

IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE
WESTERN DIVISION

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LINDA K. BOYLAND,

Claimant

v.

Claim Number T20111617
REGULAR DOCKET

STATE OF TENNESSEE,

Defendant

JUDGMENT

THIS MATTER CAME TO BE HEARD on December 3, 2013, before Nancy C. Miller-Herron, Commissioner of Claims for the Western Grand Division of the State of Tennessee. This claim arises from a motorist assist by HELP operators Eric Hill and Carl Walker for the Tennessee Department of Transportation, hereinafter referred to as TDOT, when Claimant's car overheated on eastbound Interstate 240 near the Poplar Avenue exit. This claim is brought pursuant to Tenn. Code Ann. §9-8-307(a)(1)(A), which involves "[t]he negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. . ."

I.

FACT TESTIMONY

Linda K. Boyland, age 53, testified first on her own behalf. Boyland, who did not graduate from high school, testified that she is employed as a forklift operator by the Carrier Corporation; she has been with Carrier for about sixteen years. (Tr., p. 16, lines 7-24) Boyland currently makes around \$18.46 per hour. (Tr., p. 17, lines 1-3)¹

Boyland testified that on August 10, 2010, she was driving a gray 1999 Silverado. (Tr., p. 17, lines 9-13) She identified two photographs of the truck which she sold in late 2011. (Tr., p. 18, line 16- p. 19, line 3; Tr. Ex. 1)

Boyland testified that the day of the incident that is the subject of this claim, she was headed to her daughter's house. (Tr., p. 20, lines 6-8) She stated that when she got off of the Bill Morris Parkway and onto Interstate 240, her air conditioner shut off and the red hot light on her truck lit up. (Tr., p. 21, lines 10-14) Boyland said she pulled over to the right side of the road, cut off the car and started to call her daughter. (Tr., p. 22, lines 1-15)

Boyland estimated she was probably at the side of the road about two minutes before the TDOT Help truck arrived. (Tr., p. 23, lines 7-9) She

¹ The parties stipulated at the trial of this cause that Claimant had lost wages in the amount of \$11,192.72 as a result of her injuries.

said there were two people in the truck, but one person got out of the truck to assist her. She said the Help operator Eric Hill came to the driver's side window. (Tr., p. 23, lines 14-22) Boyland said she was just then getting out of her truck.

Linda Boyland testified that she told him her truck was running hot and he had her pull the hood. (Tr., p. 24, lines 5-6) She said Mr. Hill, was looking under the truck. Boyland then described what she said happened next:

And I was standing in front of the truck. So he walked on the right side of the truck, which is the passenger's side.

And the next thing I knew, I was on the ground. He had pulled the radiator thing with no warning or anything, 'cause I was, like—my hand was on the truck. (Tr., p. 24, lines 9-15)

Ms. Boyland estimated that he tried to remove the radiator cap no more than five minutes after the hood was opened. (Tr., p. 24, line 22- p. 25, line 1) When asked what made her think her car was overheating, Boyland said that water was boiling "in the white thing." (Tr., p. 25, lines 5-6)

Boyland identified two photographs as accurately depicting the way the radiator looked on the day in question. (Tr., p. 26, lines 1-3; Tr. Ex. 2) Boyland then read the writing depicted on the top of the radiator cap:

“Caution. You can be burned. Never open hot. Always open slowly.” (Tr., p. 27, lines 2-3; Tr. Ex. 2)

Ms. Boyland was asked again whether her hand was on the truck when Hill unscrewed the radiator cap. Boyland replied, “Yes. He did it so fast, I didn’t even know he was doing it.” (Tr., p. 27, lines 10-11) She further stated Hill never asked her to stand back and never checked her temperature gauge. (Tr., p. 27, lines 12-17)

