuries sustained in the July 13, 2016 accident. The treatment obtained was reasonable, necessary, and the charges incurred were customary for the services rendered. In order to satisfy the medical bills, Claimant's health insurer, Aetna, paid $8,765.54 and Claimant personally paid $241.74;

8. That due to the injuries sustained in the July 13, 2016 accident, Claimant was placed off work by her treating orthopedic doctor from July 13, 2016 until August 29,

2016;

9. That no temporary total disability benefits were paid by Employer;

10. That no hospital or medical expenses were paid by Employer;

11. That the location where Claimant's July 13, 2016 injury occurred is owned and controlled by Employer.

ISSUES

The parties requested the Division determine the following issues:

1. Whether Claimant's injuries arose in the course and scope of employment;

2. Whether Claimant's injury arose from idiopathic causes;

3. Whether Claimant sustained any disability and, if so, the nature and extent of that disability as a result of the July 13, 2016 accident;

4. Whether Employer is obligated to pay temporary total disability benefits in the amount of $5,727.98;

5. Whether Employer is obligated to pay for past medical expenses in the amount of $27,893.62; and

6. Whether Employer is obligated to provide future medical care?

EVIDENCE PRESENTED

The Employee testified at hearing in support of her claim. Also, the employee offered for admission the following exhibits:

Exhibit A	Dr. Anne Rosenthal's Report and Medical Records
Exhibit B	Medical Bill Summary and Invoices
Exhibit C	Photograph of Door
Exhibit D	Photograph of Door
Exhibit E	Photograph of Door
Exhibit F	Photograph of Elevator and Door
Exhibit G	Photograph of Door
Exhibit H	Photograph of Door and Elevator Entryway
Exhibit I	Photograph of Door
Exhibit J	Photograph of Outside

Exhibit K	Photograph of Outside the Door
Exhibit L	Photograph Outside Entryway
Exhibit M	Photograph Outside of Entryway
Exhibit N	Photograph
Exhibit O	Saint Luke's – Employee Injury/Illness Report
Exhibit P	MO DOL - Report of Injury
Exhibit Q	Earnings History
Exhibit R	Thomas McGee, LC Insurance - Denial Letter

The parties stipulated to the admission of Employee's exhibits which were received and admitted into evidence.

The Employer offered no witnesses at hearing. The Employer offered the following exhibits:

Exhibit 1	Deposition of Lois McDowell
Exhibit 2	Certified Records of Dr. Gurba
Exhibit 3	Narrative Report of Dr. Lingenfelter
Exhibit 4	Incident Report dated 7-14-16

All of Employer's Exhibits were received and admitted into evidence.

Background and Employment

Claimant, Lois McDowell, works as a chemist at the St. Luke's Hospital plaza campus in Jackson County, Missouri. Ms. McDowell has worked for this employer for over 46 years consecutively.

Ms. McDowell is 68 years old. She is a widow and lives by herself in a home in Kansas City, Missouri. Ms. McDowell obtained a bachelor's degree in Biology in 1971, completed a 12 month internship thereafter, and has been working at St. Luke's Hospital ever since.

Ms. McDowell's title at St. Luke's is a Clinical Lab Scientist 1. Her job requires her to test specimens in a chemistry lab. Physically, this requires her to handle hundreds of vials of blood and other fluids throughout the course of a day. In a single day, Ms. McDowell testified that she may handle and test as many as 400 specimens. This requires her to uncap vials and load them into machines for testing. In addition, Ms. McDowell is also required to load reagents into the testing machines and calibrate the machines. The reagents are contained in foil packaging that must be torn open. Once the testing on a given set of specimens is complete, the used vials, contained on a carrousel of 72 vials, are dumped into a biohazard waste barrel.

Ms. McDowell typically works 40 hours per week at St. Luke's Hospital. She works eight hours per day, five days per week. Typically, her work shift begins at 3:00 p.m. and ends at 11:30 p.m. and includes a 30 minute lunch break.

The Parking Garage where Employee's Injury Occurred

The parking garage at issue is the largest parking structure on the St. Luke's Hospital—

Plaza campus. Ms. McDowell testified that she counted the number of spaces and over 840 parking spaces exist in the structure for employees. The parking structure is on the southern end of the hospital campus.

The parking garage at issue is for employees of St. Luke's Hospital only. In order to enter the garage by car, a badge is required to open a security gate. Likewise, to enter the doors leading to and from the parking garage by foot, employees are required to swipe ID badges to unlock the doors. There are multiple doors for foot traffic on the ground floor of the parking garage and then sidewalks and pathways leading to the hospital and medical buildings from the doors. However, only one door exists on the north side of the parking structure, the side closest to the hospital and the medical buildings where employees work.

