

**FINAL AWARD DENYING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
With Supplemental/Corrected Opinion)

Injury No.: 11-109554

Employee: Milton Wilson  
Employer: Liquid Environmental Solutions Corporation  
Insurer: New Hampshire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 briefs, and considered the whole record, we find that the Award of the administrative law judge denying 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**

Supplemental Facts

The administrative law judge decided this matter on the basis of a lack of jurisdiction under the Missouri Workers' Compensation Act. The administrative law judge cited numerous facts related to the jurisdictional question under the heading, RULINGS OF LAW – B. Jurisdiction. We adopt all the facts stated within that section of the Award as our own findings of fact.

We further find that employee's testimony was inconsistent between his initial deposition in April 2011, and his final deposition, (in lieu of hearing testimony), given in July 2017. In April 2011, employee indicated that he worked mostly in Missouri and Arkansas, and did a lot of work in Kansas, with some trips to Nebraska. He gave no indication of the proportionate share of work, the number of miles or the number of days in each state. At all times during his employment, the employer's principal office operations were located in Kansas, and employee was required each day to begin and end his routes by picking up and dropping off his truck at the headquarters of employer in Kansas.<sup>1</sup> At the time of his deposition in April 2011, employee lived in Kansas City, Missouri, and indicated he had lived there for five years.

In contrast, by July 2017, employee had altered his report of his work location indicating it was mostly Missouri.

Q: Where did you do most of your work?

A: Missouri.

*Transcript, page 16.*

There was no other development of the testimony about work location at the July 2017 deposition, aside from this single question at his deposition in lieu of hearing testimony. This inconsistency with his earlier testimony, appearing after the issues of the case became more apparent, diminishes employee's credibility on the issue. It also is inconsistent with his testimony that it wasn't until the last month or so of his employment, in January 2011, that he

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<sup>1</sup> Although employee gave no specifics, he indicated this was routine except for occasions when he may have an overnight route.

Employee: Milton Wilson

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mostly worked in the metro area of Kansas City, between Kansas and Missouri, while he was filling in for someone with an injury. We find that the evidence does not establish that employee worked mostly in Missouri. On the contrary, it shows the routes he drove encompassed Missouri, Kansas, Arkansas and Nebraska, but with one single consistent location on an almost daily basis, being at the employer's headquarters in Kansas. The employer's Kansas headquarters was also the place where he received assignments, reported his paperwork, and from where it appears that payment for his services was initiated. Employer had three dumpsites within the state of Kansas for employee's daily use in performing his duties, and only one in the southwestern corner of Missouri for dumping when in that area and Arkansas.

Supplemental Conclusions of Law

We agree with the administrative law judge that employee did not establish that jurisdiction over his claim falls under the Missouri Workers' Compensation Law. Employee suffered a slip and fall injury on January 28, 2011, in Bonner Springs, Kansas. He stopped working at this point. On March 16, 2011, he was diagnosed with mild bilateral carpal and mild cubital tunnel syndromes. Subsequent objective testing in the two years following the end of employment were unchanged from this diagnosis. These objective findings and the opinions of Dr. Erich Lingenfelter and Dr. O. Allen Guinn III persuade us that work was not the prevailing factor in the development of repetitive motion disease, in part because when work exposure ceased, there was no improvement. *Transcript*, pages 780, 782-785.

Section 287.110.2 RSMo provides that jurisdiction shall apply in Missouri:

... to all injuries received and occupational disease contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, ... and to all injuries received and occupational diseases contracted outside of this state where the employee's employment was principally localized in this state within thirteen calendar weeks of the injury or diagnosis of the occupational disease.

None of these jurisdictional provisions related to occupational disease have been established in the record. First, the record does not address the origination of a contract of employment. Second, employee did not establish that he contracted an occupational disease in the state of Missouri. Finally, employee did not establish that his employment was principally localized in Missouri within thirteen calendar weeks of his injury or diagnosis,<sup>2</sup> nor at any time prior to that period. We reject employee's argument that he need not show his employment was "principally localized in this state within thirteen calendar weeks of the . . . diagnosis" of the disease. Such a ruling would ignore the plain words of the statute which provide for exactly this situation where the place of contracting a disease may be unclear. Our mandate to strictly apply the provisions of the statute include giving meaning to all its provisions.

