

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

Injury No.: 03-022351

Employee: Gary L. Adamson
Employer: DTC Calhoun Trucking, Inc.
Insurer: Westport Insurance Corporation
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: February 17, 2003

Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 3, 2005. The award and decision of Associate Administrative Law Judge L. Timothy Wilson, issued August 3, 2005, 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 2nd day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Gary L. Adamson

Injury No. 03-022351

Dependents: N/A
Employer: DTC Calhoun Trucking, Inc.
Additional Party: Second Injury Fund
Insurer: Westport Insurance Corporation
Hearing Date: May 23, 2005

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri
Checked by: LTW/mp

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: February 17, 2003
5. State location where accident occurred or occupational disease was contracted: Greene County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
yes
7. Did employer receive proper notice? yes
8. Did accident or occupational disease arise out of and in the course of the employment? yes
9. Was claim for compensation filed within time required by Law? yes
10. Was employer insured by above insurer? yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant was attempting to put a tarp over the load of sand on his trailer; while doing this, the tarp tore, causing him to fall to the ground.
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: low back and femoral hernia
14. Nature and extent of any permanent disability: 12.5 percent permanent partial disability body as a whole referable to the low back and femoral hernia
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$595.30
19. Weekly compensation rate: \$396.87/340.12
20. Method wages computation: award

COMPENSATION PAYABLE

21. Amount of compensation payable:

The claim for future medical care is denied.

The employee is entitled to any additional temporary total disability compensation in the amount of \$39.40.

50 weeks of permanent partial disability from Employer at \$340.12 \$17,006.00
The claim for permanent total disability benefits from Employer is denied.

The employee's request for a 15 percent penalty increase is denied.

22. Second Injury Fund liability: No

The claim for compensation as filed against the Second Injury Fund is denied.

TOTAL: \$17,045.40

23. Future requirements awarded: none

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Paul Reichert

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Gary L. Adamson

Injury No: 03-022351

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A

Employer: DTC Calhoun Trucking, Inc.

Additional Party Second Injury Fund

Insurer: Westport Insurance Corporation

Checked by: LTW/mp

The above-referenced workers' compensation claim was heard before the undersigned Associate Administrative Law Judge on May 23, 2005. The record was left open for the submission of additional evidence and/or briefs, resulting in the record being completed and submitted to the undersigned on or about July 13, 2005.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about February 17, 2003, DTC Calhoun Trucking, Inc., was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Westport Insurance Corporation.
- (2) On the alleged injury date of February 17, 2003, Gary Adamson was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about February 17, 2003, the employee sustained an accident which arose out of and in the course and scope of employment.
- (4) The contract of employment between the aforementioned employee and employer occurred in Greene County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (5) The employee notified the employer of his injury as required by Section, 287.420, RSMo.
- (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (7) Temporary total disability compensation has been provided to the employee in the amount of \$7,728.50. (The employee asserts that the payment of temporary total disability compensation was for the period of March 14, 2003, through July 28, 2003, with the employer and insurer being unable to verify the period of disability.)
- (8) The employer and insurer have provided medical treatment to the employee, having paid \$17,583.48 in medical expenses.

The sole issues to be resolved by hearing include:

- (1) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve him of the effects of the injuries?
- (2) What is the applicable compensation rate?
- (3) Whether the employee is entitled to temporary disability benefits? (The issue is presented in the context of the parties being unable to stipulate to a compensation rate, thus presenting the question of whether the payment of temporary total disability compensation for the period of March 14, 2003, through July 28, 2003, is an underpayment or overpayment of temporary disability compensation.)
- (4) Whether the employee sustained any permanent disability as a consequence of the alleged accident; and, if so, the nature and extent of the disability?
- (5) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?
- (6) Whether the employee is entitled to an increase in benefits in the amount of 15 percent, pursuant to the statutory penalty allowed under Section 287.120.4, RSMo, wherein the employee alleges an employer violation of DOT regulations?

EVIDENCE PRESENTED

The employee testified at the hearing in support of his claim. Also, the employee presented at the hearing of this case

the testimony of three additional witnesses – Matt Schudy, Wilbur Swearingin, and Norbert Belz, M.D. In addition, the employee offered for admission the following exhibits:

Exhibit A Medical Records (Attachments to Complete Medical Report of Norbert T. Belz, M.D.)
Exhibit B Medical Records (Addendum & Attachments to Complete Medical Report of Norbert T. Belz, M.D.)
Exhibit C Calendar
Exhibit D (Not Offered)
Exhibit E Wage Records
Exhibit F ... Recorded Statement of Gary Adamson (April 7, 2003)
Exhibit G Photograph
Exhibit H CV of Wilbur Swearingin, CRC
Exhibit I Vocational Report of Wilbur Swearingin, CRC
Exhibit J CV of Norbert T. Belz, M.D.
Exhibit K Medical Report of Norbert T. Belz, M.D.
Exhibit L Medical Record Review by Norbert T. Belz, M.D.
Exhibit M Medical Record Review by Norbert T. Belz, M.D.
Exhibit N Medical Record Review by Norbert T. Belz, M.D.
Exhibit O Medical Records Review by Norbert T. Belz, M.D.
Exhibit P Deposition and Medical Records Review by Norbert T. Belz, M.D.
Exhibit Q Deposition of Norbert T. Belz, M.D.
Exhibit R Medical Drawing of Spine
Exhibit S Video Tape
Exhibit T Wage Information (Form W-2 for 2002 – 2002)
Exhibit U Photograph
Exhibit V Photograph
Exhibit W Photograph

The exhibits were received and admitted into evidence, with Exhibit T being received but not admitted into evidence.