Ms. McDowell typically parks on the 4th floor because when she arrives to work the first four floors of the garage are at full capacity. After parking, Ms. McDowell typically descends down an elevator, exits a door on the north side of the parking garage, and walks across a pavilion to the Hospital building where she works. Employee's Exhibits C through M depict the area in and around the door on the north side of the parking structure where her injury occurred.

When Ms. McDowell arrives at work (typically between 2:45 pm to 3:00 pm), it is common to see other employees leaving work who happen to be entering the parking garage as she is going to work. In particular, Ms. McDowell testified that there is a shift change that occurs with engineering employees who typically leave around 3:00 p.m. In the entryway where Ms. McDowell's injury occurred, she testified that around 75% of the time she encounters other employees coming and going as she is exiting the parking garage on foot. On the date of accident, however, she admitted she saw no one within the vestibule and only two other employees appeared outside the entrance to the garage.

Ms. McDowell could identify no structural issues, mechanical issues, damages, substances, liquids or lighting issues with the parking garage on the day of her fall. She was unaware of any code violations or substandard construction aspects of the building. Ms. McDowell has been using this garage as her designated parking spot since before 2013. Ms. McDowell was very familiar with the garage itself and the route to and from the garage outside the hospital to the lab within the hospital. Ms. McDowell continues to use the very same garage in the very same manner as of the date of the hearing.

The parties stipulated that the parking structure at issue and the area where Ms. McDowell's incident occurred is owned and controlled by Employer.

Personal Medical Condition Prior/Subsequent to Accident

Ms. McDowell testified that prior to the date of accident she had been under the medical care of orthopedic specialist Dr. Danny Gurba. Ms. McDowell conceded that she had been in treatment with Dr. Gurba from July 22, 1996 to October 19, 2017.

The records of Dr. Gurba contain extensive records of treatment for Ms. McDowell's lower extremities and both hips. These records reflect ongoing treatment starting back in 2002 extending beyond the July 2016 accident up to March of 2017. In these records, there are indications that employee suffered pain in her hips and knees, problems with her ankles and

problems with limping due to her problems with her hips, knees and ankle. The hip replacements and follow-up care is also contained in the records. There is one entry in February of 2014 indicating she fell on her back due to a slip and fall on ice. She complained of right hip pain as well as having a knot on her lateral thigh.

The claimant testified that even before 2013 her limp caused her to "duckwalk", suggesting she had an apparent uneven gait. The records reflect that even though the claimant had undergone total hip replacement in 2013 on her right side, complications from that surgery and atrophy of the hips due to altered gait caused Ms. McDowell to continue with a severe limp to the point that by early 2016 the claimant was designated a fall risk by the claimant's personal physician, Dr. Gurba. Even after her fall, the claimant continued to be considered a fall risk by this physician. The medical condition affecting the gait of Ms. McDowell continued to worsen until she had left total hip arthroplasty in March of 2017.

The claimant admitted that after the second hip replacement she has finally gotten better, improved her gait and has less pain.

The lower extremity medical conditions including the bilateral hip replacements do not arise out of Ms. McDowell's employment and are medical conditions personal to her.

Despite all of these problems, it appears that Employee only had one falling incident that was over two years prior to her injury on July 13, 2016. This fall was due to a slip and fall on ice and not due to any anatomical problems. There was no evidence of idiopathic falls presented.

Accident

At the time of her injury on July 13, 2016, Ms. McDowell was pulling a two-wheeled cart behind her. The cart contained her purse, her lunch, her medicines, and paperwork related to her work, specifically her work schedule. Ms. McDowell first began using the cart in 2013 following a hip replacement surgery on her right hip. Initially, when she was convalescing from the hip surgery, Ms. McDowell utilized a cane for around a month after returning to work in 2013. It was during this period that her supervisor provided a two-wheeled cart to help her carry items to and from work while using a cane. That was after a discussion between the two as to how to facilitate her getting from her car to her work station with a cane and all of the items she had to carry, including work papers. Her supervisor suggested the cart and supplied it to her as well. Ms. McDowell testified that she only uses the cart to carry items to and from her car at work. Ms. McDowell does not use the cart for anything besides traveling to and from work. After Ms. McDowell stopped using the cane, she continued to use the two-wheel cart.

