

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

Injury No.: 04-114314

Employee: Christopher Baldwin  
Employer: Harley Davidson Motor Company  
Insurer: American Casualty Co. of Reading

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 12, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Robert B. Miner, issued August 12, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17<sup>th</sup> day of February 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Christopher Baldwin

Injury No.: 04-114314

Employer: Harley Davidson Motor Company

Before the  
**Division of Workers'  
Compensation**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri

Insurer: American Casualty Co. of Reading

Hearing Dates: April 23, 2010 and June 24, 2010

Checked by: RBM

## 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: Alleged: October 31, 2004.
5. State location where accident occurred or occupational disease was contracted: Alleged: Kansas City, Platte 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? No.
9. Was claim for compensation filed within time required by Law? Not determined.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleged injury to lower back from working with Dyna Press and lifting 20 pound tanks and pressing and stacking on cart.
12. Did accident or occupational disease cause death? No.

13. Part(s) of body injured by accident or occupational disease: Alleged: lower back.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$874.00.
19. Weekly compensation rate: \$582.67 per week for temporary total disability and \$354.05 for permanent partial disability.
20. Method wages computation: By agreement of the parties.

#### COMPENSATION PAYABLE

21. Amount of compensation payable: None. Claimant's claim is denied.
22. Second Injury Fund liability: None. The Second Injury Fund is not a party in this case.

TOTAL: None

23. Future requirements awarded: None.

Claimant's entire claim is denied.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Christopher Baldwin Injury No's: 04-114314, 05-102617 & 06-135712

Employer: Harley Davidson Motor Company

Before the  
**Division of Workers'  
Compensation**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri

Insurer: American Casualty Co. of Reading

Hearing Dates: April 23, 2010 and June 24, 2010

Checked by: RBM

PRELIMINARIES

A non-section 287.203, RSMo temporary hearing regarding Employee's request for medical benefits from Employer/Insurer in Injury Numbers 04-114314, 05-102617, and 06-135712 was held on April 23, 2010 in Riverside, Missouri. Employee, Christopher Baldwin, appeared in person and by his attorney, Patrick B. Starke. Employer, Harley Davidson Motor Company, and Insurer, American Casualty Co. of Reading appeared by their attorney, Samantha Benjamin House. The Second Injury Fund is not a party to these cases and was not represented at the hearing. Patrick B. Starke requested an attorney's fee of 25% from all amounts awarded.

Prior to issuance of an award in connection with the April 23, 2010 hearing, Employee's attorney informed the Administrative Law Judge and Employer/Insurer's attorney by letter dated May 10, 2010 that Employee was no longer seeking a hardship medical benefit, and they would be filing for a final hearing in the near future. Employee's attorney filed Requests for Final Hearing in these cases on May 11, 2010. Pursuant to a conference call between the Administrative Law Judge and the attorneys for the parties on May 13, 2010, the parties agreed that a final hearing on Employee's claims be held on June 24, 2010 in Riverside, Missouri. The parties also agreed that the June 24, 2010 hearing should be considered a continuation of the April 23, 2010 hearing, and that the stipulations made and evidence admitted at the April 23, 2010 hearing should continue to be in effect and be a part of the record made in connection with the final hearing. This agreement was confirmed at the June 24, 2010 hearing.

A final hearing was held in these cases on Employee's claims against Employer/Insurer on June 24, 2010 in Riverside, Missouri. Employee, Christopher Baldwin, appeared in person and by his attorney, Patrick B. Starke. Employer, Harley

Davidson Motor Company, and Insurer, American Casualty Co. of Reading appeared by their attorney, Samantha Benjamin House.

### STIPULATIONS

The parties stipulated to the following:

1. On or about October 31, 2004, October 6, 2005, and November 27, 2006, Christopher Baldwin ("Claimant") was an employee of Harley Davidson Motor Company ("Employer") and was working under the provisions of the Missouri Workers' Compensation Law.

2. On or about October 31, 2004, October 6, 2005, and November 27, 2006, Employer was an employer operating under the provisions of the Missouri Workers' Compensation Law and was fully insured by American Casualty Co. of Reading ("Insurer").

3. Employer had notice of Claimant's alleged injuries.

4. Claimant's alleged November 27, 2006 Claim for Compensation was filed within the time allowed by law.

5. Venue for the hearings is proper in Riverside, Platte County, Missouri.

6. The average weekly wage was \$874.00 and the rate of compensation for temporary total disability is \$587.67 per week in all three cases, and the rate of compensation for permanent partial disability is \$354.05 per week for Injury Number 04-114314, \$365.08 per week for Injury Number 05-102617, and \$376.55 per week for Injury Number 06-135712.

7. Employer/Insurer's attorney stated at the April 23, 2010 hearing that no compensation has been paid by Employer for temporary disability in any of these cases.<sup>1</sup>

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<sup>1</sup> On August 6, 2010, Claimant's attorney emailed a letter to the administrative law judge (with a copy shown sent via email to Employer/Insurer's attorney), that states:

1. Mr. Baldwin is not abandoning his request for additional medical treatment, his records, specifically from Dr. Wright dated 10-25-05 reflect that HD refused to provide him medical treatment so that he sought treatment elsewhere. Dr. Wright's note of 10-25-05 is part of the medical that was submitted to the court. I have scanned and attached a copy for your convenience.

8. Employer/Insurer's attorney stated at the April 23, 2010 hearing that no medical aid has been paid or furnished by Employer in any of these cases.

## ISSUES

The parties agreed at the final hearing that there were disputes on the following issues:<sup>2</sup>

1. Whether on or about October 31, 2004, October 6, 2005, and November 27, 2006, Claimant sustained injuries by accident or occupational disease arising out of and in the course of his employment for Employer.

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2. Mr. Baldwin states that the stipulation regarding temporary total disability is incorrect inasmuch as he was paid for one week of temporary total disability in the amount of \$532.51 from the injury sustained in 2004. A copy of his check is attached.

3. Mr. Baldwin is seeking present and future medical inasmuch as HD refused to provide him treatment. He currently is pursuing treatment in Chicago with a urologist there.

Attached to the email was a copy of a check from CNA Insurance dated 11/8/04 in the amount of \$532.51 that references "1 wk of TTD", and a copy of a medical record dated 10-25-05. The August 6, 2010 email, and August 6, 2010 letter, with referenced check and medical record have been marked, "Court's Exhibit 1."

<sup>2</sup> Claimant's proposed Award filed on July 9, 2010 identified the following issues to determine:

1. Whether Claimant sustained an accident arising out of and in the course of employment?
2. Whether the statute of limitations has run on the 2004 and 2005 claims?
3. The nature and extent of Claimant's temporary total and permanent partial disability relating to any of the claims filed.

Claimant's amended proposed Award filed on July 27, 2010 identified the following issues to determine:

1. Whether Claimant sustained an accident arising out of and in the course of employment?
2. Whether the statute of limitations has run on the 2004 and 2005 claims, or whether such injuries are repetitive [*sic.*]
3. The nature and extent of Claimant's temporary total and permanent partial disability relating to any of the claims filed.

2. Whether Claimant's current condition is medically causally related to the alleged work injuries of October 31, 2004, October 6, 2005, and November 27, 2006.

3. Employer's liability for permanent partial disability benefits, including nature and extent of permanent partial disability.

4. Whether Claimant's claims in Injury Numbers 04-114314 and 05-102617 were filed within the time prescribed by law and are barred by the statute of limitations.

Claimant testified in person. In addition, Claimant offered the following exhibits which were admitted in evidence without objection:

- A—Dr. Douglas Rope report
- B—Employer's medical Records
- C— Employer's medical Records
- D— Medical Records
- E— Medical Records
- F— Report of Injury for 2004 claim
- G— Report of Injury for 2005 claim
- H— Report of Injury for 2006 claim
- I—Comparison of Tanks
- J—Employee Incident Report

Employer offered the following exhibits which were admitted in evidence without objection:

- 1—Disability Insurance Application
- 2—Outpatient Admission
- 3—Gill Wright, M.D. Progress Note
- 4—James Carter, M.D. Progress Note
- 5—Internet Research "Causes"

The parties offered Joint Exhibit 1, copies of Workers' Compensation Reports of Injury, Claims for Compensation, and Answers to Claims for Compensation, which was admitted in evidence without objection.

Any objections not expressly ruled on during the hearing or otherwise in this award are now overruled. To the extent there are marks, tabs or highlights contained in the exhibits, those markings were made prior to being made part of the record, and were not placed thereon by the Administrative Law Judge.

A record was made at the April 23, 2010 hearing that Claimant's case in Injury Number 07-134329 was combined by the Division of Workers' Compensation into his 2006 case, which is Injury Number 06-135712.

The proposed awards of the attorneys have been considered.

## **Findings of Fact**

### Summary of the Evidence

Claimant testified that he worked in the finesse paint department for Employer from 2002 through 2008. He did the same job for the most part. He performed detail work on Harley Davidson motorcycles, including putting on stickers, medallions, race stripes, and decals. He worked in the Dyna press tank department in the finesse paint department for about three to four years without much rotation.

Claimant described his job duties when he worked for Employer. Part of his job required that he push tanks that weighed between twenty and twenty-five pounds each. Twelve to sixteen tanks were pushed to Claimant on a cart. He started from the very top shelf, which is about shoulder length for him. There are about four racks and four tanks going across. He started from the very top and removed each tank off the cart and placed it into a fixture. He placed medallions on the tank, one on each side. He rotated the tank and placed the medallion on the opposite side. He released the tank and moved it to a presser and placed it into a fixture. He pressed buttons and a lever came down and pressed the medallions onto the tank. He then removed the tank from the fixtures and replaced it back onto the shelf and started the process all over again.

Claimant testified he did between fifty to seventy tanks a night. There was a steady flow of tanks that he was Dyna-pressing. He did a different task if he finished working on the tanks.

Claimant stated that he was principally doing the tank work from 2003 until he was terminated on April 29, 2008. He worked an eight hour shift for the most part. He estimated half of his work was Dyna-pressing. He testified he ran through fifty or sixty tanks within three or four hours. He did the tanks day-in and day-out consistently. He did not have assistance when he worked on the tanks.

Claimant testified he did more than his fair share of Dyna press work. He said Employer's rotation policy was not being implemented. He complained to the medical department at Employer that his work was taking a toll on his body and something needed to be done to enforce the rotation policy. He said nothing was done.

Claimant testified at the June 24, 2010 hearing that he began to notice physical problems at work that started with his neck and progressed to his back. He filed worker's compensation claims in 2004 and 2005 due to continuous lifting. There was not a specific incident. He voiced concerns to his group provider and union.

Claimant developed back pain and back complaints and went to his own family physician. The family physician suggested a back specialist. Claimant saw a back specialist who told him his back pain was work-related. The back specialist said Claimant needed to go to Corporate Care of Employer, which is what he did. Corporate Care gave him pain pills, but he could not take them because they made him drowsy. He would have been walked out the door if he was caught sleeping on the job. Claimant said that he was not having problems with his groin in 2004—just basically his lower back, shoulder and neck.

Claimant's third injury relates to problems with his groin. Claimant testified he was bending picking up a tank, and when he was going to place it on a fixture, he heard something pop. He noticed a bulge in his midsection when he got home that night. He first thought it was a sexually transmitted problem and did not know it was a hernia at first. He learned it was a hernia after he went to his personal doctor in June 2007. His family doctor told him he believed it was a hernia.

Claimant could not remember the exact date of this injury. He thought that happened in the summer of 2007. Claimant could not remember the actual date of the popping sensation, but said it should probably be on the incident report he filed. Claimant testified on June 24, 2010 that the problem in his groin developed in 2007.

Claimant testified he reported this injury to Employer the night it happened. Claimant then went to Employer's medical department and told them he heard a pop in his back. He did not tell them he had a hernia that night because he did not realize he had a hernia.

Employer's medical department sent Claimant to Corporate Care. Corporate Care provided treatment with a physical therapist and a doctor. Claimant testified on cross-examination that he first went to Corporate Care after he felt the pop and noticed the bulge inside his abdomen.

Claimant was not satisfied with Employer's Corporate Care, and believed they had released him from care. Claimant did not want Employer to provide medical treatment for the hernia. Claimant obtained treatment for the hernia on his own.

Claimant thought he saw his personal physician, Dr. James Carter, a week after the incident. He told Dr. Carter he thought he had a sexual injury because he had never had a

hernia before. Dr. Carter sent Claimant to an urologist. The urologist told Claimant he had a hernia and to make plans for surgery.

Claimant then went to Dr. Herman Watson, his own surgeon, on his own. Claimant had surgery on a bulge in his midsection that was determined to be a hernia. He had complications after the surgery. He had a blood clot and his testicles were swollen. He was taken from his home by ambulance to the emergency room because of his swollen testicles. He had a second surgery within twenty-four hours of the hernia surgery to release the pressure in his testicle. Claimant missed work as a result of the surgical repair.

Claimant testified he developed a hydrocoele, which is fluid in the testicle, after his hernia. He said it feels like a water balloon. He testified that his right testicle is a "whole lot larger than my left" due to the fluid that it is retaining. Claimant was asked what difficulties that caused him. He testified the testicle rubbed against his inner thigh and caused a rash and irritation. He had to see a dermatologist. He testified at the April 23, 2010 hearing that he wanted to meet with his urologist to weigh options of having the hydrocoele drained or having surgery to release the fluid.

Claimant received short-term disability benefits when he had surgery for his hernia. He was shown an Application for Short-term Disability Benefits, Exhibit 1. He acknowledged his signature on the Application, but said he did not fill it out. A part of the Application was filled out and signed by Dr. Watson. That part has a question that asks if the condition is related to the patient's employment. Dr. Watson answered, "No."