Boyland stated that she read Hill’s written statement and that there were a number of things she disagreed with. (Tr., p. 28, lines 8-10) First, she noted the incident did not happen on August 12, 2010. (Tr., p. 28, lines 14-17) Next, she said she disagreed with the assertion that her truck was running when he arrived. (Tr., p. 28, lines 18-21) Next, she stated that he did not check her temperature gauge or advise her to turn the engine off. (Tr., p. 28, line 22- p. 29, line 3) Boyland further stated he did not tell her he was “going to relieve the pressure on the cap to check the water.” (Tr. p. 29, lines 5-8) Boyland also stated that the part of the statement indicating she was standing four or five feet from the truck was inaccurate. (Tr., p. 29, lines 9-13)

Boyland testified that she did not know if the water got on Mr. Hill. (Tr., p. 29, lines 20-21) She stated, "It was just—I jumped. And it was all in my hair." (Tr., p. 29, lines 23-24)

Boyland stated that during the time Eric Hill was working on her truck, HELP operator Carl Walker didn't get out of the HELP truck. (Tr., p. 30, line 22)

Boyland testified that when the water exploded from the radiator, she fell backward. She said she felt the water in her hair and was trying to get out of the way, so she jumped back. (Tr., p. 33, lines 1-10) She explained that she was trying not to hit her head and "threw my arm back. And when I tried to get up, my bone was sticking up (indicating)." (Tr., p. 31, lines 8-10) Boyland testified that it was her left wrist that was injured. (Tr., p. 31, lines 17-20)

When asked what Eric Hill said after her fall, Boyland replied that Hill said, "I'm sorry." (Tr., p. 34, line 23)

Boyland testified that she was in a great deal of pain right after her fall—a ten on a scale of one to ten. (Tr., p. 35, lines 3-6)

Boyland testified the other HELP operator got out of his truck after she fell and one of them called 911. She was transported to St. Francis Hospital in an ambulance. (Tr., p. 35, lines 10-23)

Boyland testified that at St. Francis she was given IV pain medication and had her wrist set. She was instructed to follow up with an orthopedic surgeon the next day. (Tr., p. 36, lines 2-9)

Boyland had surgery on her wrist the day after her fall. She stated she was put under general anesthesia and Dr. Peter Lindy put a device like a pin in her arm. (Tr., p. 36, lines 7-23) Lindy also prescribed physical therapy, which helped Claimant with strength and range of motion. (Tr., p. 39, line 13- p. 40, line 2)

Boyland testified that after the surgery she had to wear a splint and a sling, then a cast, then a splint again. She stated her arm was in a sling for about three months. (Tr., p. 37, lines 4-21) Boyland said she couldn't drive for the first two months after surgery. (Tr., p. 38, lines 3-4) And for the first month, her daughters had to help her with all of her personal grooming. (Tr., p. 38, lines 10-15) She was not able to cook for herself for the first month either. (Tr., p. 39, lines 2-5) She did not go back to work until around November 30. (Tr., p. 38, lines 20-21)

Boyland testified she still has pain in her wrist sometimes when she is lifting at work. (Tr., p. 41, lines 11-12) "And I just put my brace on." (Tr., p. 41, lines 12-13)

When asked whether she takes pain medication, Claimant testified that they were prescribed, but she was not able to take them because they made her sick. (Tr., p. 41, line 21- p. 42, line 4) She stated that she took "Tylenol and Aleve." (Tr., p. 42, line 8)

On cross examination, Claimant stated that she did tell the paramedics and the medical staff at St. Francis that hot liquids had landed on her. (Tr., p. 46, lines 6-14)

When asked to read from the Chief Complaint of First Responder Incident Report, Claimant read: "Accidentally fell from a standing position . . . and injured her wrist, left wrist." (Tr., p. 47, lines 13-18)

When asked to read from the triage report at St. Francis, Claimant read: "Complains of pain in left arm, pain accurate—currently it's 10 out of 10." (Tr. 48, line 24- p. 49, line 2) Claimant acknowledged there was no mention in the triage report of being burned by hot fluids.