The employer and insurer did not present any witnesses at the hearing of this case. The employer and insurer, however, offered for admission the following exhibits:

Exhibit 1 Not Offered (Duplicate of Exhibit S)
Exhibit 2 . Deposition of James L. Jordan, M.D. (with attachments)
Exhibit 3 Deposition of Keith Mainprize, D.C.
Exhibit 4 Deposition of Melvin Eugene Curry, D.O.
Exhibit 5 Medical Records from Robert Sieve
Exhibit 6 DOT Medical Examination Report
Exhibit 7 Daily Logs
Exhibit 8 Compilation of Log Sheets
Exhibit 9 Affidavit of Tammy Calhoun

Exhibits 2, 3, 4, 5, 6, 7, and 8 were received and admitted into evidence at the hearing. Exhibit 9 was received and admitted into evidence subsequent to the hearing.

The Second Injury Fund did not present any witness or offer any evidence at the hearing of this case.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File which include: Notice of Hearing; Letter & Motion to Dismiss Medical Fee Dispute; Application for Payment of Additional Reimbursement of Medical Fees; Release of Lien on Workers' Compensation Benefits (filed by Missouri Family Support Division – February 13, 2004); Notice of Lien on Workers' Compensation Benefits (filed by Missouri Family Support Division – November 6, 2003); Release of Lien on Workers' Compensation Benefits (filed by Missouri Family Support Division – April 16, 2003); Notice of Lien on Workers' Compensation Benefits (filed by Missouri Family Support Division – April 7, 2003); Answer of Second Injury Fund to Second Amended Claim for Compensation (filed October 4, 2004); Answer of Employer & Insurer to Second Amended Claim for Compensation (filed September 30, 2004); Second Amended Claim for Compensation (filed September 13, 2004); Answer of Employer & Insurer to First Amended Claim for Compensation (filed October 8, 2003); First Amended Claim for Compensation (filed September 15, 2003); Original Claim for Compensation (filed September 8, 2003); and Report of Injury.

DISCUSSION

The employee, Gary Adamson, is 64 years of age, having been born on April 30, 1941. Mr. Adamson is single and resides alone in Mansfield, Missouri. He has one dependent daughter, who is approximately seven years of age and lives

with her mother in Mountain Grove, Missouri. Additionally, he is 6 foot 1 inch in height, and weighs approximately 160 pounds. He is not presently working and is on social security disability.

Mr. Adamson attended public schools, graduating from Mansfield High School in 1958. Mr. Adamson, however, did not obtain any higher education, as he lacks having received any formal education or job training, or college credit. Further, Mr. Adamson enjoys no history of military service. However, Mr. Adamson possesses a valid Missouri Commercial Drivers License, Class A.

Also, Mr. Adamson's work history is varied and relates primarily to working as a truck driver. In this type of employment, Mr. Adamson worked as an over-the-road tractor-trailer truck driver, and as a dump truck with trailer driver. Additionally, Mr. Adamson worked for several years as a dispatcher, dispatching trucks carrying parts and paving materials to work sites. Mr. Adamson worked off and on with DTC Calhoun Trucking, Inc., for many years.

In or around 1999, Mr. Adamson secured employment with DTC Calhoun Trucking, Inc., driving a dump truck with a pup trailer dump unit. In this employment Mr. Adamson regularly drove an empty truck and pup trailer to Jefferson City, Missouri, where he would secure a load of sand for both the dump truck and pup trailer, and then return to Springfield, Missouri, to the designated site in Springfield, Missouri, to unload the sand. According to Mr. Adamson, as an employee of DTC Calhoun Trucking, Inc., he worked as a nonunion driver and earned wages based on a percentage of "what the truck grossed." Further, DTC Calhoun Trucking, Inc., did not provide Mr. Adamson with a predetermined work schedule. Rather, Mr. Adamson worked according to the employer's needs, which was determined day by day.

On February 17, 2003, Mr. Adamson sustained an injury while enroute to Springfield, after having picked up a load of sand in Jefferson City, Missouri. Apparently, during his return trip to Springfield, Mr. Adamson received word that DOT officers were out on the highway inspecting trucks. And, in light of Mr. Adamson driving his truck and pup trailer without the benefit of a tarp securing his load, he pulled off the highway and on to the parking lot of a little service station so that he could secure the load with a tarp. (The pup trailer being operated by Mr. Adamson did not have an automatic tarp cover, thus requiring Mr. Adamson to spread the tarp from front to back on the top of the pup trailer. Further, in order to spread the tarp, Mr. Adamson was required to climb on the front of the tongue of the trailer to get the tarp; and, upon getting the tarp loose for spreading across the trailer, Mr. Adamson was required to stand and walk on a welded toehold-type walkway approximately 4 inches wide, situated on the outside of the trailer approximately five feet off of the ground and extending the length of the trailer.) Unfortunately, on this date, while attempting to unroll the 8-foot wide tarp towards the aft of the pup trailer, the tarp tore, causing Mr. Adamson to fall to the ground. Notably, in falling to the ground, Mr. Adamson's buttocks hit the ground with him in a seated position.

Immediately subsequent to suffering this fall, Mr. Adamson arose from the ground on his own accord. However, according to Mr. Adamson, upon impact he experienced low back pain and "a stinging" to his side. Upon getting to his feet, Mr. Adamson continued to tarp his trailer, and then proceeded to Springfield for completion of his scheduled delivery. Upon arriving in Springfield, Mr. Adamson reported the incident to his supervisor, Chet Pearman; but he did not seek and did not receive a referral for medical treatment, believing that he would get better and would not need any medical care.