On July 13, 2016, Ms. McDowell arrived at work. She parked her car in the employer's parking garage on the 4th floor. Ms. McDowell testified that every work day she places her purse, her medicines (which are in a small bag), her lunch, and her work schedule into a bag and then secures it to the two-wheeled cart. Ms. McDowell testified that she is required to bring a lunch every day because the employer only allows 30 minutes for lunch. This does not afford Ms. McDowell enough time to walk to the employee cafeteria, wait in line for food, and return in the allotted time. As such, she brings a lunch every day. Ms. McDowell testified that she prints off her work schedule and places it in her cart so she is reminded what day and time she is required to work and what particular bench she is designated to work during that particular work shift.

In addition to the items that are found in the two-wheeled cart every day, Ms. McDowell also testified that she places other work-related paperwork in her two-wheel cart at various times throughout the year. Ms. McDowell places flu vaccination forms in the cart to haul to and from work. She also places employee evaluation forms and evaluation notes for co-employees in the cart on occasion. In addition, Ms. McDowell testified that she also uses the cart to haul self-evaluation forms to and from work. Ms. McDowell testified that she is not provided time at work to complete these forms, so she prints them off, takes them home and completes them. Then she returns the forms to work in her two-wheeled cart. Finally, Ms. McDowell also testified that once a month continuing education classes are offered outside of her work. She will print off emails containing the dates and times for these courses to take home in her cart. At the time of her injury, Ms. McDowell may have had one of the foregoing pieces of paperwork in her cart as well, in addition to her work schedule, but she cannot specifically recall.

When walking, it was Ms. McDowell's habit to pull her cart directly behind her holding the handle of the cart at or near the center of her low back. She did so to take into account other employees who may have been near when exiting or entering the garage. On the date of accident, Ms. McDowell exited the elevator, positioned her cart behind her, and proceeded to the exit door. As Ms. McDowell was walking through the exit door on the north side of the parking garage, she encountered two other employees that were entering the parking garage after their shifts had ended. One of the employees held the door for Ms. McDowell. The other employee stood directly in front of the doorway next to the other employee, causing Ms. McDowell to take a path to the right immediately after she exited the door in order to let the other employees pass. Due to the congestion and the path Ms. McDowell was forced to take, the wheel of her two-wheeled cart got caught in the door frame. It jerked Ms. McDowell and caused her to fall to the ground injuring her left wrist.

Following her injury, Ms. McDowell provided timely and adequate notice to her Employer. She signed an Employee Injury/Illness Report which recounted Ms. McDowell's stated and signed version of the facts of the case. It reads, "I was pulling my personal 2 wheel luggage bag which contains my purse, lunch and other personal items and an engineer was holding the door open for me and as I walked through (sic) doorway my luggage bag wheels caught door facing. With my artificial right hip replacement, I lost my balance and fell down." (Employer/Insurer's Exhibit 4)

Ms. McDowell's claim for treatment for the left wrist from the employer was denied on July 14, 2016. Ms. McDowell obtained medical treatment on her own.

Medical Treatment

On July 13, 2016, shortly after her fall, Ms. McDowell was first seen by the St. Luke's Internal Medicine group. The treating physician ordered X-rays of the left wrist which revealed a distal radius fracture. Given these findings, Ms. McDowell was referred to an orthopedic surgeon.

The following day, July 14, 2016, Ms. McDowell was seen by Dr. Langford at Rockhill Orthopedics. Dr. Langford reviewed the X-rays, and discussed the intraarticular nature of the fracture with Ms. McDowell. Given the nature of the fracture, Dr. Langford opted to perform an open reduction with internal fixation surgery on July 18, 2016. Post surgically, Ms. McDowell followed up with Dr. Langford and also attended physical therapy at St. Luke's Occupational Therapy. Ms. McDowell was released from treatment on September 27, 2016 by Dr. Langford.

During the course of her treatment, Dr. Langford provided work restrictions and placed Ms. McDowell off work form July 13, 2016 until August 29, 2016.

The parties have stipulated that Employee incurred $27,893.62 in medical expenses for medical treatment which was necessary to cure and relieve the injuries sustained in the July 13, 2016 accident.

Ms. McDowell testified that she continues to suffer from pain, decreased grip strength, and decreased range of motion with respect to the affected wrist. Ms. McDowell identified numerous activities that she now struggles with as a result of her injury, including gripping and handling objects. For instance, Ms. McDowell described great difficulty with zippers, her support stockings, and other items around the home. Likewise, Ms. McDowell also reported difficulty lifting and handling heavy objects due to her wrist. In addition to difficulties in the home, Ms. McDowell also identified several accommodations she had made in the workplace to keep up with the pace of handling, uncapping, and testing hundreds of vials per day. Although she has returned to work, she struggles with gripping the vials and reagents.