Claimant met with Dr. Rope for an evaluation. He told Dr. Rope that he did not have any history of groin discomfort prior to 2007. Claimant was shown Exhibit 3, a note of a Corporate Care visit dated October 7, 2005. Page 2 of Exhibit 3, under "Review of Symptoms," states in part: "He also said he has some aching off and on of the testicles." Claimant stated he did not remember saying anything like that.

Claimant has been treated for bronchitis because of smoking. Claimant was asked about a medical report from Dr. Carter where Claimant was diagnosed with bronchitis and was smoking three blunts of marijuana every day in April 2005. He testified a blunt is about the size of a cigar. Claimant said he did that for a good month at one time. He testified he is a social drinker.

Claimant read a portion of Dr. Carter's April 18, 2005 record in Exhibit 4 stating that Claimant began smoking marijuana at the age of sixteen, but did not become a heavy user until the age of twenty-six and presently smokes three joints of marijuana every day and admitted to heavy alcohol use two or three times a week. Claimant said that he

currently smoked one or two blunts a day. He testified smoking marijuana causes him to cough.

Claimant stated he is currently drawing unemployment benefits and had been drawing benefits for close to two years since he had been terminated by Employer. He has not worked anywhere since he was terminated. Claimant has not played league baseball since he had his hernia surgery. He was asked if he does anything physically to keep fit. He answered that he was not able to run, but before the hernia, he ran. He works out with arm bands.

Claimant was born on August 2, 1969. He testified he was drug-free at the time he sustained the hernia at work in 2007.

Claimant testified on June 24, 2010 that he was a whole lot better since the April 23, 2010 hearing. He recently went to a second urologist who gave him cream that relieved the fungus. It relieved the rash caused by his testicle rubbing against his thigh. He also received an antibiotic for infections and he takes a tablet for inflammation.

Claimant said he does not have pain in the area of his hernia. He has discomfort that impacts his ability to bend and lift. He said the most weight he can lift is thirty to forty pounds. He has a swelling like a balloon in his testicle area that affects his ability to run and twist. The swelling is constant twenty-four hours a day, seven days a week. Claimant testified the rash on his thigh and testicle impacted his ability to work.

Claimant does housework. He said he can pretty much function, but he takes five to ten minute breaks to rest. He said what used to take an hour now takes two to two and a half hours. What was a hydrocoele is now a knot. He has had improvement for the rash. The medication that he has been taking does not help his swelling.

Claimant said that he also has a fungus on his face and scalp. He has ingrown hair.

I find this testimony of Claimant to be credible unless discussed otherwise later in this Award.

### Records Relating to Medical Treatment

A Corporate Care Initial Injury Record dated November 1, 2004 in Exhibit D notes the Claimant's history: "On 10-1-04 at work approx. 5 a.m. patient was at dye and press lifting tanks approx. weight twenty pounds-he lifts the tanks at least 5x approx thirty tanks a night-he states some nights up to forty tanks are lifted. At the time on 10-1-04 he was lifting these tanks the pain started in his low back and it has moved up to his shoulder and neck area."

Dr. Gill Wright's November 1, 2004 report in Exhibit D notes Claimant complained of neck pain at work around October 1, 2004 that started "probably a month before that." Claimant blamed it on spending the last two years doing the same job without rotation. Claimant reported increasing low back pain, neck pain and shoulder pain. Dr. Wright performed a physical examination and diagnosed cervical neck strain and lumbar muscle strain. He started Claimant on Naproxen and restricted Claimant not to work over shoulder height with either arm or lift over fifteen pounds. He also started Claimant on physical therapy.

A Shawnee Mission Medical Center lumbar spine evaluation dated November 3, 2004 notes a date of injury of October 1, 2004 with onset of back pain while lifting motorcycle tanks.

Dr. Gill Wright's Progress Note dated November 17, 2004 states Claimant was in for follow-up of his cervical and lumbar muscle strains. Claimant said he was not having any pain at that point. Dr. Wright noted full range of motion in the cervical and lumbar regions. He notes, "There is no tenderness on palpation and no muscle spasm noted. Neurologic and vascular exams are grossly normal." Dr. Wright's diagnosis was cervical muscle and lumbar muscle strains, resolved. The Progress Note concludes: "The patient is returned to work today without restrictions. He is discharged from further follow-up. I expect no long-term sequelae or disability related to this injury."

Dr. Gil Wright's October 7, 2005 Progress Note (page E3 in Exhibit E) states Claimant reported back pain. The Progress Note states in part: "He is very negative and angry about his job, the company and how they are treating him. He makes multiple references throughout the interview to all of the wrongs that he has suffered. He said that they are supposed to rotate him, but they never do."

Dr. Wright's Progress Note states Claimant reported to Dr. Wright he was working on the Dyna-press, a job he had done for three-and-a-half years. Claimant reported he lifted twenty to twenty-five pound tanks from varying levels up, placed them on a press and placed them back on a rack, again at varying heights. The report states Claimant typically does thirty to thirty-five tanks per shift. At his low point he was doing around twenty-five, and at most he has done forty to forty-five a shift.

Dr. Wright's October 7, 2005 Progress Note states Claimant was taking the "purple pill," which the doctor thought was Prilosec, for gastro-esophageal reflux disease. The report notes Claimant thought he might have a urinary infection. The report states in part: "He said that he sometimes feels like he has to go to the bathroom to urinate very bad and has a hard time holding it. He also said he has some aching off and on in the testicles."

A Corporate Care Functional Capacity Evaluation dated October 19, 2005 in Exhibit E states Claimant's Medallion Press work station was analyzed again on October 20, 2005 and it was found "tanks (22 lbs. max.) are lifted in a range from 8 to 65 inches."

Dr. Gil Wright's October 25, 2005 note states in part: "At this point, due to his refusal to fully participate in the functional capacity evaluation and lack of reproducible objective findings, I have returned him to full work without restrictions and discharged him from any further follow-up."

Exhibit E contains the report of Dr. James Carter dated April 18, 2005. It states in part that Claimant "first began smoking marijuana at age sixteen, but did not become a heavy user until age twenty-six. He presently smokes three blunts of marijuana every day." The report notes that on examination, Claimant was without an inguinal hernia.

Exhibit B contains records of Dr. David Bock pertaining to Claimant. Dr. Bock's April 5, 2006 note states Claimant saw Dr. Bock for evaluation and management for infertility status as well as urgency of urination. The note states in part that Claimant has "about a 5-6 year history of marijuana consumption, which sounds like about two marijuana cigarettes a day. He has had no marijuana for the last five to six weeks."

Exhibit C contains records related to Claimant. An entry dated June 12, 2007 at page C9 notes Claimant "States he needs to exercise more, and stop smoking so much."

Exhibit B includes Dr. Bock's June 29, 2007 note that states in part: "He does have what I think is a small right inguinal hernia." He thought Claimant should undergo a consultation with a general surgeon. Claimant had reported a several week history of intermittent right groin discomfort with swelling. The note also states that Claimant has a bulge in his right subpubic area that he states is oftentimes bigger than it is now.

A note of Employer dated July 11, 2007 of "MEDKC" in Exhibit C states:

p/c from EE stating has had a hernia for past 3 weeks. Got it here at work. Works in Finesse. Has been lifting the Dyna Tanks which are the heaviest tanks in the building for the past 4-5 months with no rotation. Operates the Dyna Press. Denies any specific incident caused hernia. Denies feeling pain. Has a lump in pubic area. Went to his doctor who diagnosed a hernia and they said he [sic] if this was work related he needed to talk to employer. Confirmed that if this was WC needs to come to medical dept. and complete an incident report and then will need to see doctor at Corp Care. EE asked if paper could be left up front and he could pick them up. Informed EE that he needs to come to medical dept. and complete the

incident report and medical staff will explain process. EE states will come to medical in AM.

Dr. Watson's July 11, 2007 note in Exhibit C states that Claimant came in with a mass in the right inguinal area that appeared to be a hernia. Claimant stated he had had some pain there and "it has been there for about two months and he wishes to be seen." They discussed the need for surgery.

A July 12, 2007 note of Employer in Exhibit C states:

States has hernia that was caused by work. Does not trust WC doctors. Has decided to go to his own doctor. Surgery already scheduled. STD & FMLA application dispensed.

Exhibit C includes Dr. Watson's Operative Report dated July 24, 2007 pertaining to Claimant's right inguinal hernia repair. Exhibit C also includes an Operative Report of Dr. Watson dated July 25, 2007 for evacuation of hematoma, right groin.

Exhibit C includes Dr. Watson's Discharge Summary from Research Medical Center for admission on July 25, 2007 and discharge on July 28, 2007. It documents treatment for hematoma. A Research Medical Center testicular ultrasound dated July 26, 2007 in Exhibit C notes the impression of small to moderate sized right hydrocœle. The Discharge Summary notes a urologist had seen Claimant and that a CT showed only "edematous hematoma and perhaps even hydrocœle, which was not noted prior to that. . . ."

Dr. Bock's August 21, 2007 note states in part: "From the standpoint of the hematoma, I think that his activity restrictions can be lifted."

Exhibit C also includes Dr. Herman Watson's return to work/school form dated September 19, 2007 pertaining to Claimant. It states in part: "Disability: 7/24/2007-9/18/2007. Date returned to work: 9/19/2007 light duty third shift night of 9/19/2007. Restrictions: No strenuous activity or lifting over 15 pounds from 9/19/2007-10/31/2007. Next appointment on 10/31/2007. Anticipate release to full duty on 11/1/2007."

Dr. Watson's November 28, 2007 notes states that Claimant's swelling had gone down "and his function is fairly normal. He does have some discomfort from the hydrocœle, which was about the size of an egg. We will have him see an urologist. . . ."

Exhibit B includes Dr. Bock's November 28, 2007 note that states Claimant came in reporting right scrotal swelling. The report notes: "It is really not painful, but it's uncomfortable and it changes the way his testicles hang." Dr. Bock's impression is noted

to be right hydrocœle. The report states, "He does have a small right hydrocœle. No evidence of recurrence hernia."

Dr. Watson's Return to Work/school form dated 11/28/07 notes restrictions: "light duty 12/2/07-12/31/07."

Exhibit C includes Dr. Watson's December 4, 2007 "Detailed Restriction Fact Sheet" pertaining to Claimant for the period December 2, 2007 to December 31, 2007. It restricted bending, crawling, crouching, kneeling, and stooping to occasional, and restricted lifting to occasional to a maximum weight fifteen pounds.

Exhibit C includes Dr. Watson's Return to Work/school form dated 1/3/2008 pertaining to Claimant. It notes: "disability from: 12/2/2007-12/31/2007. Return to work/school: 1/1/2008. Restrictions: None as of 1/1/2008."

Exhibit C includes Dr. Herman Watson's January 9, 2008 report pertaining to Claimant. It notes Claimant had an uneventful right inguinal right hernia repair on July 24, 2007. The report states Claimant did well and was discharged to home. Claimant noticed pain and swelling about midnight, went to the emergency room at Research Medical Center and Dr. Watson was called. He went to surgery about 3 a.m. and Dr. Watson evacuated a large hematoma from the operative site. Claimant was in the hospital for three days. The report further states: "No transfusion was needed in follow up has shown great improvement and he is doing fine with little to no restrictions."

Exhibit C includes a note, apparently of Dr. Watson, dated August 13, 2008 that states in part: "The patient had a hernia repair with a hematoma and has had a hydrocœle for years. Now, he is concerned about the hydrocœle." The notes states, "I told him that if it were me, and he wasn't having any more problems, I wouldn't have anything done."

Exhibit B includes a report of Dr. Bock dated March 11, 2009 addressed to Ms. Benjamin-House. The report states in part: "1. I do feel that his hydrocœle is connected to the hernia surgery from November 2006. I had the opportunity to examine Chris before his hernia surgery, and he did not have a significant hydrocœle at that time. It is my opinion that he has developed a reactive hydrocœle following that surgery." Dr. Bock's report further states: "3. I do not believe that this condition is due to a personal health condition."

Dr. Bock's March 11, 2009 note in Exhibit B states that Claimant complained about the right hemiscrotal contents rubbing against his inner thigh and causing skin irritation. Claimant reported significant discomfort late in the day from his testicle. The report also states that Dr. Bock did not recommend that Claimant undergo

hydrocelectomy. He prescribed cream and stated if that did not help, he should see a dermatologist.

### Evaluation of Dr. Douglas Rope

Exhibit A contains the medical report of Dr. Douglas Rope dated October 14, 2009 pertaining to Claimant. The report notes Dr. Rope examined Claimant on October 14, 2009. Dr. Rope's report notes that he has practiced internal medicine and occupational medicine since 1978. He graduated from the University of Kansas Medical School and is licensed in the states of Missouri and Kansas. He is Board Certified in Internal Medicine and is a Fellow of the American Academy of Disability Evaluating Physicians. His Curriculum Vitae identifies hospital staff affiliations, medical staff positions, guest lectureships, publications, and presentations. Dr. Rope's report notes that he reviewed records of Providence Medical Center, OHS and David Bock, M.D. His report notes that the opinions expressed in his communication are done so to a reasonable degree of medical certainty.

Dr. Rope's report recites the history of Claimant's injury. It notes Claimant developed discomfort in the right groin area and was evaluated by urologist David Bock on June 29, 2007 with a "several weeks" history of intermittent discomfort with swelling. Dr. Rope's report notes that "neither Dr. Bock's note nor the Claimant, when asked, mentioned any specific incident temporally associated with the acute appearance of those symptoms."

Dr. Rope's report notes that on Dr. Bock's examination, Claimant was stated to have a probable small right inguinal hernia. He was subsequently evaluated by surgeon Herman Watson and underwent repair of a right inguinal hernia at Providence Medical Center on July 24, 2007. Claimant's post-operative recovery is noted by Dr. Rope to have been complicated by abnormal bleeding at the operative site which required a second surgery the next day. Claimant was off work for three months.