On the following day, February 18, 2003, Mr. Adamson returned to work and, while driving and being in a seated position, he states he experienced low back pain with pain, numbness, and tingling in both of his lower extremities. Additionally, that evening, Mr. Adamson noted he experienced right groin pain; and, when showering, he observed a marble-size mass in the area of the right groin pain. Notwithstanding, Mr. Adamson stated he continued to work a full shift every day, being in pain and discomfort, but initially did not say anything to his employer about his pain.

Subsequently, in the latter part of February or early part of March, Mr. Adamson received word that, in order to continue with a current DOT license, he would need to undergo and pass a DOT medical examination. Accordingly, on or about March 6, 2003, Mr. Adamson presented to Melvin E. Curry, D.O, who is a family practitioner in Willard, Missouri. Yet, at the time of this examination, Mr. Adamson did not advise or mention to Dr. Curry that he had sustained an injury on February 18, 2003. Nor did Mr. Adamson inform Dr. Curry that he was experiencing back pain in his low back; that he was experiencing pain, numbness, and tingling in his lower extremities; or that he was experiencing pain in the groin. Notably, in performing this DOT examination, Dr. Curry thoroughly examined Mr. Adamson and discussed with him his overall medical condition, including examination and evaluation of his vascular system, genitor-urinary system, extremities, spine, and other musculoskeletal, and neurological condition. And, with each of these concerns, Dr. Curry identified Mr. Adamson to be normal without any problems, including reference to Mr. Adamson not suffering from any hernias and not suffering from any impairment associated with his lower extremities and spine.

According to Mr. Adamson, he was of the belief that he would not be able to work without completing the physical examination provided by Dr. Curry; and he told Dr. Curry what he did because he wanted to work -- he "had to work." Yet, Mr. Adamson states, at the time of the DOT examination, he was experiencing pain and symptoms which were not getting better, but not necessarily worsening. Mr. Adamson continued working in his employment with DTC Calhoun Trucking, Inc., but with pain.

Approximately one week later, on or about March 14, 2003, Mr. Adamson called his employer and informed a supervisor that he needed to see a doctor. The employer informed Mr. Adamson of his need to complete an incident report

and perhaps to see the physician in Willard, Missouri. Mr. Adamson, however, presented to the emergency room of St. John's Hospital on March 14, 2003, which resulted in him undergoing diagnostic studies and receiving a referral to James L. Jordan, M.D.

Thereafter, on or about March 19, 2003, Mr. Adamson presented to Dr. Jordan with the presenting complaints of pain. At the time of this examination, Dr. Jordan diagnosed Mr. Adamson with a femoral hernia and referred him to Dr. Shoults, who subsequently performed corrective surgery. (Dr. Jordan testified that a femoral hernia is situated in the thigh and is not as common as the inguinal hernia.) Later, on or about April 23, 2003, Mr. Adamson underwent a diagnostic study in the nature of an MRI of the lumbar spine which evidenced degenerative disc bulges with annular tears at the levels of L3-L4, L4-L5, and L5-S1. In light of these findings, Dr. Jordan treated Mr. Adamson conservatively, consisting of physical therapy and steroid injections. (The injections were administered by Ben Lampert, M.D.) Apparently, the physical injections did not provide Mr. Adamson with any relief; and the physical therapy provided moderate relief.

In light of continuing complaints of pain and symptomatology, Dr. Jordan referred Mr. Adamson to Dr. McQueary, who is an orthopedic surgeon, for a surgical consultation. Thereafter, on or about June 19, 2003, Mr. Adamson presented to Dr. McQueary who examined Mr. Adamson and, in pertinent part, noted the following:

GENERAL APPEARANCE: Well-developed, well-nourished and normal for stated age.

ORIENTATION: The patient is oriented to time, place and person.

MOOD AND AFFECT: Normal. No evident anxiety or agitation.

SKIN: Normal gait and station. No spasticity.

INSPECTION: No visible scoliosis or spinal deformity. There is no apparent leg-length discrepancy. No notable muscle atrophy or fasciculation.

PALPATION: Mild paravertebral spasm.

RANGE OF MOTION: Moderately restricted to secondary spasm.

STABILITY: Negative tripod sign indicates good spinal stability.

REFLEXES: They are 2+ and symmetric in the knee and ankle. Posterior tibialis reflexes could not be elicited.

STRENGTH: They are 5/5 in all groups bilaterally, including the extensor hallucis longus, ankle dorsiflexors, planar flexors, invertors and evertors, quadriceps, hamstrings and hip flexors.

SENSATION: Intact to light touch.

COORDINATION: Rapid alternating motions normal.

PERIPHERAL VASCULAR EXAM: Good capillary refill and good dorsalis pedis pulses.

TENSION SIGNS: Sitting straight-leg raise negative. Supine straight-leg raise negative. Bowstring test negative, Patrick's test negative.

X-RAYS: MRI scan of the low back done on April 23, 2003, was reviewed and demonstrates no significant disk protrusions. There is no neoplasia or significant neurologic compression. There is disk desiccation and mild narrowing indicating disk degeneration is present at L3-4, L4-5, and L5-S1.

In light of his examination and findings, Dr. McQueary opined that Mr. Adamson sustained a work-related injury in the nature of a sprain, overlying the preexisting three-level disc degeneration. Further, Dr. McQueary opined that Mr. Adamson was not a surgical candidate. Instead, Dr. McQueary identified the only reasonable treatment modalities to be physical therapy and rehabilitation. Additionally, Dr. McQueary advised Mr. Adamson to stop smoking and noted that any long-term treatment would consist of "regular independent exercise, regular cardiovascular exercise and smoking cessation." And, while Dr. McQueary did not provide any indication that Mr. Adamson could not work, he did note that any chance of Mr. Adamson returning to the same line of work would be "quite slim."

Accordingly, in light of the examination and findings of Dr. McQueary, Mr. Adamson continued to treat with Dr.