On re-direct, Claimant was asked to read another portion of the St. Francis medical record which states: "Present Complaint: Patient stated jumped backwards to avoid being splashed by radiator fluids and fell." (Tr., p. 50, lines 16-19)

Claimant further testified that she didn't tell emergency personnel she was burned. (Tr., p. 50, lines 21-23) She emphasized she only told them

the radiator fluid was in her hair. (Tr., p. 51, lines 2-4) She went on: "Well, they could see it, because my hair was wet." (Tr., p. 51, lines 5-6)

Boyland emphasized that her wrist does not look the same as it did before her fall. (Tr., p. 31, lines 21-24) She said, "it looks like it's still broken." (Tr., p. 32, line 8) She noted that she still has a scar where the surgeon put the pin in. (Tr., p. 32, lines 18-19)

John Riley also testified. He stated that he has worked for the TDOT HELP program for twelve years after retiring as a paramedic supervisor from the Memphis Fire Department. (Tr., p. 54, lines 1-18) Riley stated that he is currently a HELP Supervisor 1. (Tr., p. 54, lines 21-22)

Riley stated that a new TDOT HELP employee is first a probationary person, then an Operator 1. Before they become an Operator 1, they go through first responder training, an Emergency Vehicle Operation Course and around one hundred twenty (120) hours of ride along time. (Tr., p. 55, lines 8-24)

Riley testified that at the time of the incident at the heart of this claim, Eric Hill "was riding along, so he was a probationary person." (Tr., p. 56, lines 6-7) Riley stated that as a probationary person, Hill had to have someone supervising him. (Tr., p. 56, lines 13-15) Riley agreed that part

of the job of the supervisor is to make sure the probationary person does things properly. (Tr., p. 58, lines 18-23)

When asked who was riding along with Eric Hill on August 10, 2010, Riley replied, "Carl Walker, I'm told." (Tr., p. 57, lines 8) Riley said at that time Walker was an Operator 2. (Tr., p. 57, line 11)

Riley agreed that TDOT doesn't have a particular training session on overheated radiators and that training about radiator problems generally is imparted during on-the-job training. (Tr., p. 57, line19- p. 58, line 7)

When asked whether Carl Walker helped Eric Hill with the problem with Boyland's radiator, Riley said he didn't know. (Tr., p. 58, line 24- p. 59, line 3) When asked whether he would expect a trainer to respond to an overheating car with a probationary employee, Riley replied that he would "at some point, now." (Tr., p. 59, line 9)

When asked whether he would agree that one of the risks of opening a hot radiator is that it would unleash and explode its contents, Riley replied, "Yes, sir." (Tr., p. 59, line 16)

After Riley was asked to look at the warning on Claimant's radiator cap (Ex. 2), he was asked whether he had seen similar warnings on other radiator caps. He replied, "Yes, sir." (Tr., p. 60, lines19-21)

When asked whether part of the job of a TDOT HELP person is “to help people protect them from themselves,” (Tr., p. 61, lines 7-8) Riley again replied, “Yes, sir.” (Tr., p. 61, line 9) Riley also agreed that “if someone removes a radiator cap and hot water escapes and hits the car owner, that the car was too close.” (Tr., p. 61, line 20- p. 62, line1)

Riley also acknowledged that although they don’t train probationary people specifically about hot radiators, that you shouldn’t open a hot radiator cap is something they should pick up from doing the job. (Tr., p. 62, lines 6-17)

Riley agreed that a probationary employee can always ask for help from the person training them. In fact, he stated, “Oh, yes sir. Of course, sir.” (Tr., p. 62, line 23- p. 63, line1)

On cross examination, Riley testified that it is common during the ride-along process for the Operator 1 to take the lead in the motorist assist. (Tr., p. 64, lines 11-14)

Carl Walker, a HELP Operator 2, also testified in this cause. Walker testified that he was Eric Hill’s trainer on August 10, 2010. (Tr., p. 70, lines 1-6) Walker agreed that as Hill’s trainer, he was there to make sure Hill didn’t mess up. (Tr., p. 70, lines 7-10)

When asked whether he got out of the truck before Linda Boyland was injured, he said he got out “[w]hen we first pulled up.” (Tr., p. 70, line 17) He explained, “I went to see what was going on.” (Tr., p. 70, line 22)

Walker was then asked about his testimony in a pretrial deposition.