Dr. Rope notes post-operatively, Claimant returned to his customary assembly work at the plant until he was terminated in April 2008. Claimant developed an enlargement at the right testicle post-operatively. Claimant reported the enlargement was somewhat painful and tended to irritate his skin.

Claimant was evaluated by Dr. Bock on May 11, 2009 and was assessed as having a reactive hydrocœle secondary to the hernia repair surgery. Dr. Bock recommended cream for the irritation and discussed possible operative removal of the hydrocœle.

Claimant reported to Dr. Rope that he had continued discomfort and swelling in the right testicle. He reported the pain is intensified by being on his feet for long periods as well as by frequent or heavy lifting.

Claimant denied history of groin discomfort or swelling prior to 2007.

Dr. Rope's report states that Claimant is a non-smoker.

Dr. Rope's report notes Claimant worked for Employer from 2002 to April 2008. The report notes in Claimant's last four years there, the majority of his time was spent applying medallions to the gas tanks of motorcycles. Claimant told Dr. Rope the gas tanks weighed twenty-five pounds. Claimant reported taking them from rolling racks on which they were stacked three or four shelves high, putting them onto a stand for application of the medallions, and returning them to the carts.

Dr. Rope's report notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and "The weight of the tanks in that note was estimated at 20 to 25 pounds." Dr. Rope's report notes Claimant stated that he placed medallions at the rate of sixty to eighty tanks per shift the final two years of his employment.

Dr. Rope performed a physical examination of Claimant. Dr. Rope found an operative scar consistent with a herniorrhaphy. The report notes that no inguinal masses were present. Some redness of the skin around the groin was noted. The report states that there was a large right hydrocele with an estimated diameter of one and a half to two inches with some tenderness to compression.

Dr. Rope's Impression is stated to be "right inguinal hernia, status post-operative removal July 24, 2007 complicated by post-operative bleeding requiring repeat operative procedure for drainage July 25, 2007 and chronic painful hydrocele." Dr. Rope sets forth the following regarding causation:

According to MayoClinic.com  
(<http://www.mayoclinic.com/health/inguinal-hernia/DS00364>), frequent heavy lifting is an accepted risk factor for the development of inguinal hernias. Other risk factors, which in this case are not relevant, include the need frequently to strain for example at the stool or being overweight. In some cases, inguinal hernias occur in the absence of any known risk factors.

The claimant gives a history of lifting most likely at least 40 gas tanks nightly, which is a potential risk factor. Heavy lifting as

defined in the United States Department of Labor Dictionary of Occupational Titles includes movement of 25 to 50 pounds on a frequent basis, and if, as he stated, he was regularly processing close to 80 tanks on a nightly basis in the manner he describes over the two year period prior to his termination, that would reasonably fulfill the definition of "frequent," making his work activities the prevailing factor in his having contracted an inguinal hernia as well as the postoperative complication of a reactive hydrocœle."

Dr. Rope assigned permanent partial disability to the whole person in the amount of 16%.

Exhibit 5 is a document from MayoClinic.com pertaining to causes and risk factors related to inguinal hernias. Page one states in part, "Other inguinal hernias develop later in life when muscles weaken or deteriorate due to factors such as aging, strenuous physical activity or coughing that accompanies smoking." Page one also states in part:

Whether or not you have a preexisting weakness, extra pressure in your abdomen can cause a hernia. This pressure may result from – straining during bowel movements or urination – heavy lifting – fluid in the abdomen (ascites) – pregnancy, excess weight. Family history, certain medical conditions including cystic fibrosis, chronic cough, such as occurs from smoking, chronic constipation, excess weight, certain occupations: having a job that requires standing for long periods or doing heavy physical labor increases a risk of developing an inguinal hernia.

#### Division of Workers' Compensation Records

Exhibit F is a Division of Workers' Compensation Report of Injury dated April 6, 2009 pertaining to alleged date of injury/illness "2006-11-27". The part of the body affected is listed to be "low back area (inc: lumbar and & lumbo-sacral)." The "date administrator notified" is shown to be "2009-04-06."

Exhibit G is a copy of Division of Workers' Compensation Report of Injury pertaining to alleged date of injury/illness of "10/31/2004" pertaining to "back (lower)." The "date administrator notified" is shown to be "11/01/2004." The carrier is shown to be "American Casualty Company of Reading."

Exhibit H is a copy of a Missouri Division of Workers' Compensation Report of Injury pertaining to alleged injury/illness of "2005-10-06" pertaining to Claimant's "low back area (inc: lumbar and lumbo-sacral)."

Joint Exhibit 1 contains copies of Missouri Division of Workers' Compensation Reports of Injury, Claims for Compensation and Answer to Claim for Compensation pertaining to Claimant. An attorney for Claimant is not shown on any of the Claims.

Joint Exhibit 1 includes a Claim for Compensation bearing Injury Number 07-134329 alleging injury to "neck, lower back, hernia surgery" with a date of accident or occupational disease of November 27, 2007. That claim is shown to be received by the Division of Workers' Compensation on September 23, 2008.

Joint Exhibit 1 includes a Claim for Compensation in Injury Number 06-135712. It alleges injury to "neck, lower back and hernia" with an alleged date of accident or occupational disease of 11-27-06. That Claim is shown to have been received by the Division of Worker's Compensation on October 6, 2008.

Joint Exhibit 1 includes an Amended Claim for Compensation in Injury Number 06-135712 alleging "hernia surgery midsection." The alleged date of accident or occupational disease was left blank. A description of what employee was doing and how the injury occurred is left blank. The Amended Claim, which is shown to have been received by the Division of Workers' Compensation on May 13, 2009, is not signed.

Joint Exhibit 1 includes a Claim for Compensation in Injury Number 07-134329 that alleges injury to "neck, lower back, hernia surgery." The Claim alleges date of accident or occupational disease of "Nov. 27, 07." The Claim contains statement 8 that recites: "Describe what the employee was doing and how the injury occurred." The handwritten response states: "doing the same task night out and night in w/o any rotation (lifting tanks.)" The Claim is dated September 23, 2008 and is shown to have been received by the Division of Workers' Compensation on September 23, 2008.

Joint Exhibit 1 includes Claimant's Claim for Compensation in Injury Number 04-114314 pertaining to date of alleged accident or occupational disease of 10-31-04 alleging injury to low back from Dyna-press and repetitive injury. The Claim in Injury Number 04-114314 is shown to have been received by the Division of Workers' Compensation on May 29, 2009.

Joint Exhibit 1 includes Claimant's Claim for Compensation dated October 4, 2008 in Injury Number 05-102617 shown to have been received by the Division of Workers' Compensation on September 4, 2008. The Claim alleges injury to lower back, neck, and hernia. Paragraph 3 of the Claim alleges date of accident or occupational disease of 10-6-05, and contains the words "NFC 7, 2007 not reported" next to the date "10-6-05."

Claimant's case in Injury Number 07-134329 was combined into his 2006 case, which is Injury Number 06-135712.

### Other Exhibits

Exhibit J is Employee Report of Incident/Injury dated December 7, 2007 of Claimant. The Employee Report contains spaces to note "Date of Incident/Injury" and "Date Reported to Medical." Both spaces are left blank. The form reports "prolonged exposure to Dyna tanks."

A box next to "lower body" is checked under the "Describe the injury" portion of the Employee Report. Also, the words "hernia surgery" are written adjacent to the box "Other." The Employee Report states: "Describe the pain," and is followed by the Comment, "More of a discomfort than a pain and some swollen and fluid retained from hernia surgery currently still having problems with lower back."

Exhibit 1 contains a Disability Insurance Employer/Employee Statement dated July 30, 2007 pertaining to Claimant. Page one of the Statement, under the portion titled, "To be completed by employee," contains the question: "1. Is your disability work related?" The box next to "yes" is marked in response to that question. Paragraph 7 on page one references "Dyna robot by lifting a Dyna tank," next to the portion stating, "Action, when and where did it happen?" The form also states, "beginning of July. Hernia," next to "Illness, When did you first notice and what is the nature of your disability?"

The Attending Physician's Statement portion of Exhibit 1 is shown to have been completed by Herman Watson, M.D. It relates to Claimant's right inguinal hernia. It notes Claimant's most recent visit was July 25, 2007. The Attending Physician's Statement contains the question, "Is this condition related to the patient's employment?" Dr. Watson answered, "No."

Employer's Job Analysis of Claimant's job working with Dyna tanks in the Medallion Press Department (pages D35-D38 of Exhibit D) states at page D37 that the weight of the fuel tank is "22 lbs."

### **Rulings of Law**

Based on a comprehensive review of the substantial and competent evidence and the application of the Missouri Workers' Compensation Law, I make the following Rulings of Law.

Section 287.800, RSMo<sup>3</sup> provides in part that administrative law judges shall construe the provisions of this chapter strictly and shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

Section 287.808, RSMo provides:

The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

Claimant states in page 5 of his proposed Awards (original and amended proposed Awards):

The Claimant has filed 4 separate claims relating to either low back injuries or hernia. The only medical reports and opinions offered were those of Claimant indicating that the Claimant had suffered a permanent partial disability associated with his hernia and subsequent sequelae. Neither party presented evidence suggesting any disability, temporary or otherwise, with respect to the low back injury. Nor was there any evidence of medical expense or anyother [sic] type of benefits due with respect to these earlier claims [sic] Consequently, the issue of the statute of limitations is moot in as much as both the 2004 and 2005 claims relate to a low back injury for which there was no evidence of any benefits due for those injuries.

Claimant states in page 6 of his proposed Awards (original and amended proposed Awards):

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<sup>3</sup> All statutory references are to RSMo 2006 unless otherwise indicated. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc.*, 20 S.W.3d 579, 585-86 (Mo.App. 2000). See also *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo.App. 2007). Prior to August 28, 2005, Section 287.800, RSMo provided in part: "Law to be liberally construed.—All of the provisions of this chapter shall be liberally construed with a view to the public welfare. . . ."

The issue of the statute of limitations with respect to the 2004 and 2005 injuries is moot given that no evidence was presented subscribing any benefits due Claimant as a result of these claimed injuries. The limitations described by Claimant and the permanency [*sic*] outlined by Dr. Rope all deal with the hernia such that no benefits are due for the earlier injuries irrespective of the statute of limitations.

Dr. Rope did not diagnose any injury to Claimant's neck or lower back. Dr. Rope's report contains no reference of any complaints of Claimant or treatment to Claimant for his neck or low back. No physician assessed any disability specifically relating to Claimant's neck or back.

I find that Claimant failed to prove that he sustained an injury to his low back or neck by accident or occupational disease arising out of or in the course of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. I further find that Claimant failed to prove that he sustained any permanent disability relating to his low back and neck arising out of and in the course of his employment for Employer. Claimant's claims for benefits relating to alleged injuries to his low back and neck are denied.

Claimant alleges he is entitled to benefits under the Workers' Compensation Law in Injury Number 06-135712 for a hernia and a reactive hydrocoele that resulted from the hernia. Claimant's Claim for Compensation in Injury Number 05-102617 filed in 2008 alleges injury to lower back, neck, and hernia.<sup>4</sup>

Section 287.195, RSMo provides:

In all claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission:

- (1) That there was an accident or unusual strain resulting in hernia;
- (2) That the hernia did not exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed.

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<sup>4</sup> Claimant's claims were filed pro se. It is believed Claimant's Claim for Compensation in Injury Number 05-102617 mistakenly references Claimant's hernia. Claimant first complained about hernia symptoms in 2007. He was first diagnosed with a hernia in 2007. He first reported a hernia injury to Employer in 2007. He had hernia surgery in 2007.

Section 287.190.6(2), RSMo provides:

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

The Court in *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823 (Mo.App. 2009) discusses the burden of proof before and after the 2005 amendments to the Workers' Compensation Law. The Court states at 830:

Prior to this amendment, it has been stated that “[t]he purpose of Workers' Compensation Law is to ‘place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment and, consequently, the law should be liberally construed so as to effectuate its purpose and humane design.’” *Rogers v. Pacesetter Corp.*, 972 S.W.2d 540, 542-43 (Mo.App.1998). Therefore, “[a]ny question as to the right of an employee to compensation must be resolved in favor of the injured employee.” *Jennings v. Station Casino St. Charles*, 196 S.W.3d 552, 557 (Mo.App.2006) (quoting *Rogers*, 972 S.W.2d at 543). However, under the current requirements of section 287.800, not only is the law to be strictly construed, but it is also required that the evidence shall be weighed “impartially without giving the benefit of the doubt to any party.” Section 287.800. The legislature by this amendment has made it abundantly clear that previous cases which have applied a liberal construction of the law to resolve questions in favor of coverage for the employee should no longer be followed.

The quantum of proof is reasonable probability. *Thorsen v. Sachs Electric Company*, 52 S.W.3d 611, 620 (Mo.App. 2001); *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 227 (Mo. banc 2003)<sup>5</sup>; *Fischer v. Archdiocese of St.*

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<sup>5</sup> Several cases are cited herein that were among many overruled by *Hampton* on an unrelated issue (*Id.* at 224-32). Such cases do not otherwise conflict with *Hampton* and

*Louis*, 793 S.W.2d 195, 199 (Mo.App. 1990). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Thorsen*, 52 S.W.3d at 620; *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App. 1986); *Fischer*, 793 S.W.2d at 198. Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A. B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. 1974). Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo.App. 1992). "Medical causation of injuries which are not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Thorsen*, 52 S.W.3d at 618; *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App. 1991).