Jordan. Additionally, Mr. Adamson underwent the additional physical therapy, which continued until he stopped making progress.

On or about July 29, 2003, Mr. Adamson presented to Dr. Jordan with continuing complaints of low back pain radiating into the lower extremity. At the time of this examination, Dr. Jordan records several complaints and history provided to him by Mr. Adamson. The noted complaints are as follows:

Has some good days. Still having a lot of pin in low back and down into leg. Can be up more without needing to lay down.

On a good day he can sit and walk in yard. "The only yard work I do is watering flowers. I sit on the riding lawn mower for 15 minutes. I have to lay down for 1 hour to 1 hour 15 minutes after 4 to 4 ½ hours."

He rides his lawn mower, waters his garden. "He builds bird houses – he sits and stands while doing this. I stand only 10 minutes before I sit for 15 – 20 minutes." "I can drive in the car only 30 minutes without stopping." "I don't do any house work. My son lives with me."

C/O throbbing back pain and numbness down entire left lower extremity. Also, half of right foot is numb. He says the home exercise program has helped to an extent. Sometimes when it hurts the pain is not quite as bad.

He drives to Mansfield. Once he went to Batesville, Arkansas. Stopping every 15-20 minutes. He walks for 10 minutes twice per day usually. Heaviest things he has lifted were a few 5 lb. rocks.

In light of his examination and findings, Dr. Jordan diagnosed Mr. Adamson with chronic back pain associated with the sprain/strain and aggravation of degenerative disk disease, but determined him to be at maximum medical improvement. Additionally, Dr. Jordan discharged Mr. Adamson from his care and released him to return to work with limitations. Rather than identifying specific limitations, Dr. Jordan recommended that Mr. Adamson be provided with a functional capacity evaluation.

Following the examination of July 29, 2003, Dr. Jordan issued a final report. Dr. Jordan noted that Mr. Adamson exhibited a low back that was "still tender over the right gluteal muscle and sacral soft tissue." Dr. Jordan further noted that Mr. Adamson exhibited a negative straight- leg raise and normal deep-tendon reflexes. Further, in considering the nature and extent of Mr. Adamson's disability, Dr. Jordan opined that, relative to the femoral hernia, Mr. Adamson had sustained a permanent disability of 5 percent to the level of the hip or 207-week level. (The medical records note the 5 percent disability to be referable to the 160-week level; but in his deposition Dr. Jordan corrects this error, stating it should be to the hip level^[1], or 1 percent to the body as a whole.) Dr. Jordan further opined that, as a consequence of the work-related injury, Mr. Adamson had sustained a permanent partial disability of 6 percent to the body as a whole referable to the 400-week level. Additionally, Dr. Jordan opined that, prior to this injury, Mr. Adamson presented with a preexisting disability in the amount of 4 percent, attributable to the pre-existing degenerative disc disease in his lumbar spine.

In or around October 2003, Mr. Adamson was involved in a motor-vehicle accident, wherein he was rear-ended while being stopped at a yield sign. This injury caused Mr. Adamson to experience pain in his neck, pain around the left shoulder blade, and pain across the top of the left shoulder. In light of this pain, on or about October 29, 2003, Mr. Adamson presented to Keith Mainprize, D.C., for a chiropractic examination and evaluation. At the time of this examination, Dr. Mainprize took a history and performed certain tests and an examination of Mr. Adamson relative to the cervical and thoracic area of the spine. Notably, Dr. Mainprize did not examine Mr. Adamson relative to the lumbar spine pursuant to Mr. Adamson's direction. Dr. Mainprize indicated that, absent this direction, he would have examined Mr. Adamson's low back to determine whether it needed treatment. However, without such initial examination, Dr. Mainprize could not state whether the low back did or did not need treatment. (Mr. Adamson advised Dr. Mainprize of the prior work injury involving his low back and the matter being in litigation. Addressing this issue, Dr. Mainprize states, "He [Mr. Adamson] stated he had a low- back injury and problems with his low back but he didn't want me to examine it. He didn't want me to treat it.")

In light of his examination and findings, Dr. Mainprize provided Mr. Adamson with follow-up chiropractic care, consisting of 38 treatments. During this period of treatment, in or around November 2003, Dr. Mainprize notes Mr. Adamson went deer hunting. Additionally, Mr. Adamson missed a December appointment, advising Dr. Mainprize that he would be traveling out of town. The follow-up treatment continued until April 5, 2004, when Dr. Mainprize determined that Mr. Adamson had reached maximum medical improvement with active care, although continuing to present with "residual fixation complexes in cervical spine and upper thoracic spine with tightness of muscles in neck and superior medial border of left scapula."

Mr. Adamson testified that eventually he settled this motor-vehicle accident case with the insurer. According to Mr. Adamson, the agreement allowed him to keep his vehicle and receive additional money. Also, the insurer paid him

\$6,400.00 for the chiropractor care and expenses.

At the hearing Mr. Adamson testified that he has good days and bad days, but that he cannot operate at full capacity and experiences chronic pain. Further, according to Mr. Adamson, he experiences a worsening of his condition with cold and rainy weather. Additionally, Mr. Adamson notes that he lays down every day at approximately 11 a.m. because of being in pain. Mr. Adamson further notes that he is not able to remain at a sit/stand position for any 8-hour period without having to recline or lay down, and he is not able to work as a dispatcher because of the pain.

Yet, Mr. Adamson notes that he takes care of his own laundry, cleaning house, etc. Additionally, he does yard work, such as mowing the yard with his riding mower and performing light gardening. The video surveillance of Mr. Adamson, taken on July 26, 2003, evidences Mr. Adamson working in the garden and performing landscaping activities, such as carrying and working with landscape pavers / stones. Additionally, in this video Mr. Adamson is observed bending over while landscaping, including squatting into a position similar to a baseball catcher without any noticeable difficulty. Further, since the injury of 2003, he has gone deer hunting.