Employee appears to argue that his deposition testimony is sufficient to prove that he did most of his work in Missouri; therefore, it would follow that his repetitive motion disease was contracted in Missouri. In effect, he asks us to draw an inference from his testimony. However,

<sup>2</sup> Employee's initial claim filed May 2012, identified a date of injury as March 16, 2011. This was amended at the hearing to January 28, 2011. Employee was diagnosed with mild bilateral carpal tunnel syndrome and cubital tunnel syndrome as of March 16, 2011. January 28, 2011 was the date that employee fell at work. He did not work after that date. Regardless of which date is used, employee has not shown his employment was principally localized in Missouri or that his occupational disease was contracted here.

Employee: Milton Wilson

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we conclude that employee did not prove the employment was principally localized or that the substantial bulk of his work was in Missouri. We have not found his testimony persuasive on this issue.

As noted by the administrative law judge, the Missouri Workers' Compensation Act does not define the term "principally localized." In addition to the Black's Law Dictionary definition relied on by the judge, there are other resources which offer guidance in the context of the employment relationship.

Some of the important factors considered in determining whether employment is localized in a state include:

- Where the work day starts and ends.
- Whether the employer has an office in the state claimed.
- Whether the duties performed in a state are merely incidental to the position.<sup>3</sup>
- Where does the employee receive orders, pay, and supervision.
- If the employee's duties require travel, does the evidence establish that most miles are within a certain state.
- Is there a base of operations in the claimed state.<sup>4</sup>

The National Commission on State Workers' Compensation Law Model Act offers a definition of "localized." However, Missouri has not adopted these provisions of the Model Act. The Model Act generally would suggest that the question of jurisdiction should consider whether employer has a place of business in the state and employee regularly works from that location; or employee is domiciled in the state and spends a substantial part of his working time in the state.<sup>5</sup> Missouri's legislature has not adopted this simple test for determining localization of a business for coverage under the statute. The best approach may be to review the various factors stated above, for a more refined definition of "principally localized."

The Commission has looked to the Model Act on this question in the past, but has also considered factors beyond the limited inquiry proposed in the Model Act. For example, an over-the-road driver whose contract of employment was in Wisconsin, but who regularly worked from and was required to use a Missouri terminal for truck maintenance, was found to be covered by the Missouri law, where he spent 55% of his travel time throughout Missouri. *Earl Cable v. Schneider Transportation, Inc.*, Injury No. 88-183019 (LIRC, Mr. 7, 1997). In the instant matter before us, none of these factors are present to support Missouri jurisdiction.

In considering the localization question in an Illinois workers' compensation case involving an over-the-road driver, the court noted employee spent 48% of his time driving in Illinois, but he received his orders and pay, and was hired in Missouri, where the principal terminal that he reported to was also located. In that matter, the Illinois court found the employment principally localized in Missouri. *Patton v. Industrial Commission*, 498 N.E. 2d 539 (Ill. App. 1986). In the instant matter before us, none of these factors would favor a finding of Missouri as the principal location.

Cases from other states have focused on where the employee primarily begins and ends his day, despite the fact that the position involved driving through other states.<sup>6</sup>

<sup>3</sup> See Missouri Employment Security Law § 288.034.4 RSMo.

<sup>4</sup> See Missouri Employment Security Law § 288.034.2 RSMo.

<sup>5</sup> *Earl Cable v. Schneider Transportation, Inc.*, Injury No. 88-183019 (LIRC, Mr. 7, 1997).

<sup>6</sup> *Johnson v. United Airlines*, 550 So. 2d 134 (Fla. 1st DCA 1989); *Holland v. Workmen's Comp. Appeal Bd. (Pep Boys)*, 137 Pa. Commw. 22, 586 A.2d 988 (1990)

Employee: Milton Wilson

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Regardless of all the guidance that may be available on interpreting the phrase chosen by Missouri's legislature as employment that is "principally localized in this state," (§ 287.110.2) we are constrained by Section 287. 800 to construe the statute strictly.