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelley v. Banta & Stude Constr. Co. Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999); *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992); *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 162 (Mo.App. 1986). The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith*, 182 S.W.3d at 701; *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 263 (Mo.App. 2004).

A claimant has the burden to prove all the essential elements of his or her case, and a claim will not be validated where some essential element is lacking. *Thorsen*, 52 S.W.3d at 618; *Cook v. Sunnen Products Corp.*, 937 S.W.2d 221, 223 (Mo. App. 1996).

The Court in *McClain v. Yellow Cab Co.*, 439 S.W.2d 200 (Mo.App. 1969), denied a taxicab driver's workers' compensation claim alleging a hernia from lifting a passenger's heavier suitcase to the trunk. His usual duties involved lifting. The Court noted that Section 287.195, RSMo requires in a hernia claim it must be definitely proved that there was an accident or unusual strain resulting in hernia. The Court stated at 203:

Performance of any manual task is accompanied by a certain degree of straining the muscles and other parts of a workman's body. The amount of strain incurred will, of course, vary according to the work to be accomplished and the circumstances and conditions under which it is being performed. Injuries produced by strains which are normal

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are cited for legal principles unaffected thereby; thus *Hampton's* effect thereon will not be further noted.

for the job to be performed in a customary fashion are not compensable although the amount of straining may be great or would be considered abnormal in other classes of employment or if performed in an abnormal manner under unusual circumstances.

The Court noted at 204 that the record in the case was

barren of any suggestion that McClain, when injured, was doing something beyond and different from his normal routine because 'a lot of times we have passengers that have a lot of luggage and we have to load that and unload it.' There is no evidence the claimant was subjected to any strain, either usual or unusual, because he slipped, tripped, fell, twisted, turned, became overbalanced or unbalanced, struck any object or was struck by any object before or at the time he 'felt a stinging in my side.' McClain did not assume an unusual stance or position, and does not claim he experienced any strain because his handhold slipped or because the suitcase was unwieldy or because its unknown contents shifted any weight onto him. The trunk of the taxi, as far as we know, was the standard height from the ground and did not require the employee to undertake a higher-than-usual lift. Nothing is said to indicate that McClain, in stowing the luggage, gave or was required to give 'a kinda extra surge' or that he exerted 'his full force' or used 'all the strength I had.' No person or object was encountered that produced any strain by causing him to deviate from the usual method employed in his work. The suitcase did not strike anything or get 'hung' on any object; neither was its weight dropped or thrown onto the employee.

The Court stated at 205 that "'Any theory of abnormal strain involves a consideration of the degree of physical exertion. And the very use of the term 'abnormal' (usually joined with the tautological 'unusual') necessitates a reference to the comparative.'" The Court continued at 205:

In our opinion there is a failure of proof that the claimant, on the occasion in dispute, experienced either by way of physical exertion or from forces external to his body a strain of such an exceptional degree that it could be properly classified as being unusual or abnormal to that customarily experienced in the discharge of his usual duties.

The Court in *Pattengill v. General Motors Corp.*, 845 S.W.2d 630 (Mo.App. 1992), upheld a finding of compensability in a hernia case involving an employee who was injured while standing on top of a 12-foot ladder and reaching up as far as he could

to guide a 300- to 500-pound object suspended over his head by ropes held by four men. The Court set forth Section 287.195, RSMo, and stated at 632:

We turn first to whether an unusual strain occurred. “[A]n unusual or abnormal strain may be classified as an accident even though not preceded by a slip and fall. The unexpected or abnormal strain *usually* results from the performance of work in an abnormal manner or in a manner not routine, but this is not necessarily so. Abnormal strain may also result from the lifting of heavy objects while in an awkward or unbalanced posture where the worker is subjected to stress of unforeseen force or duration.”

The *Pattengill* Court found at 632 that Claimant’s injury qualified as an unusual strain.

Based on the substantial and competent evidence and the application of the Missouri Workers’ Compensation Law, I find that Claimant’s claim for hernia and the resulting hydrocœle should be denied. I find that Claimant failed to prove that he sustained a compensable hernia under Section 287.195, RSMo. Section 287.195, RSMo governs Claimant’s claims for benefits relating to his hernia. It states in part: In *all* claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission: (1) That there was an accident or unusual strain resulting in hernia. . . .” (Emphasis added.)

I find that Claimant did not establish that there was an accident or unusual strain arising out of and in the course of his employment for Employer resulting in hernia. While I find that Claimant sustained a hernia that was diagnosed in 2007, and he had a reactive hydrocœle connected to his hernia surgery, I find that Claimant did not have an accident or unusual strain in the course of his employment for Employer that resulted in a hernia. This conclusion is supported by the following.

Dr. Bock stated, and I find that Claimant developed a reactive hydrocœle following his July 24, 2007 hernia surgery, and that his hydrocœle is connected to the hernia surgery. Dr. Rope also noted a postoperative complication of a reactive hydrocœle after Claimant’s hernia surgery. I find that Claimant’s hydrocœle resulted from and was caused by his hernia.

Claimant testified he lifted tanks that weighed between 20 and 25 pounds when he worked in the Dyna tank department for Employer. Dr. Rope’s report states notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and “The weight of the tanks in that note was

estimated at 20 to 25 pounds.” Dr. Rope’s report states Claimant told him the tanks he lifted weighed 25 pounds. Employer’s Job Analysis for Claimant’s job and the functional capacity evaluation both document the weight of the tanks that Claimant lifted when he worked for Employer was 22 pounds, not 25 pounds. I find the 22 pound weight of the tanks set forth in the job description and functional capacity is accurate and more reliable than Claimant’s 25 pound estimate of the weight of the tanks. I find that Claimant lifted 22 pound tanks when he worked for Employer.

The evidence establishes, and I find that Claimant lifted between 25 and 80 tanks per shift, and that he placed medallions at the rate of 50 to 80 tanks per shift the final two years of his employment. Claimant testified he lifted between 50 to 70 tanks per shift. Dr. Wright’s October 7, 2005 Progress Note states Claimant typically did 30 to 35 tanks per shift, and at his low point he was doing around 25, and at most he has done 40 to 45 a shift. Dr. Rope’s report states notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and “The weight of the tanks in that note was estimated at 20 to 25 pounds.” Dr. Rope’s report notes Claimant stated that he placed medallions at the rate of sixty to eighty tanks per shift the final two years of his employment.

Claimant handled each tank when he removed it from a cart and placed it into a fixture. He placed medallions on the tank, one on each side. He rotated the tank and placed the medallion on the opposite side. He released the tank and moved it to a presser and placed it into a fixture. He pressed buttons and a lever came down and pressed the medallions onto the tank. He then removed the tank from the fixtures and replaced it back onto the shelf and started the process all over again.

None of the treatment records relating to Claimant’s hernia make any reference to Claimant’s hernia being caused by or related to his work for Employer. Claimant saw Dr. Bock in 2007 for abdominal complaints. Dr. Bock’s records are silent as to the cause of the complaints. Claimant was treated by Dr. Watson in 2007 for the hernia. Dr. Watson’s records and the hospital records make no reference to Claimant’s hernia being related to his work for Employer. Claimant worked for several years performing the same tasks without hernia complaints until the summer of 2007.

Claimant testified that he was bending and picking up a tank to put it on a fixture when he heard something pop and noticed a bulge in his midsection. He thought it happened in the summer of 2007. He saw his personal doctor after that in June 2007. Claimant testified that he went to Employer’s medical department and told them he heard a pop in his back. There are no records in evidence that document any such report of a pop. Further, Claimant’s application for disability benefits makes no reference whatsoever to any accident, unusual strain or other event or incident relating to the hernia.

None of the medical records state that Claimant reported he sustained an accidental injury or unusual strain that resulting in a hernia. Claimant did not testify that he had an accident or unusual strain when he first noticed the bulge in his abdomen. Claimant's report to Employer in July 2007 regarding the hernia denied any specific incident. Dr. Bock's June 29, 2007 note states that Claimant reported a several week history of intermittent right groin discomfort with swelling. Dr. Bock diagnosed a small inguinal hernia then. That is the first time Claimant's hernia was diagnosed. Dr. Watson's July 11, 2007 note states that Claimant came in with what appeared to be a hernia and described pain that had "been there for about two months." There is no reference whatsoever in these records to any unusual event or abnormal strain or accident at work that caused or contributed to cause the hernia.

Claimant's own evaluating doctor, Douglas Rope, did not diagnose that Claimant's hernia was caused by an accident or unusual strain. Dr. Rope's report states that neither Dr. Bock's note nor the Claimant, when asked by Dr. Rope, "mentioned any specific incident temporally associated with the acute appearance of those symptoms." Dr. Rope's report makes no reference to any accident, unusual strain or abnormal work activity that caused Claimant's hernia.

I find Claimant did not prove that he performed his job in any manner other than what was customary or normal. I find that Claimant failed to prove, either by way of physical exertion or from forces external to his body a strain of such an exceptional degree that it could be properly classified as being unusual or abnormal to that customarily experienced in the discharge of his usual duties.

As in the *McClain* case, Claimant did not prove that he was doing anything beyond and different from his normal routine. As in *McClain*, there is no evidence that Claimant was subjected to any strain, either usual or unusual, because he slipped, fell, twisted, turned, became overbalanced or unbalanced, struck any object or was struck by any object before or at the time he "heard the pop" or felt the bulge.

There is no evidence that when Claimant alleged he noticed an abdominal injury that he was undertaking a higher than usual lift. As in *McClain*, no person or object was encountered or produced any strain by causing Claimant to deviate from the usual method employed in his work. A tank did not strike anything or get "hung" on any object.

The case at hand is clearly distinguishable from the *Pattengill* case where Claimant was standing on top of a twelve foot ladder and reaching up as far as he could to guide a three hundred to five hundred pound object suspended over his head by ropes held by four men at the time he sustained his hernia injury.

It is also noteworthy that Dr. Watson, Claimant's treating physician, responded "No" to the question, "Is this condition related to patient's employment?" that is in a July 2007 Attending Physician's Statement in Claimant's disability insurance form relating to Claimant's hernia.

Dr. Rope's report states that heavy lifting as defined in the United States Department of Labor Dictionary includes movement of "twenty to fifty pounds on a frequent basis." The report continues: "If, as he stated, he was regularly processing close to eighty tanks on a nightly basis in the manner he describes over the two year period prior to his termination, that would reasonably fulfill the definition of 'frequent,' making his work activities a prevailing factor in his having contracted an inguinal hernia as well as a post operative complication of a reactive hydrocoele." I find this opinion of Dr. Rope is not credible. I find Claimant did not prove his work activities at Employer were the prevailing factor in his having contracted an inguinal hernia as well as a post operative complication of a reactive hydrocoele.

Dr. Rope's report references heavy lifting as being twenty-five to fifty pounds. Claimant reported to Dr. Rope that he took tanks weighing 25 pounds from rolling racks on which they were stacked three or four shelves high, putting them onto a stand for application of the medallions, and returning them to the carts. I have found the tanks weighed 22 pounds, a weight that is below the "heavy weight" definition of the Dictionary of Occupational Titles. Dr. Rope notes that "frequent heavy lifting" is an accepted risk for the development of inguinal hernias according to MayoClinic.com. I find that Claimant was not engaged in frequent heavy lifting as defined by the Dictionary of Occupational Titles.

Dr. Rope's conclusion is subject to question because he did not consider what effect Claimant's coughing from smoking may have had in causing Claimant's hernia. The Mayo Clinic record (Exhibit 5) notes that coughing that accompanies smoking is a risk factor related to inguinal hernias. Dr. Rope's report states Claimant was a non-smoker. I find Claimant was a smoker at the time he sustained his hernia and that smoking causes him to cough. Claimant testified that he smoked one or two marijuana blunts a day and that smoking marijuana causes him to cough. Employer's record dated June 12, 2007 notes Claimant stated he needed to "stop smoking so much." Claimant treated with Dr. Bock in 2006. Dr. Bock noted then that Claimant had a five to six year history of marijuana consumption "which sounds like about two marijuana cigarettes a day." Dr. Rope did not address whether Claimant coughed from smoking at the time he sustained the hernia.

In addition, Dr. Rope did not explain why lifting was a greater risk than any other risk factor.

I find that Claimant failed to prove that he had an accident or unusual strain resulting in hernia arising out of and in the course of his employment for Employer. I find that Claimant failed to prove that he sustained a compensable injury resulting in hernia arising out of and in the course of his employment for Employer. I find that Claimant did not have an accident or unusual strain in the course of his employment for Employer that resulted in a hernia. Claimant's claims for benefits resulting from the hernia and hydrocœle are denied.

I also find Claimant did not prove that he sustained an injury to his neck or back in 2006 or 2007 arising out of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. Dr. Rope did not diagnose any injury to Claimant's neck or lower back. Dr. Rope's report contains no reference to any complaints of Claimant or treatment to Claimant for his neck or low back. No physician assessed any disability specifically relating to Claimant's neck or back. Claimant acknowledged in his proposed Award that the limitations described by Claimant and the permanency outlined by Dr. Rope all deal with the hernia.

I find that Claimant failed to prove that he sustained any injuries to his low back or neck arising out of or in the course of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. I further find that Claimant failed to prove that he sustained any permanent disability relating to his low back or neck arising out of and in the course of his employment for Employer. I find that Claimant failed to prove he is entitled to any benefits under the Workers' Compensation Law relating to his neck or back. Claimant's claims for benefits relating to alleged injuries to his low back and neck are also denied.

Claimant's entire claims for benefits in all three cases, Injury Numbers 04-114314, 05-102617, and 06-135712<sup>6</sup> are denied and all other issues are moot.