Also, at the time of the hearing, Mr. Adamson was not under the care of any doctor. Nor was he aware of any outstanding medical bills for which he might be responsible.

In addition, taking into consideration the undersigned's observations at the hearing, Mr. Adamson attended the hearing well tanned, appearing slender and healthy. And, while he asserts a hearing loss, he was actively engaged in the trial process, taking notes and listening to the testimonies and conversations without any noticeable difficulty.

Prior to the accident of February 17, 2003, Mr. Adamson sustained several injuries and/or medical conditions. These injuries include:

Cervical Spine – In 1992 Mr. Adamson was involved in a motor- vehicle accident, wherein he was rear-ended and suffered a “whiplash.” The injury resulted in Mr. Adamson receiving three months of chiropractic treatment and entering into a settlement with the insurer, with Mr. Adamson receiving a settlement amount of \$12,000. Yet Mr. Adamson states that this injury resolved without him suffering any residual problems.

Lumbar Spine – In May 2001 Mr. Adamson suffered a slip and fall which caused him to experience low back pain and left lower extremity pain. As a consequence of suffering this injury, Mr. Adamson obtained an initial evaluation and treatment by a physician, and then chiropractic treatment. (In the examination performed by Dr. Belz on April 27, 2004, Dr. Belz diagnosed this injury as an “aggravation to low back lumbosacral degenerative joint disease and degenerative disc disease with intermittent and transient left lower extremity radiculopathy.”) At the hearing, on cross-examination, however, Mr. Adamson stated that the problems with his back cleared and that he did not have any ongoing back complaints until suffering the injury on February 17, 2003.

Hearing Loss – Mr. Adamson states that he suffers from hearing loss, but hears better out of one ear than the other ear. In reporting this concern to Dr. Belz, Mr. Adamson noted that he experiences difficulty comprehending and interpreting speech in an environment with background noise. And, at the hearing Mr. Adamson indicated that mostly his hearing loss pertains to background noise; and he does not believe it interfered with his employment.

Also, in discussing these preexisting injuries or medical conditions at the hearing of this case, Mr. Adamson testified that, prior to February 17, 2003, he had no problems doing his job and had no ongoing back complaints. Additionally, before 2003, according to Mr. Adamson, he had no limits on standing and experienced no problem with standing.

Norbert T. Belz, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition and at the hearing on behalf of the employee. Dr. Belz _____ performed an independent medical examination of the employee on or about April 27, 2004. At the time of this examination, Dr. Belz took a history from Mr. Adamson, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Adamson, Dr. Belz opined that, as a consequence of the accident of February 17, 2003, Mr. Adamson sustained several injuries: (1) right femoral hernia – incarcerated, which necessitated surgical repair; (2) left sciatic nerve contusion with paresthesias and pain; and (3) occupational aggravation of prior degenerative joint disease and degenerative disc disease of the lumbosacral spine. Dr. Belz further opined that, as a consequence of these injuries, Mr. Adamson is governed by restrictions and limitations. In identifying these restrictions, Dr. Belz states:

[right femoral hernia – incarcerated]

The individual is not to lift/ push/pull in excess of 30 pounds. Proper body mechanics and biomechanics to be utilized.

[left sciatic nerve contusion with paresthesias and pain]

The individual is not to perform captive-seated work. Standing work is acceptable. A sit/stand workstation is acceptable. The individual is not to drive a truck as a condition of employment – vibration and captive-seated work.

[occupational aggravation of prior degenerative joint disease and degenerative disc disease of the lumbosacral spine]

The individual is not to lift/push/pull in excess of 25 pounds. Proper body mechanics and biomechanics are to be utilized. Sit/stand workstation with symptom limited posture changes. Further, Mr. Adamson states that he is required to recline one hour after performing four hours of sit/stand functioning. Same is biologically and biomechanically plausible. ... the necessity to recline during any eight-hour work shift for one hour is plausible. Likewise plausible is the need for a sit/stand workstation with symptom limited posture changes throughout a work shift.

The individual is not to operate a dump truck. The individual is not to function under Fed. DOT regulations.

In light of the foregoing, Dr. Belz is of the opinion that the accident of February 17, 2003, caused Mr. Adamson to sustain certain permanent partial disability. In rendering an assessment of permanent disability, Dr. Belz opines that, relative to the right femoral hernia – incarcerated, Mr. Adamson sustained a permanent partial disability of 7.5 percent to the body as a whole; relative to the left sciatic nerve contusion with paresthesias and pain, Mr. Adamson sustained a permanent partial disability of 15 percent referable to the left hip at the 201-week level; and, relative to the occupational aggravation of prior degenerative joint disease and degenerative disc disease of the lumbosacral spine, Mr. Adamson sustained a permanent partial disability of 25 percent to the body as a whole. Also, Dr. Belz opined that, as a consequence of the accident of February 17, 2003, and relative to the latter two injuries, Mr. Adamson is in need of future medical care relative to certain prescription medication and activity modification. (Dr. Belz notes that Mr. Adamson is taking narcotic medication, including Neurontin, and such medication is not occupational.)

In addition, Dr. Belz opined that, prior to February 17, 2003, Mr. Adamson suffered from preexisting industrial disabilities in the nature of a hearing loss and lumbosacral degenerative joint disease and degenerative disc disease, which served as an impediment or obstacle to employment / reemployment. In assessing permanent disability relative to these two concerns, Dr. Belz opined that the hearing loss presented Mr. Adamson with a permanent partial disability of 4 percent referable to the left ear at the 44-week level; and the lumbosacral degenerative joint disease and degenerative disc disease presented Mr. Adamson with a permanent partial disability of 7.5 to 10 percent to the body as a whole. Additionally, relative to these injuries, Dr. Belz notes that Mr. Adamson would have been governed by the following restrictions:

[hearing loss]

The individual is not to converse in an environment with background noise present.