Q. “And when you got on the scene, did you know what the problem was or did you let Mr. Hill figure that out? . . .

A. “I let Mr. Hill figure it out—that out.” (Tr., p. 72, lines 9-16)

Walker was then referred to the following testimony on page 6 of his deposition:

Q. Okay. And eventually, were you made aware of the fact that the car was overheating? What was your answer?

A. (As read): Yes.

Q. (As read): Did you know that prior to this incident happening? What was your answer?

A. No. (Tr., p. 73, lines 6-14)

Walker then admitted that he did not know what the problem was with Boyland’s car prior to her injury and that he had sent Hill out to figure out what the problem was. (Tr., p. 73, lines 15-21) He further acknowledged that he was in the truck when Hill attempted to open the cap on the radiator. (Tr., p. 74, lines 1-3)

Walker acknowledged that he had not given Hill any warnings about how to deal with overheated radiators and that people learn out in the field. (Tr., p. 74, lines 8-16)

After Walker was asked to read the warning on the radiator cap, the following exchange took place:

Q. Do you know if Eric Hill was sort of disregarding that warning in opening that cap?

A. I assume he did.

Q. Okay. When you saw Ms. Boyland, was her hair wet at all?

A. I can't remember. (Tr., p. 76, lines 2-7)

Walker testified that he saw Boyland holding her wrist and he "got some ice and put on her wrist." (Tr., p. 76, line 16)

Walker said prior to Hill coming back and asking him to get help for Boyland, he had not asked for any other help. (Tr., p. 76, line 21- p. 77, line 1)

On cross examination, Walker testified that at some point, an Operator 2 lets the Operator 1 take the lead in motorist assist situations. (Tr., p. 80, lines 1-4)

Walker testified that when he got out of the truck, Boyland was "on the side of the truck on the ground." (Tr., p. 81, lines 15-16) When asked

which side, he said he believed she was on the right or passenger's side. (Tr., p. 81, lines 15-20)

Eric Hill also testified in this cause. Hill testified that when you start with TDOT, when you are in training, you have someone ride along with you. (Tr., p. 90, lines 6-12) He acknowledged that there is no classroom discussion on how to deal with an overheated radiator. (Tr., p. 90, lines 19-22)

Hill acknowledged that the date on his incident report, August 12, 2010, was inaccurate. (Tr., p. 95, lines 15-19; Tr. Ex. 4)

Hill stated that he's not sure, but he thinks Boyland's car was running when they arrived on the scene. He stated he told her to turn it off. (Tr., p. 97, lines 3-11)

Hill stated that Boyland's car was overheating. It had "a hissing (sic), boiling sounds, like, light smoke coming from the radiator cap." (Tr., p. 97, lines 18-20)

Hill agreed that Walker did not get out of the truck to assess the problem with Boyland's truck. (Tr., p. 97, line 21- p. 98, line 3)

Hill examined the close up of the radiator cap in Ex. 2 and read: "Caution. You can be burned. Never open hot. Always open slowly." (Tr., p. 100, lines 11-12)

When asked whether he opened the cap with Boyland nearby, Hill responded, "I took pressure off of it, but I didn't open it all the way." (Tr., p. 100, lines 18-19) He conceded that when he relieved the pressure, it exploded. (Tr., p. 100, lines 20-22)

Hill further conceded that the contents were spewing out on him and on the hood. He said he didn't recall if they hit Linda Boyland. (Tr., p. 101, lines 8-17)

When asked whether he had warned Ms. Boyland, the following exchange took place:

A. I advised her what I was doing and to step back.

Q. Okay. Did she heed your warning?

A. Yes sir. Four to five feet in front of the vehicle. (Tr., p. 102, lines 2-6)

Hill testified that he had on protective gloves when he loosened the cap, but he did not have on goggles. He said hot water got on him. (Tr., p. 102, lines 16-24)