Made by: /s/ Robert B. Miner  
Robert B. Miner  
*Administrative Law Judge*  
*Division of Workers' Compensation*

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<sup>6</sup> Claimant's claim in Injury Number 07-134329 has been combined by the Division of Workers' Compensation into Injury Number 06-135712. Claimant's claim relating to Injury Number 07-134329 is also denied.

This award is dated and attested to this 12th day of August, 2010.

/s/ Naomi Pearson

Naomi Pearson  
*Division of Workers' Compensation*

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

Injury No.: 05-102617

Employee: Christopher Baldwin  
Employer: Harley Davidson Motor Company  
Insurer: American Casualty Co. of Reading

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 12, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Robert B. Miner, issued August 12, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17<sup>th</sup> day of February 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Christopher Baldwin

Injury No.: 05-102617

Employer: Harley Davidson Motor Company

Before the  
**Division of Workers'  
Compensation**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri

Insurer: American Casualty Co. of Reading

Hearing Dates: April 23, 2010 and June 24, 2010

Checked by: RBM

## 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: Alleged: October 6, 2005.
5. State location where accident occurred or occupational disease was contracted: Alleged: Kansas City, Platte 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? No.
9. Was claim for compensation filed within time required by Law? Not determined.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleged injury to lower back, neck, hernia from working the Dyna Press without rotation.
12. Did accident or occupational disease cause death? No.

13. Part(s) of body injured by accident or occupational disease: Alleged: lower back, neck, hernia.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$874.00.
19. Weekly compensation rate: \$582.67 per week for temporary total disability and \$365.08 for permanent partial disability.
20. Method wages computation: By agreement of the parties.

#### COMPENSATION PAYABLE

21. Amount of compensation payable: None. Claimant's claim is denied.
22. Second Injury Fund liability: None. The Second Injury Fund is not a party in this case.

TOTAL: None

23. Future requirements awarded: None.

Claimant's entire claim is denied.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Christopher Baldwin Injury No's: 04-114314, 05-102617 & 06-135712

Employer: Harley Davidson Motor Company

Before the  
**Division of Workers'  
Compensation**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri

Insurer: American Casualty Co. of Reading

Hearing Dates: April 23, 2010 and June 24, 2010

Checked by: RBM

PRELIMINARIES

A non-section 287.203, RSMo temporary hearing regarding Employee's request for medical benefits from Employer/Insurer in Injury Numbers 04-114314, 05-102617, and 06-135712 was held on April 23, 2010 in Riverside, Missouri. Employee, Christopher Baldwin, appeared in person and by his attorney, Patrick B. Starke. Employer, Harley Davidson Motor Company, and Insurer, American Casualty Co. of Reading appeared by their attorney, Samantha Benjamin House. The Second Injury Fund is not a party to these cases and was not represented at the hearing. Patrick B. Starke requested an attorney's fee of 25% from all amounts awarded.

Prior to issuance of an award in connection with the April 23, 2010 hearing, Employee's attorney informed the Administrative Law Judge and Employer/Insurer's attorney by letter dated May 10, 2010 that Employee was no longer seeking a hardship medical benefit, and they would be filing for a final hearing in the near future. Employee's attorney filed Requests for Final Hearing in these cases on May 11, 2010. Pursuant to a conference call between the Administrative Law Judge and the attorneys for the parties on May 13, 2010, the parties agreed that a final hearing on Employee's claims be held on June 24, 2010 in Riverside, Missouri. The parties also agreed that the June 24, 2010 hearing should be considered a continuation of the April 23, 2010 hearing, and that the stipulations made and evidence admitted at the April 23, 2010 hearing should continue to be in effect and be a part of the record made in connection with the final hearing. This agreement was confirmed at the June 24, 2010 hearing.

A final hearing was held in these cases on Employee's claims against Employer/Insurer on June 24, 2010 in Riverside, Missouri. Employee, Christopher Baldwin, appeared in person and by his attorney, Patrick B. Starke. Employer, Harley

Davidson Motor Company, and Insurer, American Casualty Co. of Reading appeared by their attorney, Samantha Benjamin House.

### STIPULATIONS

The parties stipulated to the following:

1. On or about October 31, 2004, October 6, 2005, and November 27, 2006, Christopher Baldwin ("Claimant") was an employee of Harley Davidson Motor Company ("Employer") and was working under the provisions of the Missouri Workers' Compensation Law.

2. On or about October 31, 2004, October 6, 2005, and November 27, 2006, Employer was an employer operating under the provisions of the Missouri Workers' Compensation Law and was fully insured by American Casualty Co. of Reading ("Insurer").

3. Employer had notice of Claimant's alleged injuries.

4. Claimant's alleged November 27, 2006 Claim for Compensation was filed within the time allowed by law.

5. Venue for the hearings is proper in Riverside, Platte County, Missouri.

6. The average weekly wage was \$874.00 and the rate of compensation for temporary total disability is \$587.67 per week in all three cases, and the rate of compensation for permanent partial disability is \$354.05 per week for Injury Number 04-114314, \$365.08 per week for Injury Number 05-102617, and \$376.55 per week for Injury Number 06-135712.

7. Employer/Insurer's attorney stated at the April 23, 2010 hearing that no compensation has been paid by Employer for temporary disability in any of these cases.<sup>1</sup>

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<sup>1</sup> On August 6, 2010, Claimant's attorney emailed a letter to the administrative law judge (with a copy shown sent via email to Employer/Insurer's attorney), that states:

1. Mr. Baldwin is not abandoning his request for additional medical treatment, his records, specifically from Dr. Wright dated 10-25-05 reflect that HD refused to provide him medical treatment so that he sought treatment elsewhere. Dr. Wright's note of 10-25-05 is part of the medical that was submitted to the court. I have scanned and attached a copy for your convenience.

8. Employer/Insurer's attorney stated at the April 23, 2010 hearing that no medical aid has been paid or furnished by Employer in any of these cases.

## ISSUES

The parties agreed at the final hearing that there were disputes on the following issues:<sup>2</sup>

1. Whether on or about October 31, 2004, October 6, 2005, and November 27, 2006, Claimant sustained injuries by accident or occupational disease arising out of and in the course of his employment for Employer.

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2. Mr. Baldwin states that the stipulation regarding temporary total disability is incorrect inasmuch as he was paid for one week of temporary total disability in the amount of \$532.51 from the injury sustained in 2004. A copy of his check is attached.

3. Mr. Baldwin is seeking present and future medical inasmuch as HD refused to provide him treatment. He currently is pursuing treatment in Chicago with a urologist there.

Attached to the email was a copy of a check from CNA Insurance dated 11/8/04 in the amount of \$532.51 that references "1 wk of TTD", and a copy of a medical record dated 10-25-05. The August 6, 2010 email, and August 6, 2010 letter, with referenced check and medical record have been marked, "Court's Exhibit 1."

<sup>2</sup> Claimant's proposed Award filed on July 9, 2010 identified the following issues to determine:

1. Whether Claimant sustained an accident arising out of and in the course of employment?
2. Whether the statute of limitations has run on the 2004 and 2005 claims?
3. The nature and extent of Claimant's temporary total and permanent partial disability relating to any of the claims filed.

Claimant's amended proposed Award filed on July 27, 2010 identified the following issues to determine:

1. Whether Claimant sustained an accident arising out of and in the course of employment?
2. Whether the statute of limitations has run on the 2004 and 2005 claims, or whether such injuries are repetitive [*sic.*]
3. The nature and extent of Claimant's temporary total and permanent partial disability relating to any of the claims filed.

2. Whether Claimant's current condition is medically causally related to the alleged work injuries of October 31, 2004, October 6, 2005, and November 27, 2006.

3. Employer's liability for permanent partial disability benefits, including nature and extent of permanent partial disability.

4. Whether Claimant's claims in Injury Numbers 04-114314 and 05-102617 were filed within the time prescribed by law and are barred by the statute of limitations.

Claimant testified in person. In addition, Claimant offered the following exhibits which were admitted in evidence without objection:

- A—Dr. Douglas Rope report
- B—Employer's medical Records
- C— Employer's medical Records
- D— Medical Records
- E— Medical Records
- F— Report of Injury for 2004 claim
- G— Report of Injury for 2005 claim
- H— Report of Injury for 2006 claim
- I—Comparison of Tanks
- J—Employee Incident Report

Employer offered the following exhibits which were admitted in evidence without objection:

- 1—Disability Insurance Application
- 2—Outpatient Admission
- 3—Gill Wright, M.D. Progress Note
- 4—James Carter, M.D. Progress Note
- 5—Internet Research "Causes"

The parties offered Joint Exhibit 1, copies of Workers' Compensation Reports of Injury, Claims for Compensation, and Answers to Claims for Compensation, which was admitted in evidence without objection.

Any objections not expressly ruled on during the hearing or otherwise in this award are now overruled. To the extent there are marks, tabs or highlights contained in the exhibits, those markings were made prior to being made part of the record, and were not placed thereon by the Administrative Law Judge.

A record was made at the April 23, 2010 hearing that Claimant's case in Injury Number 07-134329 was combined by the Division of Workers' Compensation into his 2006 case, which is Injury Number 06-135712.

The proposed awards of the attorneys have been considered.

## **Findings of Fact**

### Summary of the Evidence

Claimant testified that he worked in the finesse paint department for Employer from 2002 through 2008. He did the same job for the most part. He performed detail work on Harley Davidson motorcycles, including putting on stickers, medallions, race stripes, and decals. He worked in the Dyna press tank department in the finesse paint department for about three to four years without much rotation.

Claimant described his job duties when he worked for Employer. Part of his job required that he push tanks that weighed between twenty and twenty-five pounds each. Twelve to sixteen tanks were pushed to Claimant on a cart. He started from the very top shelf, which is about shoulder length for him. There are about four racks and four tanks going across. He started from the very top and removed each tank off the cart and placed it into a fixture. He placed medallions on the tank, one on each side. He rotated the tank and placed the medallion on the opposite side. He released the tank and moved it to a presser and placed it into a fixture. He pressed buttons and a lever came down and pressed the medallions onto the tank. He then removed the tank from the fixtures and replaced it back onto the shelf and started the process all over again.

Claimant testified he did between fifty to seventy tanks a night. There was a steady flow of tanks that he was Dyna-pressing. He did a different task if he finished working on the tanks.

Claimant stated that he was principally doing the tank work from 2003 until he was terminated on April 29, 2008. He worked an eight hour shift for the most part. He estimated half of his work was Dyna-pressing. He testified he ran through fifty or sixty tanks within three or four hours. He did the tanks day-in and day-out consistently. He did not have assistance when he worked on the tanks.

Claimant testified he did more than his fair share of Dyna press work. He said Employer's rotation policy was not being implemented. He complained to the medical department at Employer that his work was taking a toll on his body and something needed to be done to enforce the rotation policy. He said nothing was done.

Claimant testified at the June 24, 2010 hearing that he began to notice physical problems at work that started with his neck and progressed to his back. He filed worker's compensation claims in 2004 and 2005 due to continuous lifting. There was not a specific incident. He voiced concerns to his group provider and union.

Claimant developed back pain and back complaints and went to his own family physician. The family physician suggested a back specialist. Claimant saw a back specialist who told him his back pain was work-related. The back specialist said Claimant needed to go to Corporate Care of Employer, which is what he did. Corporate Care gave him pain pills, but he could not take them because they made him drowsy. He would have been walked out the door if he was caught sleeping on the job. Claimant said that he was not having problems with his groin in 2004—just basically his lower back, shoulder and neck.

Claimant's third injury relates to problems with his groin. Claimant testified he was bending picking up a tank, and when he was going to place it on a fixture, he heard something pop. He noticed a bulge in his midsection when he got home that night. He first thought it was a sexually transmitted problem and did not know it was a hernia at first. He learned it was a hernia after he went to his personal doctor in June 2007. His family doctor told him he believed it was a hernia.

Claimant could not remember the exact date of this injury. He thought that happened in the summer of 2007. Claimant could not remember the actual date of the popping sensation, but said it should probably be on the incident report he filed. Claimant testified on June 24, 2010 that the problem in his groin developed in 2007.

Claimant testified he reported this injury to Employer the night it happened. Claimant then went to Employer's medical department and told them he heard a pop in his back. He did not tell them he had a hernia that night because he did not realize he had a hernia.

Employer's medical department sent Claimant to Corporate Care. Corporate Care provided treatment with a physical therapist and a doctor. Claimant testified on cross-examination that he first went to Corporate Care after he felt the pop and noticed the bulge inside his abdomen.

Claimant was not satisfied with Employer's Corporate Care, and believed they had released him from care. Claimant did not want Employer to provide medical treatment for the hernia. Claimant obtained treatment for the hernia on his own.

Claimant thought he saw his personal physician, Dr. James Carter, a week after the incident. He told Dr. Carter he thought he had a sexual injury because he had never had a

hernia before. Dr. Carter sent Claimant to an urologist. The urologist told Claimant he had a hernia and to make plans for surgery.

Claimant then went to Dr. Herman Watson, his own surgeon, on his own. Claimant had surgery on a bulge in his midsection that was determined to be a hernia. He had complications after the surgery. He had a blood clot and his testicles were swollen. He was taken from his home by ambulance to the emergency room because of his swollen testicles. He had a second surgery within twenty-four hours of the hernia surgery to release the pressure in his testicle. Claimant missed work as a result of the surgical repair.

Claimant testified he developed a hydrocoele, which is fluid in the testicle, after his hernia. He said it feels like a water balloon. He testified that his right testicle is a "whole lot larger than my left" due to the fluid that it is retaining. Claimant was asked what difficulties that caused him. He testified the testicle rubbed against his inner thigh and caused a rash and irritation. He had to see a dermatologist. He testified at the April 23, 2010 hearing that he wanted to meet with his urologist to weigh options of having the hydrocoele drained or having surgery to release the fluid.