[lumbosacral degenerative joint disease and degenerative disc disease]

The individual is not to lift/push/pull in excess of 35 to 45 pounds. Proper body mechanics and biomechanics to be utilized.

Finally, Dr. Belz opined that the prior and last disabilities combine to cause Mr. Adamson to suffer additional disability in excess of the simple sum, “such that a fifteen percent (15%) load is appropriate. Yet, considering all the disabilities, and taking into consideration Mr. Adamson’s age and the governing restrictions and limitations, in the context of his employability, Dr. Belz is of the opinion that the prior and last disabilities combine to render Mr. Adamson unemployable in the open and competitive labor market; and Mr. Adamson is permanently and totally disabled.

On cross-examination Dr. Belz admitted that the history provided to Dr. Curry by Mr. Adamson at the time of his DOT physical examination on March 6, 2003, is completely contradictory to the history Mr. Adamson provided to him. In this regard Dr. Belz agreed that, either Mr. Adamson was being dishonest with him, or was being dishonest with Dr. Curry. Additionally, Dr. Belz acknowledged that he had not been made aware of Mr. Adamson having been convicted of a crime associated with drugs.

Also, on cross-examination by the Second Injury Fund, Dr. Belz acknowledged that, prior to the injury of February 17, 2003, Mr. Adamson was not governed by any medical restrictions; and prior to February 17, 2003, Mr. Adamson provides a history of limited leg and back complaints, which seemingly resolved in or around May 2001. Similarly, Dr. Belz acknowledged that, prior to February 17, 2003, Mr. Adamson took care of things around his home, including such activities as mowing, cutting wood, lifting fertilizer bags up to 50 pounds, and changing the oil in his own vehicles.

Wilbur T. Swearingin, CRC, who is a vocational consultant, testified at the hearing on behalf of the employer and insurer. Mr. Swearingin performed a vocational examination and evaluation of the employee on September 13, 2004. At the time of this examination, Mr. Swearingin took a history from Mr. Adamson, reviewed the various medical records, and performed several vocational tests. In light of his examination and evaluation of Mr. Adamson, Mr. Swearingin opined that, as a consequence of the combination of the preexisting injuries and disabilities and the last occupational injury, Mr. Adamson is unemployable in the open and competitive labor market.

On cross-examination Mr. Swearingin admitted that there are some employers who make employment accommodations and might offer Mr. Adamson a sit/stand option to work as a dispatcher. Additionally, Mr. Swearingin acknowledged that, in part, his examination of Mr. Adamson and vocational opinion are based on the truthfulness of Mr. Adamson and the accuracy of the medical records. Also, Mr. Swearingin acknowledged that Mr. Adamson possesses the aptitude for sedentary employment, and that Mr. Adamson is not governed by any restrictions that prohibit him from performing normal life activities. In addition, on cross-examination, Mr. Swearingin acknowledged that his opinion of Mr. Adamson being unemployable in the open and competitive labor market is premised on the medical restrictions imposed by Dr. Belz, wherein Dr. Belz imposes the employment restriction of being able to recline, sit/stand in any employment setting.

FINDINGS AND CONCLUSIONS

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575, 577 (Mo. App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

I. Compensation Rate

The provisions of Section 287.250, RSMo, govern the determination of the applicable compensation rate. Section 287.250, RSMo, in pertinent part, states:

1. Except as otherwise provided for in this chapter, the method of computing an injured employee's average weekly wage earnings which will serve as the basis for compensation provided for in this chapter shall be as follows:

* * *

(3) If the wages are fixed by the year, the average weekly wage shall be the yearly wage fixed divided by fifty-two;

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages by the day, hour, or output per day actually worked by the employee that such employee earned in the employ of the employer in the last thirteen consecutive calendar weeks immediately preceding the week in which the employee was injured... For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or

scheduled work days, even if not in the same calendar week, shall be considered as absence of for a calendar week. ...

(5) If the employee has been employed less than the two calendar weeks immediately preceding the injury, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of the injury, except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon multiplied by the number of weekly hours scheduled shall be the employee's average weekly wage;

(6) If the hourly wage has not been fixed or cannot be ascertained, or the employee earned no wage, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees of the employer or any other employer;

* * *

3. If an employee is hired by the employer for less than the number of hours per week needed to be classified as a full-time or regular employee, benefits computed for purposes of this chapter for permanent partial disability, permanent total disability and death benefits shall be based upon the average weekly wage of a full-time or regular employee engaged by the employer to perform work of the same or similar nature and at the number of hours per week required by the employer to classify the employee as a full-time or regular employee, but such computation shall not be based on less than thirty hours per week.

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in such manner and by such method as, in the opinion of the division or the commission, based upon the exceptional facts presented, fairly determined such employee's average weekly wage.