Employee did not show that the majority of his time, miles, days, or work duties were spent in Missouri or that the employer was principally operating its business in Missouri, as opposed to the several other states where employee drove to perform services. We agree with the administrative law judge in concluding that employee's employment was not proven to be "principally localized" in Missouri and that employee's testimony was insufficient to establish Missouri jurisdiction. Furthermore, we are not persuaded that employee has proven that an occupational disease was contracted in Missouri.

Because we find jurisdiction has not been proven, we must deny the claim. All other issues are moot.

Corrections

In regard to the facts recited by the administrative law judge reporting the opinion of Dr. Michael Poppa, we correct the quoted statement as follows.

Award, page 6, first full paragraph states:

He concludes that Employee, "...is probably or more than unlikely unable to access the open labor market in any capacity."

We correct that statement to read:

He concludes that Employee, "...is probably or more than likely unable to access the open labor market in any capacity."

*Transcript, page 768.*

We correct the Award at page 5, third paragraph up from the bottom, following the quote of Dr. Guinn, which states:

"On February 12, 2013, Employee underwent right carpal and cubital tunnel releases. On March 26, 2014, Employee underwent left carpal and cubital tunnel releases."

We correct that statement to read:

"On February 12, 2014, Employee underwent right carpal and cubital tunnel releases. On March 26, 2014, Employee underwent left carpal and cubital tunnel releases."

*Transcript, page 780.*

**Decision**

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

The award and decision of Administrative Law Judge Angela Heffner is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Employee: Milton Wilson

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Given at Jefferson City, State of Missouri, this 5<sup>th</sup> day of February 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



*Robert W. Cornejo*

Robert W. Cornejo, Chairman

*Reid K. Forrester*

Reid K. Forrester, Member

DISSENTING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

*Pamela M. Hofmann*  
Secretary

Employee: Milton Wilson

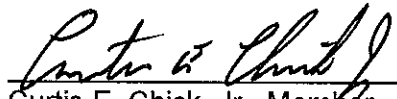
**DISSENTING OPINION**

The majority has voted to affirm the administrative law judge's decision finding that there is no jurisdiction to hear this claim under Missouri Workers' Compensation Law. I disagree and I would vote to reverse that decision, and find the employee's employment is covered under Missouri law.

The underpinning of the majority's reasoning is that employee has not proven the necessary elements of jurisdiction and that his testimony was insufficient to do so. In such matters, it can be onerous for an employee to garner sophisticated evidence of the employer's connections with a state in order to prove jurisdiction as suggested by the majority. I would find employee's testimony that most, or a significant amount of his work was performed in Missouri to have been credible. I would find his testimony sufficient since there was no direct evidence disputing his assertion.

If Missouri jurisdiction were found, we would proceed to the merits of the employee's claim and evaluate whether work exposure was the prevailing factor in causing injury or occupational disease and whether employee was partially or totally permanently disabled as a result of work and/or preexisting disabilities. I believe employee deserves a decision on the merits.

I respectfully dissent.

  
Curtis E. Chick, Jr., Member

## FINAL AWARD

Employee: Milton Wilson Injury No. 11-109554  
Employer: Liquid Environmental Solutions Corp.  
Insurer: New Hampshire Insurance Co.  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
Hearing Date: December 21, 2017 Checked by: AH/lh

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: January 28, 2011.
5. State location where accident occurred, or occupational disease was contracted:  
Kansas City, Kansas.
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 employment? No.
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 the alleged accident occurred or occupational disease contracted: constant and repetitive motions of hands and arms.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body allegedly injured by accident or occupational disease: Bilateral upper extremities.
14. Nature and extent of any permanent disability: 0%.

- 15. Compensation paid to-date for temporary disability: \$6,072.80.
- 16. Value necessary medical aid paid to date by employer/insurer? \$25,338.43.
- 17. Value necessary medial aid not furnished by employer/insurer? \$0.
- 18. Employee's average weekly wages: \$887.69.
- 19. Weekly compensation rate: \$591.82 TTD and \$418.58 PPD.
- 20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

- 21. Employer liability:
  - 0 weeks temporary total disability .....\$0
  - 0 weeks permanent partial disability..... \$0
- 22. Second Injury Fund liability: None
- 23. Future requirements awarded: None

The compensation awarded to the employee shall be subject to a twenty-five percent (25%) lien in favor of Kathleen A. McNamara, Attorney, for reasonable and necessary legal services.