Claimant received short-term disability benefits when he had surgery for his hernia. He was shown an Application for Short-term Disability Benefits, Exhibit 1. He acknowledged his signature on the Application, but said he did not fill it out. A part of the Application was filled out and signed by Dr. Watson. That part has a question that asks if the condition is related to the patient's employment. Dr. Watson answered, "No."

Claimant met with Dr. Rope for an evaluation. He told Dr. Rope that he did not have any history of groin discomfort prior to 2007. Claimant was shown Exhibit 3, a note of a Corporate Care visit dated October 7, 2005. Page 2 of Exhibit 3, under "Review of Symptoms," states in part: "He also said he has some aching off and on of the testicles." Claimant stated he did not remember saying anything like that.

Claimant has been treated for bronchitis because of smoking. Claimant was asked about a medical report from Dr. Carter where Claimant was diagnosed with bronchitis and was smoking three blunts of marijuana every day in April 2005. He testified a blunt is about the size of a cigar. Claimant said he did that for a good month at one time. He testified he is a social drinker.

Claimant read a portion of Dr. Carter's April 18, 2005 record in Exhibit 4 stating that Claimant began smoking marijuana at the age of sixteen, but did not become a heavy user until the age of twenty-six and presently smokes three joints of marijuana every day and admitted to heavy alcohol use two or three times a week. Claimant said that he

currently smoked one or two blunts a day. He testified smoking marijuana causes him to cough.

Claimant stated he is currently drawing unemployment benefits and had been drawing benefits for close to two years since he had been terminated by Employer. He has not worked anywhere since he was terminated. Claimant has not played league baseball since he had his hernia surgery. He was asked if he does anything physically to keep fit. He answered that he was not able to run, but before the hernia, he ran. He works out with arm bands.

Claimant was born on August 2, 1969. He testified he was drug-free at the time he sustained the hernia at work in 2007.

Claimant testified on June 24, 2010 that he was a whole lot better since the April 23, 2010 hearing. He recently went to a second urologist who gave him cream that relieved the fungus. It relieved the rash caused by his testicle rubbing against his thigh. He also received an antibiotic for infections and he takes a tablet for inflammation.

Claimant said he does not have pain in the area of his hernia. He has discomfort that impacts his ability to bend and lift. He said the most weight he can lift is thirty to forty pounds. He has a swelling like a balloon in his testicle area that affects his ability to run and twist. The swelling is constant twenty-four hours a day, seven days a week. Claimant testified the rash on his thigh and testicle impacted his ability to work.

Claimant does housework. He said he can pretty much function, but he takes five to ten minute breaks to rest. He said what used to take an hour now takes two to two and a half hours. What was a hydrocoele is now a knot. He has had improvement for the rash. The medication that he has been taking does not help his swelling.

Claimant said that he also has a fungus on his face and scalp. He has ingrown hair.

I find this testimony of Claimant to be credible unless discussed otherwise later in this Award.

### Records Relating to Medical Treatment

A Corporate Care Initial Injury Record dated November 1, 2004 in Exhibit D notes the Claimant's history: "On 10-1-04 at work approx. 5 a.m. patient was at dye and press lifting tanks approx. weight twenty pounds-he lifts the tanks at least 5x approx thirty tanks a night-he states some nights up to forty tanks are lifted. At the time on 10-1-04 he was lifting these tanks the pain started in his low back and it has moved up to his shoulder and neck area."

Dr. Gill Wright's November 1, 2004 report in Exhibit D notes Claimant complained of neck pain at work around October 1, 2004 that started "probably a month before that." Claimant blamed it on spending the last two years doing the same job without rotation. Claimant reported increasing low back pain, neck pain and shoulder pain. Dr. Wright performed a physical examination and diagnosed cervical neck strain and lumbar muscle strain. He started Claimant on Naproxen and restricted Claimant not to work over shoulder height with either arm or lift over fifteen pounds. He also started Claimant on physical therapy.

A Shawnee Mission Medical Center lumbar spine evaluation dated November 3, 2004 notes a date of injury of October 1, 2004 with onset of back pain while lifting motorcycle tanks.

Dr. Gill Wright's Progress Note dated November 17, 2004 states Claimant was in for follow-up of his cervical and lumbar muscle strains. Claimant said he was not having any pain at that point. Dr. Wright noted full range of motion in the cervical and lumbar regions. He notes, "There is no tenderness on palpation and no muscle spasm noted. Neurologic and vascular exams are grossly normal." Dr. Wright's diagnosis was cervical muscle and lumbar muscle strains, resolved. The Progress Note concludes: "The patient is returned to work today without restrictions. He is discharged from further follow-up. I expect no long-term sequelae or disability related to this injury."

Dr. Gil Wright's October 7, 2005 Progress Note (page E3 in Exhibit E) states Claimant reported back pain. The Progress Note states in part: "He is very negative and angry about his job, the company and how they are treating him. He makes multiple references throughout the interview to all of the wrongs that he has suffered. He said that they are supposed to rotate him, but they never do."

Dr. Wright's Progress Note states Claimant reported to Dr. Wright he was working on the Dyna-press, a job he had done for three-and-a-half years. Claimant reported he lifted twenty to twenty-five pound tanks from varying levels up, placed them on a press and placed them back on a rack, again at varying heights. The report states Claimant typically does thirty to thirty-five tanks per shift. At his low point he was doing around twenty-five, and at most he has done forty to forty-five a shift.

Dr. Wright's October 7, 2005 Progress Note states Claimant was taking the "purple pill," which the doctor thought was Prilosec, for gastro-esophageal reflux disease. The report notes Claimant thought he might have a urinary infection. The report states in part: "He said that he sometimes feels like he has to go to the bathroom to urinate very bad and has a hard time holding it. He also said he has some aching off and on in the testicles."

A Corporate Care Functional Capacity Evaluation dated October 19, 2005 in Exhibit E states Claimant's Medallion Press work station was analyzed again on October 20, 2005 and it was found "tanks (22 lbs. max.) are lifted in a range from 8 to 65 inches."

Dr. Gil Wright's October 25, 2005 note states in part: "At this point, due to his refusal to fully participate in the functional capacity evaluation and lack of reproducible objective findings, I have returned him to full work without restrictions and discharged him from any further follow-up."

Exhibit E contains the report of Dr. James Carter dated April 18, 2005. It states in part that Claimant "first began smoking marijuana at age sixteen, but did not become a heavy user until age twenty-six. He presently smokes three blunts of marijuana every day." The report notes that on examination, Claimant was without an inguinal hernia.

Exhibit B contains records of Dr. David Bock pertaining to Claimant. Dr. Bock's April 5, 2006 note states Claimant saw Dr. Bock for evaluation and management for infertility status as well as urgency of urination. The note states in part that Claimant has "about a 5-6 year history of marijuana consumption, which sounds like about two marijuana cigarettes a day. He has had no marijuana for the last five to six weeks."

Exhibit C contains records related to Claimant. An entry dated June 12, 2007 at page C9 notes Claimant "States he needs to exercise more, and stop smoking so much."

Exhibit B includes Dr. Bock's June 29, 2007 note that states in part: "He does have what I think is a small right inguinal hernia." He thought Claimant should undergo a consultation with a general surgeon. Claimant had reported a several week history of intermittent right groin discomfort with swelling. The note also states that Claimant has a bulge in his right subpubic area that he states is oftentimes bigger than it is now.

A note of Employer dated July 11, 2007 of "MEDKC" in Exhibit C states:

p/c from EE stating has had a hernia for past 3 weeks. Got it here at work. Works in Finesse. Has been lifting the Dyna Tanks which are the heaviest tanks in the building for the past 4-5 months with no rotation. Operates the Dyna Press. Denies any specific incident caused hernia. Denies feeling pain. Has a lump in pubic area. Went to his doctor who diagnosed a hernia and they said he [sic] if this was work related he needed to talk to employer. Confirmed that if this was WC needs to come to medical dept. and complete an incident report and then will need to see doctor at Corp Care. EE asked if paper could be left up front and he could pick them up. Informed EE that he needs to come to medical dept. and complete the

incident report and medical staff will explain process. EE states will come to medical in AM.

Dr. Watson's July 11, 2007 note in Exhibit C states that Claimant came in with a mass in the right inguinal area that appeared to be a hernia. Claimant stated he had had some pain there and "it has been there for about two months and he wishes to be seen." They discussed the need for surgery.

A July 12, 2007 note of Employer in Exhibit C states:

States has hernia that was caused by work. Does not trust WC doctors. Has decided to go to his own doctor. Surgery already scheduled. STD & FMLA application dispensed.

Exhibit C includes Dr. Watson's Operative Report dated July 24, 2007 pertaining to Claimant's right inguinal hernia repair. Exhibit C also includes an Operative Report of Dr. Watson dated July 25, 2007 for evacuation of hematoma, right groin.

Exhibit C includes Dr. Watson's Discharge Summary from Research Medical Center for admission on July 25, 2007 and discharge on July 28, 2007. It documents treatment for hematoma. A Research Medical Center testicular ultrasound dated July 26, 2007 in Exhibit C notes the impression of small to moderate sized right hydrocœle. The Discharge Summary notes a urologist had seen Claimant and that a CT showed only "edematous hematoma and perhaps even hydrocœle, which was not noted prior to that. . . ."

Dr. Bock's August 21, 2007 note states in part: "From the standpoint of the hematoma, I think that his activity restrictions can be lifted."

Exhibit C also includes Dr. Herman Watson's return to work/school form dated September 19, 2007 pertaining to Claimant. It states in part: "Disability: 7/24/2007-9/18/2007. Date returned to work: 9/19/2007 light duty third shift night of 9/19/2007. Restrictions: No strenuous activity or lifting over 15 pounds from 9/19/2007-10/31/2007. Next appointment on 10/31/2007. Anticipate release to full duty on 11/1/2007."

Dr. Watson's November 28, 2007 notes states that Claimant's swelling had gone down "and his function is fairly normal. He does have some discomfort from the hydrocœle, which was about the size of an egg. We will have him see an urologist. . . ."

Exhibit B includes Dr. Bock's November 28, 2007 note that states Claimant came in reporting right scrotal swelling. The report notes: "It is really not painful, but it's uncomfortable and it changes the way his testicles hang." Dr. Bock's impression is noted

to be right hydrocœle. The report states, "He does have a small right hydrocœle. No evidence of recurrence hernia."

Dr. Watson's Return to Work/school form dated 11/28/07 notes restrictions: "light duty 12/2/07-12/31/07."

Exhibit C includes Dr. Watson's December 4, 2007 "Detailed Restriction Fact Sheet" pertaining to Claimant for the period December 2, 2007 to December 31, 2007. It restricted bending, crawling, crouching, kneeling, and stooping to occasional, and restricted lifting to occasional to a maximum weight fifteen pounds.

Exhibit C includes Dr. Watson's Return to Work/school form dated 1/3/2008 pertaining to Claimant. It notes: "disability from: 12/2/2007-12/31/2007. Return to work/school: 1/1/2008. Restrictions: None as of 1/1/2008."

Exhibit C includes Dr. Herman Watson's January 9, 2008 report pertaining to Claimant. It notes Claimant had an uneventful right inguinal right hernia repair on July 24, 2007. The report states Claimant did well and was discharged to home. Claimant noticed pain and swelling about midnight, went to the emergency room at Research Medical Center and Dr. Watson was called. He went to surgery about 3 a.m. and Dr. Watson evacuated a large hematoma from the operative site. Claimant was in the hospital for three days. The report further states: "No transfusion was needed in follow up has shown great improvement and he is doing fine with little to no restrictions."

Exhibit C includes a note, apparently of Dr. Watson, dated August 13, 2008 that states in part: "The patient had a hernia repair with a hematoma and has had a hydrocœle for years. Now, he is concerned about the hydrocœle." The notes states, "I told him that if it were me, and he wasn't having any more problems, I wouldn't have anything done."

Exhibit B includes a report of Dr. Bock dated March 11, 2009 addressed to Ms. Benjamin-House. The report states in part: "1. I do feel that his hydrocœle is connected to the hernia surgery from November 2006. I had the opportunity to examine Chris before his hernia surgery, and he did not have a significant hydrocœle at that time. It is my opinion that he has developed a reactive hydrocœle following that surgery." Dr. Bock's report further states: "3. I do not believe that this condition is due to a personal health condition."

Dr. Bock's March 11, 2009 note in Exhibit B states that Claimant complained about the right hemiscrotal contents rubbing against his inner thigh and causing skin irritation. Claimant reported significant discomfort late in the day from his testicle. The report also states that Dr. Bock did not recommend that Claimant undergo

hydrocelectomy. He prescribed cream and stated if that did not help, he should see a dermatologist.

### Evaluation of Dr. Douglas Rope

Exhibit A contains the medical report of Dr. Douglas Rope dated October 14, 2009 pertaining to Claimant. The report notes Dr. Rope examined Claimant on October 14, 2009. Dr. Rope's report notes that he has practiced internal medicine and occupational medicine since 1978. He graduated from the University of Kansas Medical School and is licensed in the states of Missouri and Kansas. He is Board Certified in Internal Medicine and is a Fellow of the American Academy of Disability Evaluating Physicians. His Curriculum Vitae identifies hospital staff affiliations, medical staff positions, guest lectureships, publications, and presentations. Dr. Rope's report notes that he reviewed records of Providence Medical Center, OHS and David Bock, M.D. His report notes that the opinions expressed in his communication are done so to a reasonable degree of medical certainty.

Dr. Rope's report recites the history of Claimant's injury. It notes Claimant developed discomfort in the right groin area and was evaluated by urologist David Bock on June 29, 2007 with a "several weeks" history of intermittent discomfort with swelling. Dr. Rope's report notes that "neither Dr. Bock's note nor the Claimant, when asked, mentioned any specific incident temporally associated with the acute appearance of those symptoms."