This Court finds claimant's testimony credible. In reviewing her medical records her complaints were reasonable and consistent. No doctor claimed she was malingering or exaggerating her injury. Her description of her accident and subsequent treatment was consistent with her medical records. Her live testimony was consistent throughout.

Independent Medical Exams

Employee was evaluated by Dr. Anne Rosenthal on November 1, 2016. Dr. Rosenthal noted that at the time of her evaluation Ms. McDowell was continuing to suffer from radial sided wrist pain. Dr. Rosenthal also noted that Ms. McDowell suffered from reduced grip strength, reduced range of motion for the wrist, and daily swelling of the effected hand. Dr. Rosenthal noted that Ms. McDowell reported daily pain that started at a 2 and intensified throughout the day to as high as a 7 or 8 out of 10 in severity. On physical exam, Dr. Rosenthal performed testing with respect to grip strength that identified over a 50% decrease in grip strength comparing Ms. McDowell's injured hand to her non-effected hand. Dr. Rosenthal noted that Ms. McDowell reported a significant disruption in the activities of daily living as a result of her injury. Dr. Rosenthal concluded that the prevailing factor for Ms. McDowell's medical condition was her work injury and that the medical treatment obtained was reasonable, necessary, and appropriate to cure and relieve the injuries sustained in the July 13, 2016 fall. Dr. Rosenthal opined that Ms. McDowell has a 35% disability at the 200 week level. Dr. Rosenthal also opined that medical should remain open with respect to the implanted hardware.

Employee was also evaluated by Dr. Lingenfelter at the request of Employer on July 19, 2017. Dr. Lingenfelter noted that Ms. McDowell continues to suffer from residual pain over the distal aspect of the incision. Dr. Lingenfelter also noted a decreased range of motion with respect to the affected wrist. Dr. Lingenfelter opined that Ms. McDowell has an 8% disability. Dr. Lingenfelter also opined that medical should remain open with respect to the implanted hardware.

FINDINGS AND CONCLUSIONS

The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee. R.S.Mo. § 287.808. Administrative Law Judges shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

The initial issue presented by the parties involves consideration of whether the employee sustained an injury by accident on July 13, 2016 and whether said accident arose in the course and scope of employment.

Pursuant to R.S.Mo. § 287.020.3:

> (2) An injury shall be deemed to arise out of and in the course of the employment only if:
>
> (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.
>
> (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

There is no dispute the prevailing factor for Ms. McDowell's medical condition is her fall. The Employer's basis for denial is instead based upon whether the cart was a personal apparatus which created a risk unrelated to employment and whether the fall was idiopathic in nature.

The key inquiry the Court must make is whether "the risk of injury from [a particular] action is equally present outside of work, or instead has some causal connection to the employee's work." Wright v. Treasurer of Missouri as Custodian of Second Injury Fund, 484 S.W.3d 56, 61 (Mo. App. E.D. 2015). The Western District Court of Appeals has developed a two-part test to determine whether the "risk source" of a claimant's injury is connected to the employee's work. Gleason v. Turner, 455 S.W.3d 494 (Mo. App. W.D. 2015). This test requires: (1) the Court to identify of the risk source of a claimant's injury, *i.e.* the activity that gave rise to the injury; and (2) then compare that risk source to normal, non-employment activity. *Id. See also* Wright v. Treasurer of Missouri as Custodian of Second Injury Fund, 484 S.W.3d 56, 61 (Mo. App. E.D. 2015).

In this case, the activity that gave rise to Ms. McDowell's injury was pulling a two-wheeled cart through a congested doorway. There is substantial evidence which creates a nexus between work and the cart and, as such, this is clearly a work related risk. First, Ms. McDowell testified that she *only* uses the cart to haul materials to and from work. Also, Ms. McDowell testified the cart contains items necessary to complete her work, such as personal medical supplies and her lunch. Ms. McDowell testified that, absent bringing a lunch from home, she would not be otherwise able to comply with the employer's 30 minute lunch timeframe. What is more, the two-wheeled cart contained work paperwork necessary for Ms. McDowell to function in her

work. The cart is not for personal benefit but, instead, incidental to employment and essential for Ms. McDowell to continue working at St. Luke's. It is also noted that the cart was suggested and supplied by Ms. McDowell's supervisor. This testimony was not contradicted by any other evidence.

Also, the congestion in the walkway that led Ms. McDowell to alter her path on July 13, 2016 is a risk also connected to work. Ms. McDowell testified that she commonly encounters congestion in and around the doorway at issue due to shift changes. This is a risk only associated with her workplace.