**FINDINGS OF FACT AND RULINGS OF LAW:**

Employee: Milton Wilson Injury No. 11-109554  
Employer: Liquid Environmental Solutions Corp.  
Insurer: New Hampshire Insurance Co.  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
Hearing Date: December 21, 2017 Checked by: AH/lh

On December 21, 2017, a hearing was held in the above captioned matter before Administrative Law Judge Angela Heffner in Kansas City, Missouri. Employee, Milton Wilson, (Employee or Claimant) appeared through counsel, Kathleen A. McNamara. Employer and Insurer (Employer) appeared through counsel, Kelsy Allison. The Second Injury Fund (SIF) appeared through Assistant Attorney General Candace Cole.

One of the issues identified at hearing was whether the Division of Workers' Compensation has jurisdiction to hear this claim. I find that the Missouri Division of Workers' Compensation does not have jurisdiction to hear this claim pursuant to 287.110.

At the hearing, the Court granted leave to Liquid Environmental Solutions to amend their answer by changing their address of 3349 Harvester Road, Kansas City, Missouri to correct their address of 3349 Harvester Road, Kansas City, Kansas. The Court granted leave to Employee to amend his claim by changing the date of injury from March 16, 2011 to January 28, 2011.

Post-hearing briefs were due on January 22, 2018.

**STIPULATIONS**

The parties entered into the following stipulations:

1. Liquid Environmental Solutions was an employer on January 28, 2011.
2. Milton Wilson was a Liquid Environmental employee on January 28, 2011.
3. Employer's liability was fully insured by New Hampshire Insurance Co.
4. Employee notified the Employer of the injury as required by law.
5. Employee's claim was filed within the time allowed by law.
6. Employer paid employee \$6,072.80 in temporary total disability benefits.
7. Employer provided employee medical care costing \$25,338.43.
8. Employee's average weekly wage is \$887.69.
9. Employee's temporary total disability compensation rate is \$591.82 and permanent partial disability compensation rate is \$418.58.
10. If the Court finds this case compensable, there is an underpayment of temporary total disability benefits in the amount of \$520.07.

### **ISSUES**

The issues to be resolved by this hearing include:

1. Whether the Employer is subject to the laws of Missouri under Section 287.110.
2. Whether the Employee sustained an occupational disease arising out of and in the course and scope of his employment.
3. Whether the employee suffered any disability and, if so, the nature and extent of the Employee's disability.
4. Whether the Second Injury Fund is liable to employee for any disability compensation.

### **EXHIBITS**

The Employee offered the following exhibits into evidence which were admitted:

Exhibit A: Transcript of Employee's Evidentiary Deposition taken July 20, 2017  
Exhibit B: Medical Records of Employee  
Exhibit C: Dr. Poppa's March 11, 2016 Rating Report

The Employer offered the following exhibits into evidence which were admitted:

Exhibit 1: Dr. Guinn's August 1, 2014 Rating Report  
Exhibit 2: Dr. Lingenfelter's March 7, 2012 Office Note  
Exhibit 3: Dr. Lingenfelter's March 8, 2012 Causation Opinion  
Exhibit 4: Medical Benefits Paid  
Exhibit 5: Transcript of Employee's April 27, 2011 discovery deposition

### **FINDINGS OF FACT**

On January 28, 2011, while in the employ of Liquid Environmental Solutions Employee sustained a traumatic injury in Bonner Springs, Kansas. Employee subsequently developed bilateral upper extremity complaints.

On March 16, 2011, Employee underwent an EMG of the bilateral upper extremities that revealed mild early bilateral carpal tunnel syndrome and mild bilateral cubital tunnel syndrome. Employee was later seen by Dr. Lingenfelter on May 12, 2011. Dr. Lingenfelter did not feel that the carpal or cubital tunnel syndromes were related to the employee's January 28, 2011 traumatic injury.