Dr. Rope's report notes that on Dr. Bock's examination, Claimant was stated to have a probable small right inguinal hernia. He was subsequently evaluated by surgeon Herman Watson and underwent repair of a right inguinal hernia at Providence Medical Center on July 24, 2007. Claimant's post-operative recovery is noted by Dr. Rope to have been complicated by abnormal bleeding at the operative site which required a second surgery the next day. Claimant was off work for three months.

Dr. Rope notes post-operatively, Claimant returned to his customary assembly work at the plant until he was terminated in April 2008. Claimant developed an enlargement at the right testicle post-operatively. Claimant reported the enlargement was somewhat painful and tended to irritate his skin.

Claimant was evaluated by Dr. Bock on May 11, 2009 and was assessed as having a reactive hydrocœle secondary to the hernia repair surgery. Dr. Bock recommended cream for the irritation and discussed possible operative removal of the hydrocœle.

Claimant reported to Dr. Rope that he had continued discomfort and swelling in the right testicle. He reported the pain is intensified by being on his feet for long periods as well as by frequent or heavy lifting.

Claimant denied history of groin discomfort or swelling prior to 2007.

Dr. Rope's report states that Claimant is a non-smoker.

Dr. Rope's report notes Claimant worked for Employer from 2002 to April 2008. The report notes in Claimant's last four years there, the majority of his time was spent applying medallions to the gas tanks of motorcycles. Claimant told Dr. Rope the gas tanks weighed twenty-five pounds. Claimant reported taking them from rolling racks on which they were stacked three or four shelves high, putting them onto a stand for application of the medallions, and returning them to the carts.

Dr. Rope's report notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and "The weight of the tanks in that note was estimated at 20 to 25 pounds." Dr. Rope's report notes Claimant stated that he placed medallions at the rate of sixty to eighty tanks per shift the final two years of his employment.

Dr. Rope performed a physical examination of Claimant. Dr. Rope found an operative scar consistent with a herniorrhaphy. The report notes that no inguinal masses were present. Some redness of the skin around the groin was noted. The report states that there was a large right hydrocele with an estimated diameter of one and a half to two inches with some tenderness to compression.

Dr. Rope's Impression is stated to be "right inguinal hernia, status post-operative removal July 24, 2007 complicated by post-operative bleeding requiring repeat operative procedure for drainage July 25, 2007 and chronic painful hydrocele." Dr. Rope sets forth the following regarding causation:

According to MayoClinic.com  
(<http://www.mayoclinic.com/health/inguinal-hernia/DS00364>), frequent heavy lifting is an accepted risk factor for the development of inguinal hernias. Other risk factors, which in this case are not relevant, include the need frequently to strain for example at the stool or being overweight. In some cases, inguinal hernias occur in the absence of any known risk factors.

The claimant gives a history of lifting most likely at least 40 gas tanks nightly, which is a potential risk factor. Heavy lifting as

defined in the United States Department of Labor Dictionary of Occupational Titles includes movement of 25 to 50 pounds on a frequent basis, and if, as he stated, he was regularly processing close to 80 tanks on a nightly basis in the manner he describes over the two year period prior to his termination, that would reasonably fulfill the definition of "frequent," making his work activities the prevailing factor in his having contracted an inguinal hernia as well as the postoperative complication of a reactive hydrocoele."

Dr. Rope assigned permanent partial disability to the whole person in the amount of 16%.

Exhibit 5 is a document from MayoClinic.com pertaining to causes and risk factors related to inguinal hernias. Page one states in part, "Other inguinal hernias develop later in life when muscles weaken or deteriorate due to factors such as aging, strenuous physical activity or coughing that accompanies smoking." Page one also states in part:

Whether or not you have a preexisting weakness, extra pressure in your abdomen can cause a hernia. This pressure may result from – straining during bowel movements or urination – heavy lifting – fluid in the abdomen (ascites) – pregnancy, excess weight. Family history, certain medical conditions including cystic fibrosis, chronic cough, such as occurs from smoking, chronic constipation, excess weight, certain occupations: having a job that requires standing for long periods or doing heavy physical labor increases a risk of developing an inguinal hernia.

#### Division of Workers' Compensation Records

Exhibit F is a Division of Workers' Compensation Report of Injury dated April 6, 2009 pertaining to alleged date of injury/illness "2006-11-27". The part of the body affected is listed to be "low back area (inc: lumbar and & lumbo-sacral)." The "date administrator notified" is shown to be "2009-04-06."

Exhibit G is a copy of Division of Workers' Compensation Report of Injury pertaining to alleged date of injury/illness of "10/31/2004" pertaining to "back (lower)." The "date administrator notified" is shown to be "11/01/2004." The carrier is shown to be "American Casualty Company of Reading."

Exhibit H is a copy of a Missouri Division of Workers' Compensation Report of Injury pertaining to alleged injury/illness of "2005-10-06" pertaining to Claimant's "low back area (inc: lumbar and lumbo-sacral)."

Joint Exhibit 1 contains copies of Missouri Division of Workers' Compensation Reports of Injury, Claims for Compensation and Answer to Claim for Compensation pertaining to Claimant. An attorney for Claimant is not shown on any of the Claims.

Joint Exhibit 1 includes a Claim for Compensation bearing Injury Number 07-134329 alleging injury to "neck, lower back, hernia surgery" with a date of accident or occupational disease of November 27, 2007. That claim is shown to be received by the Division of Workers' Compensation on September 23, 2008.

Joint Exhibit 1 includes a Claim for Compensation in Injury Number 06-135712. It alleges injury to "neck, lower back and hernia" with an alleged date of accident or occupational disease of 11-27-06. That Claim is shown to have been received by the Division of Worker's Compensation on October 6, 2008.

Joint Exhibit 1 includes an Amended Claim for Compensation in Injury Number 06-135712 alleging "hernia surgery midsection." The alleged date of accident or occupational disease was left blank. A description of what employee was doing and how the injury occurred is left blank. The Amended Claim, which is shown to have been received by the Division of Workers' Compensation on May 13, 2009, is not signed.

Joint Exhibit 1 includes a Claim for Compensation in Injury Number 07-134329 that alleges injury to "neck, lower back, hernia surgery." The Claim alleges date of accident or occupational disease of "Nov. 27, 07." The Claim contains statement 8 that recites: "Describe what the employee was doing and how the injury occurred." The handwritten response states: "doing the same task night out and night in w/o any rotation (lifting tanks.)" The Claim is dated September 23, 2008 and is shown to have been received by the Division of Workers' Compensation on September 23, 2008.

Joint Exhibit 1 includes Claimant's Claim for Compensation in Injury Number 04-114314 pertaining to date of alleged accident or occupational disease of 10-31-04 alleging injury to low back from Dyna-press and repetitive injury. The Claim in Injury Number 04-114314 is shown to have been received by the Division of Workers' Compensation on May 29, 2009.

Joint Exhibit 1 includes Claimant's Claim for Compensation dated October 4, 2008 in Injury Number 05-102617 shown to have been received by the Division of Workers' Compensation on September 4, 2008. The Claim alleges injury to lower back, neck, and hernia. Paragraph 3 of the Claim alleges date of accident or occupational disease of 10-6-05, and contains the words "NFC 7, 2007 not reported" next to the date "10-6-05."

Claimant's case in Injury Number 07-134329 was combined into his 2006 case, which is Injury Number 06-135712.

### Other Exhibits

Exhibit J is Employee Report of Incident/Injury dated December 7, 2007 of Claimant. The Employee Report contains spaces to note "Date of Incident/Injury" and "Date Reported to Medical." Both spaces are left blank. The form reports "prolonged exposure to Dyna tanks."

A box next to "lower body" is checked under the "Describe the injury" portion of the Employee Report. Also, the words "hernia surgery" are written adjacent to the box "Other." The Employee Report states: "Describe the pain," and is followed by the Comment, "More of a discomfort than a pain and some swollen and fluid retained from hernia surgery currently still having problems with lower back."

Exhibit 1 contains a Disability Insurance Employer/Employee Statement dated July 30, 2007 pertaining to Claimant. Page one of the Statement, under the portion titled, "To be completed by employee," contains the question: "1. Is your disability work related?" The box next to "yes" is marked in response to that question. Paragraph 7 on page one references "Dyna robot by lifting a Dyna tank," next to the portion stating, "Action, when and where did it happen?" The form also states, "beginning of July. Hernia," next to "Illness, When did you first notice and what is the nature of your disability?"

The Attending Physician's Statement portion of Exhibit 1 is shown to have been completed by Herman Watson, M.D. It relates to Claimant's right inguinal hernia. It notes Claimant's most recent visit was July 25, 2007. The Attending Physician's Statement contains the question, "Is this condition related to the patient's employment?" Dr. Watson answered, "No."

Employer's Job Analysis of Claimant's job working with Dyna tanks in the Medallion Press Department (pages D35-D38 of Exhibit D) states at page D37 that the weight of the fuel tank is "22 lbs."

### **Rulings of Law**

Based on a comprehensive review of the substantial and competent evidence and the application of the Missouri Workers' Compensation Law, I make the following Rulings of Law.

Section 287.800, RSMo<sup>3</sup> provides in part that administrative law judges shall construe the provisions of this chapter strictly and shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

Section 287.808, RSMo provides:

The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

Claimant states in page 5 of his proposed Awards (original and amended proposed Awards):

The Claimant has filed 4 separate claims relating to either low back injuries or hernia. The only medical reports and opinions offered were those of Claimant indicating that the Claimant had suffered a permanent partial disability associated with his hernia and subsequent sequelae. Neither party presented evidence suggesting any disability, temporary or otherwise, with respect to the low back injury. Nor was there any evidence of medical expense or anyother [sic] type of benefits due with respect to these earlier claims [sic] Consequently, the issue of the statute of limitations is moot in as much as both the 2004 and 2005 claims relate to a low back injury for which there was no evidence of any benefits due for those injuries.

Claimant states in page 6 of his proposed Awards (original and amended proposed Awards):

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<sup>3</sup> All statutory references are to RSMo 2006 unless otherwise indicated. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc.*, 20 S.W.3d 579, 585-86 (Mo.App. 2000). See also *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo.App. 2007). Prior to August 28, 2005, Section 287.800, RSMo provided in part: "Law to be liberally construed.—All of the provisions of this chapter shall be liberally construed with a view to the public welfare. . . ."

The issue of the statute of limitations with respect to the 2004 and 2005 injuries is moot given that no evidence was presented subscribing any benefits due Claimant as a result of these claimed injuries. The limitations described by Claimant and the permanency [sic] outlined by Dr. Rope all deal with the hernia such that no benefits are due for the earlier injuries irrespective of the statute of limitations.

Dr. Rope did not diagnose any injury to Claimant's neck or lower back. Dr. Rope's report contains no reference of any complaints of Claimant or treatment to Claimant for his neck or low back. No physician assessed any disability specifically relating to Claimant's neck or back.

I find that Claimant failed to prove that he sustained an injury to his low back or neck by accident or occupational disease arising out of or in the course of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. I further find that Claimant failed to prove that he sustained any permanent disability relating to his low back and neck arising out of and in the course of his employment for Employer. Claimant's claims for benefits relating to alleged injuries to his low back and neck are denied.

Claimant alleges he is entitled to benefits under the Workers' Compensation Law in Injury Number 06-135712 for a hernia and a reactive hydrocoele that resulted from the hernia. Claimant's Claim for Compensation in Injury Number 05-102617 filed in 2008 alleges injury to lower back, neck, and hernia.<sup>4</sup>

Section 287.195, RSMo provides:

In all claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission:

- (1) That there was an accident or unusual strain resulting in hernia;
- (2) That the hernia did not exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed.

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<sup>4</sup> Claimant's claims were filed pro se. It is believed Claimant's Claim for Compensation in Injury Number 05-102617 mistakenly references Claimant's hernia. Claimant first complained about hernia symptoms in 2007. He was first diagnosed with a hernia in 2007. He first reported a hernia injury to Employer in 2007. He had hernia surgery in 2007.

Section 287.190.6(2), RSMo provides:

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

The Court in *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823 (Mo.App. 2009) discusses the burden of proof before and after the 2005 amendments to the Workers' Compensation Law. The Court states at 830:

Prior to this amendment, it has been stated that “[t]he purpose of Workers' Compensation Law is to ‘place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment and, consequently, the law should be liberally construed so as to effectuate its purpose and humane design.’” *Rogers v. Pacesetter Corp.*, 972 S.W.2d 540, 542-43 (Mo.App.1998). Therefore, “[a]ny question as to the right of an employee to compensation must be resolved in favor of the injured employee.” *Jennings v. Station Casino St. Charles*, 196 S.W.3d 552, 557 (Mo.App.2006) (quoting *Rogers*, 972 S.W.2d at 543). However, under the current requirements of section 287.800, not only is the law to be strictly construed, but it is also required that the evidence shall be weighed “impartially without giving the benefit of the doubt to any party.” Section 287.800. The legislature by this amendment has made it abundantly clear that previous cases which have applied a liberal construction of the law to resolve questions in favor of coverage for the employee should no longer be followed.

The quantum of proof is reasonable probability. *Thorsen v. Sachs Electric Company*, 52 S.W.3d 611, 620 (Mo.App. 2001); *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 227 (Mo. banc 2003)<sup>5</sup>; *Fischer v. Archdiocese of St.*

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<sup>5</sup> Several cases are cited herein that were among many overruled by *Hampton* on an unrelated issue (*Id.* at 224-32). Such cases do not otherwise conflict with *Hampton* and

*Louis*, 793 S.W.2d 195, 199 (Mo.App. 1990). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Thorsen*, 52 S.W.3d at 620; *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App 1986); *Fischer*, 793 S.W.2d at 198. Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A. B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. 1974). Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo.App. 1992). "Medical causation of injuries which are not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Thorsen*, 52 S.W.3d at 618; *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App 1991).