He agreed that he did not at any time ask Carl Walker what to do and that Walker stayed in the HELP truck until he was notified that Boyland was injured. (Tr., p. 103, lines 4-12)

Hill testified that Boyland was standing about two feet from her truck when he advised her to step back farther. (Tr., p. 103, lines 22-24)

When asked whether Boyland appeared to be in pain after she fell, Hill responded, "Yes, sir." (Tr., p. 104, lines 17-19) He said he didn't recall if she was crying. (Tr., p. 104, line 21)

When asked whether he told Ms. Boyland he was sorry about what happened, Hill replied, "Uh, no sir. I don't recall at the time. I don't think I did." (Tr, p. 106, lines 2-3)

When asked whether he knew when he loosened the cap there was a risk of it exploding, Hill responded, "No, sir." (Tr., p. 106, line 21- p. 107, line 1) He then acknowledged that in his pre-trial deposition, when asked if he knew there was a risk it could exploded, he testified as follows: "Yes sir. It could take it all the way off." (Tr., p. 107, line 20- p. 108, line 5)

On cross-examination, Hill testified that at the time of the incident with Boyland, he had already encountered 60-70 overheating radiators and had never had a cap shoot off when he tried to relieve the pressure. (Tr., p. 108, line 24- p. 109, line 6)

Hill testified that he checked on Boyland after she fell, he did not notice if her hair was wet, but she did not tell him fluids had gotten on her and he did not notice any. (Tr., p. 110, lines 3-9)

On redirect, Hill testified that because he knew there was a risk of explosion, he knew there was a risk of people being injured. (Tr., p. 114, lines 1-4) He also stated that he agreed Boyland did nothing wrong to cause her injury. (Tr., p. 114, lines 5-8)

II.

EXPERT TESTIMONY OF PETER LINDY, M.D.

Peter Lindy, M.D., testified by deposition on October 22, 2013. (Tr. Ex. 5) Dr. Lindy, who is board eligible but not board certified, practices with the East Memphis Orthopedic Group in Memphis, TN. (Tr. Ex. 5, p. 7, lines 10-15) Dr. Lindy testified that he first treated Linda Boyland on August 12, 2010 for a distal radius fracture to her left wrist. (Tr., Ex. 5, p. 8, lines 3-9; p. 9, lines 21-24) Lindy testified that Boyland had previously been treated in the emergency room at St. Francis, then followed up with him. (Tr. Ex. 5, p. 8, line 16- p. 9, line 1)

Dr. Lindy testified that after reviewing Boyland's x-rays, he recommended surgery, a "closed reduction and K-wire fixation of her left wrist." (Tr. Ex. 5, p. 11, line 1) He stated this procedure involves putting the patient under general anesthesia and placing a K-wire or pin through the skin to "maintain the reduced position and stabilize the fracture, the fracture pieces while they went on to heal." (Tr. Ex. 5, p.11, lines 12-14)

Lindy stated the pin was needed for about six weeks “to hold the fracture in place.” (Tr. Ex. 5, p. 11, lines 21-22)

Dr. Lindy testified that he later removed the pin, but acknowledged it was visible while it was in place. (Tr. Ex. 5, p. 12, lines 20-23) He stated that he “left it sticking outside of her skin, so that it could be easily removed at a later point in time.” (Tr. Ex. 5, p. 13, lines 13-15) Lindy removed the pin on October 4, 2010. (Tr. Ex. 5, p. 13, line 20)

Dr. Lindy testified that Boyland was in a splint from August 10, 2010 until September 2, 2010, when he “placed her in a long arm cast.” (Tr. Ex. 5, p.14, lines 12-13) Boyland was removed from the cast on October 4, 2010 and put in a forearm brace. (Tr. Ex. 5, p. 14, lines 21-23) He described the forearm brace as “an off the shelf wrist brace.” (Tr. Ex. 5, p. 15, line 1) He said she continued with the brace, which could be removed for exercise and wound care, through the rest of her treatment. (Tr. Ex. 5, p.15, lines 2-6)