The facts of Pope v. Gateway to the West Harley Davidson, 404 S.W.3d 315 (Mo. App. E.D. 2012) are instructive. In Pope, an employee was walking down stairs in the course and scope of his employment while wearing work boots and carrying a motorcycle helmet (which was needed for work purposes). While descending the stairs (which were not found to be defective in anyway), Pope lost his footing and fell. An ALJ denied compensation. The Commission reversed this denial and the Court of Appeals affirmed the Commission's award of benefits. The Court of Appeals noted that the key inquiry was whether Pope was injured *because* he was at work as opposed to becoming injured merely *while* at work. The Eastern District noted that the risk source was not merely walking down stairs—but walking down stairs while wearing work boots and carrying a work-related helmet, a risk that Pope was not equally exposed to outside of work. Like Pope, in this case, Ms. McDowell was only exposed to risks associated with two-wheeled carts and congested walkways at work. This claim must be found to arise in the course and scope of employment. *See also* Simmons v. Mercy Hospital, 2013 WL 3292792 (Mo. Lab. Ind. Rel. Com) (holding claim was compensable where employee was wearing clogs, holding mail, and her shoes stuck to a laminate floor causing her to fall because the risk of wearing clogs and holding mail was unique to work).

Another instructive case is Lincoln University v. Narens, 485 S.W.3d 811 (Mo. App. W.D. 2016). In Narens, the claimant sustained a fall when she stepped off a ledge on a sidewalk while negotiating a "crowded campus." The Court of Appeals found that this particular risk—walking off a steep ledge on a crowded college campus—was a risk claimant would *not* have been equally exposed to outside of work. Here, like in Narens, the risk involves negotiating crowds and congestion—a risk unique to the workplace.

The Court finds that the risk source (pulling a cart of work related supplies through a congested entryway) is related to the workplace and not a risk source Ms. McDowell would be likely to encounter in her non-work life. As such, the accident on July 13, 2016 arose in the course and scope of employment.

Employer also argued the fall was idiopathic. This argument is wholly unsupported. The evidence is clear that Ms. McDowell's fall was caused by the wheels of her cart "jerking" her and causing her to fall. Ms. McDowell's prior hip surgeries and admitted prior "limp" in no way caused or contributed to cause the fall. Further her statement "With my artificial right hip replacement; I lost my balance and fell down" is not an admission this fall was idiopathic. But for the need to move to the right causing her cart to get stuck, which then caused her to be pulled off balance, she would not have fallen.

The next issue to be determined by this Court is whether Employer is obligated to pay 6 and 2/7ths' weeks of temporary total disability benefits in the amount of $5,727.98 equaling

$5,427.98. The evidence shows that her treating physician Dr. Langford placed her on restrictions and took her off work from July 13, 2016 through August 29, 2016. Having found that employee's injury is compensable under the law and after reviewing the medical records, the Court finds that Employer owes to claimant the sum of $5,727.98 for temporary total disability.

The next issue for this Court to determine is whether Employer is obligated to pay for past medical expenses in the amount of $27,893.62. Having found claimant's injury compensable under the law and, further, after review of the medical records and bills, this Court finds that the treatment Employee received was necessary to cure and relieve her injuries due to the accident of July 13, 2016. Therefore, this Court orders Employer to pay to Claimant the sum of $27,893.62, an amount to which the parties previously stipulated.

After reviewing Claimant's testimony regarding her current physical problems as well as disabilities related to her work injury, the Court awards to Claimant 25% permanent partial disability at the 200 week level of the left upper extremity. This equates to 50 weeks of permanent partial disability at $477.33 per week, which equals to $23,866.50.

Finally, after reviewing the medical records as well as the reports of both Dr. Rosenthal and Dr. Lingenfelter, this Court finds that Employer is to provide Claimant with future medical care reasonably necessary to cure and relieve the symptoms related to the injury of July 13, 2016 or to address complications or other issues arising from the implanted hardware.

This Court noted that there was no request by the claimant for an assessment of disfigurement nor a review of her surgical site for purposes of assessment of disfigurement. Therefore, this Court awards no disfigurement herein.

Finally, this Court awards to Employee's attorney, Brett Coppage, 25% of all benefits awarded herein.

I certify that on 3-2-18, I delivered a copy of the foregoing award to the parties to the case. A complete record of the method of delivery and date of service upon each party is retained with the executed award in the Division's case file.

By _____

DIVISION OF WORKERS' COMPENSATION
DEPARTMENT OF LABOR
INDUSTRIAL RELATIONS

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