In the present case, as an employee of DTC Calhoun Trucking, Inc., Mr. Adamson worked as a nonunion driver and earned wages based on a percentage of "what the truck grossed." According to Mr. Adamson, he earned 30 percent of the gross revenue per haul. The pay stubs reflected in Exhibit E, which govern the applicable 13-week period, indicate that Mr. Adamson earned an average weekly wage of \$595.30. (\$7,738.92 divided by 13 = \$595.30.) The wages earned during this period are in the amounts and as follows:

WEEK ENDING	GROSS REVENUE	WAGES EARNED BY THE EMPLOYEE ^[2]
02-16-03	2,579.98	\$ 774.00
02-09-03	1,664.31	499.30
02-02-03	2,070.41	621.13
01-26-03	1,180.44	354.14
01-19-03	1,719.44	515.84
01-12-03	1,642.13	510.64 ^[3]
01-05-03	1,142.95	324.89
12-29-02	447.50	134.25
12-22-02	2,719.84	815.96
12-15-02	1,189.44	935.21
12-15-02	BONUS	\$1,000.00 ^[4]
12-08-02	661.27	198.39
11-31-02	1,456.84	437.05 ^[5]
11-24-02	2,060.38	<u>618.12</u>
Total Wages Earned by Employee:		\$7,738.92

Notably, during this 13-week period, there are a number of days Mr. Adamson did not work. However, DTC Calhoun Trucking, Inc., did not provide Mr. Adamson with a predetermined work schedule. Rather, Mr. Adamson worked according to the employer's needs, which was determined day by day. Accordingly, there is not an absence of five regular or scheduled workdays (or absence of a calendar week), and thus no basis for reducing or not considering the workweeks Mr. Adamson earned a substantially lower wage, such as week ending December 8, 2002, or week ending December 29, 2002.

Accordingly, after consideration and review of the evidence, I find and conclude that, at the time of the accident of February 17, 2003, Mr. Adamson's average weekly wage was \$595.30. Therefore, the applicable compensation rate is \$396.87 for the purpose of temporary total disability compensation, and a compensation rate of \$340.12 for the purpose of permanent partial disability compensation.

II. Temporary Total Disability Compensation

The parties do not readily dispute that, as a consequence of sustaining the accident of February 17, 2003, Mr. Adamson suffered a period of temporary total disability. Further, the parties have stipulated that, relative to this period of temporary total disability, the employer and insurer paid to the employee temporary total disability compensation in the amount of \$7,728.50. Additionally, in identifying this period of temporary total disability, Mr. Adamson asserted a period of March 14, 2003, through July 28, 2003, which is consistent with the medical record of Dr. Jordan who examined Mr. Adamson on July 29, 2003 and, at the time of this examination, determined that Mr. Adamson had reached maximum medical improvement and discharged Mr. Adamson from his care.

Accordingly, the evidence is supportive of a finding that the employer and insurer have paid to the employee temporary total disability compensation in the amount of \$7,728.50, payable for the period of March 14, 2003, through July 28, 2003 (137 days or 19 and 4/7 weeks). Yet, for this period of temporary total disability, in recognizing an applicable compensation rate of \$396.87 per week, the employee was entitled to \$7,767.90. ($\$396.87 \text{ divided by } 7 = \$56.70 \text{ per day} / \$56.70 \text{ multiplied by } 137 \text{ days} = \$7,767.90$.) Therefore, the employee received an underpayment of temporary total disability compensation, and is entitled to additional temporary total disability compensation in the amount of \$39.40.

III. Nature & Extent of Permanent Disability

The accident of February 17, 2003, caused Mr. Adamson to sustain injuries in the nature of a sacral contusion with left sacroiliac sprain and right femoral hernia. The injury involving the right femoral hernia resulted in Mr. Adamson undergoing a surgical repair, while the sacral contusion with left sacroiliac sprain resulted in Mr. Adamson receiving conservative care only, as the treating physicians and surgical consultations did not identify Mr. Adamson to be a surgical candidate relative to treatment of his low back.

The parties offer differing medical opinions relative to the nature and extent of Mr. Adamson's permanent disability. Mr. Adamson asserts that he is permanently and totally disabled, and relies upon the medical opinion of Dr. Belz and the vocational opinion of Mr. Swearingin. The employer and insurer, as well as the Second Injury Fund, dispute the contentions of Mr. Adamson, asserting that he is not permanently and totally disabled. The employer and insurer rely upon the medical opinion of Dr. Jordan, together with other evidence impeaching the testimony and credibility of Mr. Adamson. The Second Injury Fund does not rely on any additional evidence not offered by the parties, but further suggests that, based on Mr. Adamson's own testimony, he did not suffer from any preexisting permanent disability; and, thus, there is no basis for finding Second Injury Fund liability.

Although Mr. Adamson asserts that he is significantly limited or restricted in his activities, and while Dr. Belz prescribes limitations and restrictions, I am persuaded that Mr. Adamson is not nearly as limited or restricted in his activities as he suggests, or as Dr. Belz suggests. Notably, the opinion of Dr. Belz is premised significantly on his acceptance as true the complaints of pain, limitations, and history provided to him by Mr. Adamson, including Mr. Adamson's assertion that he must sit, stand, recline, and lie down during the day. Yet, none of the treating or examining physicians objectively quantified these subjective complaints of pain and self-imposed limitations.

Further, Mr. Adamson is not believable and, unfortunately, presents with a history of being less than truthful. Notably, subsequent to the accident of February 17, 2003, on or about March 6, 2003, Mr. Adamson presented to Dr. Curry for a DOT examination; and, at the time of this examination, Mr. Adamson did not advise or mention to Dr. Curry that he had sustained an injury on February 18, 2003. Nor did Mr. Adamson inform Dr. Curry that he was experiencing back pain in his low back; he was experiencing pain, numbness and tingling in his lower extremities; or he was experiencing pain in the groin. And, in performing this DOT examination, Dr. Curry thoroughly examined Mr. Adamson and discussed with him his overall medical condition, including examination and evaluation of his vascular system, genitor-urinary system, extremities, spine, and other musculoskeletal and neurological condition. With each of these concerns, Dr. Curry identified Mr. Adamson to be normal without any problems, including reference to Mr. Adamson not suffering from any hernias and not suffering from any impairment associated with his lower extremities and spine. Mr. Adamson took no action and made no comments to suggest he was in pain and had suffered an injury. Even Dr. Belz acknowledged that either Mr. Adamson was misrepresenting the truth to Dr. Curry or was misrepresenting the truth to him.