Dr. Lindy testified that once Boyland was removed from the cast, he prescribed physical therapy to “begin range of motion of her hand and her wrist.” (Tr. Ex. 5, p. 16, lines 5-6)

Dr. Lindy also testified that Boyland was off work from August 10, 2010 until November 30, 2010. (Tr. Ex. 5, p. 17, lines 19-23)

Dr. Lindy testified that all of the opinions he gave were within a reasonable degree of medical certainty. (Tr. Ex. 5, p. 18, lines 16-19)

At the start of the trial of this cause, the parties stipulated that Claimant's medical bills, totaling seventeen thousand one hundred fifty dollars and nineteen cents (\$17,150.19) were reasonable and necessary. (Tr., p. 6, lines 1-4)

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner has thoroughly reviewed the record in this case, including the testimony of the witnesses who appeared at the hearing of this cause, the testimony of those whose depositions were introduced for proof, the arguments of counsel and, indeed, the entire record as a whole. After carefully weighing the credibility of each of the witnesses, the Commissioner makes the following findings of fact.

The Claims Commission has jurisdiction over this matter under § 9-8-307(a)(1)(A), Tenn. Code Ann., involving negligent operation or maintenance of a vehicle.

A. Elements of Negligence

Under Tennessee law, a negligence claim requires that plaintiff prove:

- (1) a duty of care owed by the defendant to the plaintiff;
 - (2) conduct by the defendant falling below the standard of care;
 - (3) an injury or loss;
 - (4) causation in fact; and
 - (5) proximate or legal cause.
- Coln v. City of Savannah*, 966 S.W. 2d 34, 37 (Tenn. 1998).

Duty is simply the legal obligation, based on the reasonable person standard, that the State owes a claimant to protect him against unreasonable risks of harm. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995) As stated by the Tennessee Supreme Court in *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347, 365-366 (Tenn. 2008):

A duty arises when the degree of foreseeability of the risk and the gravity of the harm outweigh the burden that would be imposed if the defendant were required to engage in an alternative course of conduct that would have prevented the harm. *West v. E. Tenn. Pioneer Oil Co.*, 172 S.W.3d, 551,551; *Burroughs v. Magee*, 118 S.W.3d at 329; *McCall v. Wilder*, 913 S.W.2d at 153. The foreseeability and gravity of the harm are linked insofar as the degree of foreseeability needed to establish a duty is inversely proportional to the magnitude of the foreseeable harm. *Turner v. Jordan*, 957 S.W.2d at 818. The greater the risk of harm, the less degree of foreseeability is required. *Pittman v. Upjohn Co.*, 890 S.W.2d 425, 433 (Tenn. 1994).

B. Alleged Negligence Under § 9-8-307(a)(1)(A)

In the instant case, John Riley, TDOT Help Program Supervisor I, testified that one of the risks of opening a hot radiator is that it would unleash and explode its contents. (Tr., p. 59, line 16) Riley also testified that he had seen warnings on radiator caps, like the one depicted in the photograph of Claimant's radiator cap, which says: "Caution. You can be burned. Never open hot. Always open slowly."

When asked whether he would expect a trainer to respond to an overheating car with a probationary employee, Riley replied that he would "at some point, now." (Tr., p. 59, line 9)

Eric Hill, the probationary employee who unscrewed the radiator cap, at first denied he knew when he loosened the cap there was a risk of it exploding. (Tr., p. 106, line 21- p. 107, line 1) He then acknowledged that in his pre-trial deposition, when asked if he knew there was a risk it could explode, he testified as follows: "Yes sir. It could take it all the way off." (Tr., p. 107, line 20- p. 108, line 5)

Using the "magnitude of foreseeable risk" discussed above, however, it would seem that loosening a hot radiator cap poses a high magnitude of risk. The Commission **FINDS** that the risk of the very kind of explosion of hot liquids which happened here was foreseeable.