On November 3, 2011, Employee obtained a report from Dr. Michael Poppa. Dr. Poppa evaluated the employee and agreed that the January 28, 2011 work injury did not cause the employee's upper extremity complaints. However, he concluded:

“...as a result of continual and repetitive use of his hands and arms at work performing his job duties, he did develop and aggravate his pre-existing bilateral elbow cubital tunnel syndromes and did develop bilateral carpal tunnel syndromes as a result of his employment at Liquid Environmental Services.”

Employee was subsequently seen by Dr. Lingenfelter on March 8, 2012. He stated:

“I strongly disagree with the notion that the ulnar neuritis and carpal tunnel syndrome was caused by any trauma. In asking him specifically about his mechanisms, he reports that his arms were free out in front of him. He did not land on his hand or elbow. I have also been made aware that there may be some claim regarding repetitiveness. And based on how this job is described to me, I see no evidence to relate that type of work to the development of carpal tunnel and ulnar neuritis. Quite frankly, he reports to me, as of yesterday’s visit, that the numbness and tingling did not start until after this fall. So, I am not quite sure why he is trying to claim repetitiveness and change his story, stating that it now happened as a result of the fall.”

Dr. Guinn initially evaluated employee on April 17, 2012. Dr. Guinn felt that in considering the employee’s medical history, “the neuropathies most likely pre-existed the falls.” However, he recommended a repeat EMG, as it would be helpful in determining causation. Employee underwent a repeat EMG on May 16, 2012. Results were essentially unchanged. On May 22, 2012, Dr. Guinn stated:

“In the event the patient’s nerve conduction study worsened from this last study given that the patient had not worked since that time, it would be assumed that the patient’s home activities were the prevailing factor in the causation. If the study had shown improvement, but still abnormal, then the assumption would be that his home activity was not a significant contributing factor. In this case, where the patient’s nerve study is essentially unchanged, it tends to suggest that at least some of his home activities are contributing to the problem since the condition is persisting, but with it not worsening it also suggests that there may be more of a chronic compressive factor to this.”

Employee was seen by Dr. Guinn approximately one year later on June 13, 2013. Dr. Guinn recommended another repeat EMG of the bilateral upper extremities. Employee underwent a third EMG on July 30, 2013, which revealed the same findings as prior EMGs. Dr. Guinn subsequently recommended surgical intervention. On February 12, 2013, Employee underwent right carpal and cubital tunnel releases. On March 26, 2014, Employee underwent left carpal and cubital tunnel releases. On May 1, 2014, Employee was released to full-duty work.

Employee failed to appear for his final appointment with Dr. Guinn due to his incarceration and indictment by a federal grand jury for transportation of a minor across state lines for prostitution. However, Dr. Guinn issued a rating report on August 1, 2014 finding 4% permanent partial disability on the left and right upper extremities.

Employee is currently incarcerated serving a 120-month sentence. Approximately four years remain on the employee’s sentence. While incarcerated, the employee’s attorney spoke with

the employee via telephone about his ongoing complaints. Employee's attorney then sent her notes about the employee's complaints and medical records to Dr. Poppa. On March 11, 2016, Dr. Poppa issued a rating report finding 25% permanent partial disability at the right wrist, 20% permanent partial disability at the right elbow; 25% permanent partial disability at the left wrist, 20% permanent partial disability at the left elbow.

Dr. Poppa also opined as to the injuries and medical conditions Employee had prior to the January 28, 2011 primary injury. He concludes that Employee, "...is probably or more than unlikely unable to access the open labor market in any capacity. Given Mr. Wilson's age, lack of transferable skills, restrictions, loss of employment and lack of education, it appears he may be permanently and totally disabled from a worker's compensation standpoint."

### **RULINGS OF LAW**

#### **A. Burden of Proof**

In a workers' compensation claim, the Employee bears the burden of proof to show that his injury was compensable. *Johme v. St. John's Mercy Healthcare*, 366 S.W.2d 504 (Mo. Banc 2012) (citing *Sanderson v. Producers Comm'n Ass'n*, 360 Mo 571, 229 S.W.2d 563, 566 (Mo. 1950)). To meet this burden, Employee must prove that each factual proposition upon which his claim rests is more likely to be true than not true. R.S.Mo § 287.808.