Also, the activities of Mr. Adamson subsequent to the accident of February 17, 2003, and his appearance at the

hearing, suggest that he is not severely disabled and governed by such restrictive limitations and restrictions. Mr. Adamson is a slender and well-tanned individual who exhibits a normal gait and healthy appearance. He was capable of being actively engaged in the trial process, taking notes, and listening to the testimonies and conversations without any noticeable difficulty. At home he takes care of his own laundry, cleaning house, etc. And he does yard work, such as mowing the yard with his riding mower; and he performs gardening and landscaping activities, such as carrying and working with landscape pavers / stones. And, in performing these activities, he is able to bend over, including squatting into a position similar to a baseball catcher, without any noticeable difficulty. Further, since the injury of 2003, he has gone deer hunting.

Accordingly, after consideration and review of the evidence, I resolve the differences in medical opinion in favor of Dr. Jordan. I do not find Mr. Adamson to be credible. Nor do I accept as true his complaints of pain and self-imposed limitations and restrictions. I further find and conclude that Mr. Adamson need not be governed by the restriction of having to sit, stand, recline, or lie down during the day. And, without acceptance of such a restriction, the vocational opinion of Mr. Swearingin falls short, as his opinion of Mr. Adamson being unemployable necessarily includes consideration of this severely limiting restriction, which I do not accept to be a governing restriction upon Mr. Adamson.

Therefore, in light of the foregoing, and after consideration and review of the evidence, I find and conclude that Mr. Adamson is not permanently and totally disabled. I further find and conclude that, as a consequence of the accident of February 17, 2003, the employee, Gary Adamson, sustained a permanent partial disability of 12.5 percent to the body as a whole (50 weeks), referable to the low back and femoral hernia. The employer and insurer are ordered to pay to the employee, Gary Adamson, the sum of \$17,006.00, which represents 50 weeks of permanent partial disability compensation, payable at the applicable compensation rate of \$340.12. (50 weeks multiplied by \$340.12 = \$17,006.00.)

IV.

Second Injury Fund

The evidence is not supportive of a finding that, prior to the accident of February 17, 2003, Mr. Adamson suffered from a preexisting permanent partial disability that would meet the statutory threshold of 15 percent to an extremity or 12.5 percent to the body as a whole. Admittedly, prior to the accident of February 17, 2003, Mr. Adamson suffered from a three level degenerative disc disease of the lumbar spine. However, as the Second Injury Fund notes, at the time of the injury, the underlying degenerative changes were not causing Mr. Adamson any problems and was not symptomatic. Further, neither Dr. Belz nor Dr. Jordan identified any preexisting permanent partial disability suffered by Mr. Adamson, including his low back and hearing, to be greater than 10 percent to the body as a whole. Accordingly, while the preexisting low back condition may have presented Mr. Adamson with certain permanent partial disability, I do not find such permanent partial disability to be greater than 10 percent to the body as a whole.

Therefore, in light of the foregoing, and having found Mr. Adamson to not be permanently and totally disabled, there can be no Second Injury Fund liability. The Claim for Compensation, as filed against the Second Injury Fund, is denied.

V.

Medical Care

The parties offer differing medical opinions relative to the question of whether the employee is in need of future medical care in order to cure and relieve him from the effects of the injury of February 17, 2003. After consideration and review of the evidence, I resolve the differences in medical opinion in favor of the medical opinion of Dr. Jordan who is of the opinion that, as a consequence of the accident of February 17, 2003, Mr. Adamson has been provided reasonable and necessary medical care; he is now at maximum medical improvement; and he does not need any additional medical care relative to treatment of his low back, femoral hernia, and the injury of February 17, 2003. Accordingly, I find and conclude that, as a consequence of the accident of February 17, 2003, the employee does not need any additional medical care. The employee's request for future medical care is denied.

VI.

Statutory Penalty

The employee asserts that he is entitled to a 15 percent increase in the payment of disability compensation pursuant to Section 287.120.4, RSMo, contending that his employer, DTC Calhoun Trucking, Inc, violated DOT Regulations in not providing an adequate tarp for the truck. The evidence is not supportive of such a finding. The Affidavit of the employer shows that the Missouri Highway Patrol performed two inspections of the truck and issued no citations for a defective tarp. Similarly, the employee's log sheets for the six months immediately preceding the accident of February 17, 2003, indicate that he made no report of any defective tarp. Also, Matt Schudy

acknowledged that he did not know whether the truck was in violation of the DOT Regulations, stating that such determination “would depend on the DOT officer.”

Accordingly, the employee’s request for a 15 percent penalty increase is denied.

Date: August 3, 2005

Made by: /s/ L. Timothy Wilson
L. Timothy Wilson
Associate Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia “Pat” Secrest
Patricia “Pat” Secrest
Director
Division of Workers' Compensation

[1] The permanent partial disability schedule identifies the hip to be at the 207-week level. Dr. Jordan noted that, unlike an inguinal hernia, a femoral hernia reflects a lower extremity injury referable up to the level of the hip.

[2] The pay stubs reflected in Exhibit E identify and refer to these wages as “Total Pay.”

[3] The pay stub reflects an additional \$18.00. The pay stub reports regular earnings of \$492.64, and total pay of \$510.64, with the notation “+ \$18.00 shorted last wk.”

[4] This sum is identified as bonus income, which the employee earned during the governing 13 week period.

[5] Exhibit E does not include a pay stub for this week, but the employee does include the information on his “yellow copies.”