Specifically, the Commission **FINDS** that state employee Eric Hill was negligent in failing to heed the warning on the radiator cap and in failing to warn Claimant that he was about to loosen the radiator cap so that she could move to a safe location. The Commission would note that, in part because of the discrepancies between Hill's trial testimony and his deposition testimony, the Commissioner found the Claimant's trial testimony on the events leading up to her injury to be more credible than Hill's.

Moreover, the harm that resulted in this case could have been easily avoided if Hill had either warned Claimant to move back far enough to avoid the danger of spewing hot liquid or if he had waited for the liquid to cool down before loosening the top on the radiator.

The Commission also would note that although no formal training was offered to HELP operators on dealing with overheating vehicles, Hill was "riding along" with a more senior HELP operator named Carl Walker, who was charged with helping train him. Walker agreed that as Hill's trainer, he was there to make sure Hill didn't mess up. (Tr., p. 70, lines 7-10) It is undisputed that Walker did not exit the HELP vehicle until after Ms. Boyland was injured.

The Commission **FINDS** that the Eric Hill's failure to heed the warning on the radiator cap and/or to warn Claimant that he was about to loosen the radiator cap amounted to a breach of the State's duty to Claimant.

The Commission further **FINDS** that the decision of Carl Walker not to exit the HELP truck and assist Eric Hill in dealing with Claimant's overheated vehicle was a breach of duty to Claimant and a violation of Tenn. Code Ann. § 9-8-307 (a)(1) (A).

The Commission further **FINDS** that the aforementioned breaches of duty were a proximate cause of Claimant's injuries.

C. Comparative Fault

Because the Commission found Claimant's testimony that Eric Hill did not warn her that he was about to loosen the cap on her radiator to be credible, the Commission **FINDS** that Claimant's own negligence was not a proximate cause of her injuries. Claimant understandably jumped backwards in response to the unexpected explosive spewing of hot liquid from her radiator.

The Commission **FINDS** that one hundred percent (100%) of the fault reasonably can be apportioned to the State of Tennessee.

D. Damages

Claimant suffered over three months of lost wages as a result of her injuries. She also endured significant pain and suffering, underwent surgery and physical therapy, was unable to tend to her own personal hygiene needs for a month, unable to drive for two months, and had to wear a sling and various splints or casts for a significant period of time. Claimant's wrist is still scarred and she continues to have occasional pain at work. The parties stipulated to Claimant's reasonable and necessary medical expenses of seventeen thousand one hundred fifty dollars and nineteen cents (\$17,150.19) and lost wages of eleven thousand one hundred ninety-two dollars and seventy-two cents (\$11,192.72).

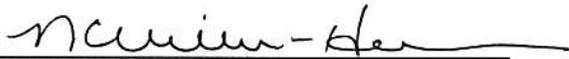
Based on Claimant's medical expenses, lost wages, pain and suffering, loss of enjoyment of life, and all other damages, the Commission **FINDS** Claimant, Linda Boyland, sustained damages in the amount of seventy-five thousand dollars (\$75,000.00).

IV.

CONCLUSION

It is **ORDERED, ADJUDGED** and **DECREED** that Claimant, Linda Boyland, is awarded a judgment against Defendant, State of Tennessee, in the amount of seventy-five thousand dollars (\$75,000.00).

Costs of this cause are taxed pursuant to TCA §9-8-307 (d).


**NANCY C. MILLER-HERRON,
COMMISSIONER**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically transmitted, hand-delivered or mailed by first class U.S. mail, postage prepaid, to:

Mr. David A. McLaughlin, Esq.
One Commerce Square, 26th Floor
Memphis, TN 38103

Ms. Dawn M. Jordan, Esq.
Ms. Amanda S. Jordan, Esq.
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

on this the 18 day of February, 2014


**PAULA SWANSON, CLERK
TENNESSEE CLAIMS COMMISSION**