#### **B. Jurisdiction**

Pursuant to 287.110.2, jurisdiction is proper in Missouri if (1) the injury occurred in the state of Missouri, (2) the contract for employment was made in Missouri, or (3) the employee's employment was principally localized in Missouri within the 13 weeks preceding the work injury. Employee must meet one of the aforementioned requirements in order to claim Missouri jurisdiction.

Employee failed to present any evidence regarding employment contract formation. As such, in the case at hand, Missouri jurisdiction is dependent upon whether the employee's employment was "principally localized" in Missouri the 13 weeks preceding the work injury. The Missouri Workers' Compensation Act does not define "principally localized." Additionally, neither the Supreme Court nor the Court of Appeals has established any guidance on the issue.

Black's Law Dictionary defines principal, as "chief; leading; most important or considerable; primary; original." Employee's testimony is the only evidence available to establish where his employment was principally localized the 13 weeks preceding the work injury.

Q. Were you working mostly in town or mostly out of town?

A. Just the last little bit I was working in town because the other driver had fell and hurt his shoulder and he was off with surgery. So was running his truck trying to keep up with his stops too. I was trying to do two men's jobs with one employee.

Q. When you say, "the last little bit," what do you mean?

A. Well, Adam fell sometime at the end of December hurt his shoulder, and he's been off since the last of December. Had shoulder surgery.

Q. So you're saying, I'm just trying to focus you, so you were saying at the end of December this guy fell, so from between December and January, you haven't returned to work since the end of January, correct? (Ex. 5,p.60)

Employee's testimony continues to discuss where he was working toward the end of his employment with Employer.

Q. So towards the end, you're not really sure when, you think you were working mostly in Missouri?

A. Well, you got the Kansas City/metro area, you know, you'd be in Missouri, you'd be in Kansas, back and forth, you know. You might be up here at Liberty, then you might run over to Overland Park, Lenexa, you know. It was just kind of back and forth, back and forth. And it just depends on what stops they gave you. You might do two stops in Kansas, you might do three stops in Missouri that day. (Ex. 5, p.61-2)

Employee testified that he picked up his truck in Kansas and reported to work in Kansas each day. (Ex. 5, p. 52) Employer was initially located in Lenexa, Kansas. However, approximately one year before the alleged injury, Employer moved to 3349 Harvester Rd. Kansas City, Kansas 66115. (*Id.* at 53). At all relevant times, Employer was a Kansas employer operating in Kansas. There is no evidence that the employee worked from a Missouri location. Employee submitted paperwork in Kansas. He received his job assignments at the Kansas office. (*Id.* at 54).

Q: Then at the end of the day did you have to unload all the grease?

A: Yes. Sometimes you unload a couple times a day, sometimes just once.

Q: Where did you do this at?

A: If I was working in town, I unloaded at Kaw Point (Kansas). Sometimes I'd unload in Topeka. Sometimes I used to unload in Wichita, Kansas, and other times I unloaded in Springfield, Missouri. If I was working down in Arkansas and Southern Missouri I would go to Springfield, Missouri to unload. (*Id.* at 56-58).

Q: Did you work mostly in Kansas?

A: Mostly Missouri and Arkansas. We did a lot of work in Kansas. We lost the contract in Kansas for the Wal-Marts and Sam's Clubs. Missouri, Arkansas. I went up to Omaha once in a while, Nebraska" (*Id.* at 59)

Employee testified he performed most of his work in Missouri. (Ex. 1, p. 7). However, employee's testimony in his April 2011 deposition regarding the details of his work contradicts this statement and establishes he did not spend a substantial part of his working time in Missouri

Issued by DIVISION OF WORKERS' COMPENSATION

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he made five years later in his July 2017 deposition. Employee's testimony establishes he worked in several jurisdictions.

Employee bears the burden of proving his employment was "principally localized" in Missouri. There can only be one "principal" employment location. Employee failed to prove his employment was "principally localized" in Missouri. In the case at hand, Employee's testimony is insufficient to establish Missouri jurisdiction. Accordingly, I find that the Missouri Division of Workers' Compensation does not have jurisdiction to hear this matter.

Based on the finding of fact and rulings of law discussed above, I find I lack jurisdiction to hear this matter.

I certify that on March 14, 2018,  
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 MP

  
Angela Heffner  
Administrative Law Judge  
Division of Workers' Compensation