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelley v. Banta & Stude Constr. Co. Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999); *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992); *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 162 (Mo.App. 1986). The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith*, 182 S.W.3d at 701; *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 263 (Mo.App. 2004).

A claimant has the burden to prove all the essential elements of his or her case, and a claim will not be validated where some essential element is lacking. *Thorsen*, 52 S.W.3d at 618; *Cook v. Sunnen Products Corp.*, 937 S.W.2d 221, 223 (Mo. App. 1996).

The Court in *McClain v. Yellow Cab Co.*, 439 S.W.2d 200 (Mo.App. 1969), denied a taxicab driver's workers' compensation claim alleging a hernia from lifting a passenger's heavier suitcase to the trunk. His usual duties involved lifting. The Court noted that Section 287.195, RSMo requires in a hernia claim it must be definitely proved that there was an accident or unusual strain resulting in hernia. The Court stated at 203:

Performance of any manual task is accompanied by a certain degree of straining the muscles and other parts of a workman's body. The amount of strain incurred will, of course, vary according to the work to be accomplished and the circumstances and conditions under which it is being performed. Injuries produced by strains which are normal

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are cited for legal principles unaffected thereby; thus *Hampton's* effect thereon will not be further noted.

for the job to be performed in a customary fashion are not compensable although the amount of straining may be great or would be considered abnormal in other classes of employment or if performed in an abnormal manner under unusual circumstances.

The Court noted at 204 that the record in the case was

barren of any suggestion that McClain, when injured, was doing something beyond and different from his normal routine because 'a lot of times we have passengers that have a lot of luggage and we have to load that and unload it.' There is no evidence the claimant was subjected to any strain, either usual or unusual, because he slipped, tripped, fell, twisted, turned, became overbalanced or unbalanced, struck any object or was struck by any object before or at the time he 'felt a stinging in my side.' McClain did not assume an unusual stance or position, and does not claim he experienced any strain because his handhold slipped or because the suitcase was unwieldy or because its unknown contents shifted any weight onto him. The trunk of the taxi, as far as we know, was the standard height from the ground and did not require the employee to undertake a higher-than-usual lift. Nothing is said to indicate that McClain, in stowing the luggage, gave or was required to give 'a kinda extra surge' or that he exerted 'his full force' or used 'all the strength I had.' No person or object was encountered that produced any strain by causing him to deviate from the usual method employed in his work. The suitcase did not strike anything or get 'hung' on any object; neither was its weight dropped or thrown onto the employee.

The Court stated at 205 that "'Any theory of abnormal strain involves a consideration of the degree of physical exertion. And the very use of the term 'abnormal' (usually joined with the tautological 'unusual') necessitates a reference to the comparative.'" The Court continued at 205:

In our opinion there is a failure of proof that the claimant, on the occasion in dispute, experienced either by way of physical exertion or from forces external to his body a strain of such an exceptional degree that it could be properly classified as being unusual or abnormal to that customarily experienced in the discharge of his usual duties.

The Court in *Pattengill v. General Motors Corp.*, 845 S.W.2d 630 (Mo.App. 1992), upheld a finding of compensability in a hernia case involving an employee who was injured while standing on top of a 12-foot ladder and reaching up as far as he could

to guide a 300- to 500-pound object suspended over his head by ropes held by four men. The Court set forth Section 287.195, RSMo, and stated at 632:

We turn first to whether an unusual strain occurred. “[A]n unusual or abnormal strain may be classified as an accident even though not preceded by a slip and fall. The unexpected or abnormal strain *usually* results from the performance of work in an abnormal manner or in a manner not routine, but this is not necessarily so. Abnormal strain may also result from the lifting of heavy objects while in an awkward or unbalanced posture where the worker is subjected to stress of unforeseen force or duration.”

The *Pattengill* Court found at 632 that Claimant’s injury qualified as an unusual strain.

Based on the substantial and competent evidence and the application of the Missouri Workers’ Compensation Law, I find that Claimant’s claim for hernia and the resulting hydrocœle should be denied. I find that Claimant failed to prove that he sustained a compensable hernia under Section 287.195, RSMo. Section 287.195, RSMo governs Claimant’s claims for benefits relating to his hernia. It states in part: In *all* claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission: (1) That there was an accident or unusual strain resulting in hernia. . . .” (Emphasis added.)

I find that Claimant did not establish that there was an accident or unusual strain arising out of and in the course of his employment for Employer resulting in hernia. While I find that Claimant sustained a hernia that was diagnosed in 2007, and he had a reactive hydrocœle connected to his hernia surgery, I find that Claimant did not have an accident or unusual strain in the course of his employment for Employer that resulted in a hernia. This conclusion is supported by the following.

Dr. Bock stated, and I find that Claimant developed a reactive hydrocœle following his July 24, 2007 hernia surgery, and that his hydrocœle is connected to the hernia surgery. Dr. Rope also noted a postoperative complication of a reactive hydrocœle after Claimant’s hernia surgery. I find that Claimant’s hydrocœle resulted from and was caused by his hernia.

Claimant testified he lifted tanks that weighed between 20 and 25 pounds when he worked in the Dyna tank department for Employer. Dr. Rope’s report states notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and “The weight of the tanks in that note was

estimated at 20 to 25 pounds.” Dr. Rope’s report states Claimant told him the tanks he lifted weighed 25 pounds. Employer’s Job Analysis for Claimant’s job and the functional capacity evaluation both document the weight of the tanks that Claimant lifted when he worked for Employer was 22 pounds, not 25 pounds. I find the 22 pound weight of the tanks set forth in the job description and functional capacity is accurate and more reliable than Claimant’s 25 pound estimate of the weight of the tanks. I find that Claimant lifted 22 pound tanks when he worked for Employer.

The evidence establishes, and I find that Claimant lifted between 25 and 80 tanks per shift, and that he placed medallions at the rate of 50 to 80 tanks per shift the final two years of his employment. Claimant testified he lifted between 50 to 70 tanks per shift. Dr. Wright’s October 7, 2005 Progress Note states Claimant typically did 30 to 35 tanks per shift, and at his low point he was doing around 25, and at most he has done 40 to 45 a shift. Dr. Rope’s report states notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and “The weight of the tanks in that note was estimated at 20 to 25 pounds.” Dr. Rope’s report notes Claimant stated that he placed medallions at the rate of sixty to eighty tanks per shift the final two years of his employment.

Claimant handled each tank when he removed it from a cart and placed it into a fixture. He placed medallions on the tank, one on each side. He rotated the tank and placed the medallion on the opposite side. He released the tank and moved it to a presser and placed it into a fixture. He pressed buttons and a lever came down and pressed the medallions onto the tank. He then removed the tank from the fixtures and replaced it back onto the shelf and started the process all over again.

None of the treatment records relating to Claimant’s hernia make any reference to Claimant’s hernia being caused by or related to his work for Employer. Claimant saw Dr. Bock in 2007 for abdominal complaints. Dr. Bock’s records are silent as to the cause of the complaints. Claimant was treated by Dr. Watson in 2007 for the hernia. Dr. Watson’s records and the hospital records make no reference to Claimant’s hernia being related to his work for Employer. Claimant worked for several years performing the same tasks without hernia complaints until the summer of 2007.

Claimant testified that he was bending and picking up a tank to put it on a fixture when he heard something pop and noticed a bulge in his midsection. He thought it happened in the summer of 2007. He saw his personal doctor after that in June 2007. Claimant testified that he went to Employer’s medical department and told them he heard a pop in his back. There are no records in evidence that document any such report of a pop. Further, Claimant’s application for disability benefits makes no reference whatsoever to any accident, unusual strain or other event or incident relating to the hernia.

None of the medical records state that Claimant reported he sustained an accidental injury or unusual strain that resulting in a hernia. Claimant did not testify that he had an accident or unusual strain when he first noticed the bulge in his abdomen. Claimant's report to Employer in July 2007 regarding the hernia denied any specific incident. Dr. Bock's June 29, 2007 note states that Claimant reported a several week history of intermittent right groin discomfort with swelling. Dr. Bock diagnosed a small inguinal hernia then. That is the first time Claimant's hernia was diagnosed. Dr. Watson's July 11, 2007 note states that Claimant came in with what appeared to be a hernia and described pain that had "been there for about two months." There is no reference whatsoever in these records to any unusual event or abnormal strain or accident at work that caused or contributed to cause the hernia.

Claimant's own evaluating doctor, Douglas Rope, did not diagnose that Claimant's hernia was caused by an accident or unusual strain. Dr. Rope's report states that neither Dr. Bock's note nor the Claimant, when asked by Dr. Rope, "mentioned any specific incident temporally associated with the acute appearance of those symptoms." Dr. Rope's report makes no reference to any accident, unusual strain or abnormal work activity that caused Claimant's hernia.

I find Claimant did not prove that he performed his job in any manner other than what was customary or normal. I find that Claimant failed to prove, either by way of physical exertion or from forces external to his body a strain of such an exceptional degree that it could be properly classified as being unusual or abnormal to that customarily experienced in the discharge of his usual duties.

As in the *McClain* case, Claimant did not prove that he was doing anything beyond and different from his normal routine. As in *McClain*, there is no evidence that Claimant was subjected to any strain, either usual or unusual, because he slipped, fell, twisted, turned, became overbalanced or unbalanced, struck any object or was struck by any object before or at the time he "heard the pop" or felt the bulge.

There is no evidence that when Claimant alleged he noticed an abdominal injury that he was undertaking a higher than usual lift. As in *McClain*, no person or object was encountered or produced any strain by causing Claimant to deviate from the usual method employed in his work. A tank did not strike anything or get "hung" on any object.

The case at hand is clearly distinguishable from the *Pattengill* case where Claimant was standing on top of a twelve foot ladder and reaching up as far as he could to guide a three hundred to five hundred pound object suspended over his head by ropes held by four men at the time he sustained his hernia injury.

It is also noteworthy that Dr. Watson, Claimant's treating physician, responded "No" to the question, "Is this condition related to patient's employment?" that is in a July 2007 Attending Physician's Statement in Claimant's disability insurance form relating to Claimant's hernia.

Dr. Rope's report states that heavy lifting as defined in the United States Department of Labor Dictionary includes movement of "twenty to fifty pounds on a frequent basis." The report continues: "If, as he stated, he was regularly processing close to eighty tanks on a nightly basis in the manner he describes over the two year period prior to his termination, that would reasonably fulfill the definition of 'frequent,' making his work activities a prevailing factor in his having contracted an inguinal hernia as well as a post operative complication of a reactive hydrocoele." I find this opinion of Dr. Rope is not credible. I find Claimant did not prove his work activities at Employer were the prevailing factor in his having contracted an inguinal hernia as well as a post operative complication of a reactive hydrocoele.

Dr. Rope's report references heavy lifting as being twenty-five to fifty pounds. Claimant reported to Dr. Rope that he took tanks weighing 25 pounds from rolling racks on which they were stacked three or four shelves high, putting them onto a stand for application of the medallions, and returning them to the carts. I have found the tanks weighed 22 pounds, a weight that is below the "heavy weight" definition of the Dictionary of Occupational Titles. Dr. Rope notes that "frequent heavy lifting" is an accepted risk for the development of inguinal hernias according to MayoClinic.com. I find that Claimant was not engaged in frequent heavy lifting as defined by the Dictionary of Occupational Titles.

Dr. Rope's conclusion is subject to question because he did not consider what effect Claimant's coughing from smoking may have had in causing Claimant's hernia. The Mayo Clinic record (Exhibit 5) notes that coughing that accompanies smoking is a risk factor related to inguinal hernias. Dr. Rope's report states Claimant was a non-smoker. I find Claimant was a smoker at the time he sustained his hernia and that smoking causes him to cough. Claimant testified that he smoked one or two marijuana blunts a day and that smoking marijuana causes him to cough. Employer's record dated June 12, 2007 notes Claimant stated he needed to "stop smoking so much." Claimant treated with Dr. Bock in 2006. Dr. Bock noted then that Claimant had a five to six year history of marijuana consumption "which sounds like about two marijuana cigarettes a day." Dr. Rope did not address whether Claimant coughed from smoking at the time he sustained the hernia.

In addition, Dr. Rope did not explain why lifting was a greater risk than any other risk factor.

I find that Claimant failed to prove that he had an accident or unusual strain resulting in hernia arising out of and in the course of his employment for Employer. I find that Claimant failed to prove that he sustained a compensable injury resulting in hernia arising out of and in the course of his employment for Employer. I find that Claimant did not have an accident or unusual strain in the course of his employment for Employer that resulted in a hernia. Claimant's claims for benefits resulting from the hernia and hydrocœle are denied.

I also find Claimant did not prove that he sustained an injury to his neck or back in 2006 or 2007 arising out of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. Dr. Rope did not diagnose any injury to Claimant's neck or lower back. Dr. Rope's report contains no reference to any complaints of Claimant or treatment to Claimant for his neck or low back. No physician assessed any disability specifically relating to Claimant's neck or back. Claimant acknowledged in his proposed Award that the limitations described by Claimant and the permanency outlined by Dr. Rope all deal with the hernia.

I find that Claimant failed to prove that he sustained any injuries to his low back or neck arising out of or in the course of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. I further find that Claimant failed to prove that he sustained any permanent disability relating to his low back or neck arising out of and in the course of his employment for Employer. I find that Claimant failed to prove he is entitled to any benefits under the Workers' Compensation Law relating to his neck or back. Claimant's claims for benefits relating to alleged injuries to his low back and neck are also denied.

Claimant's entire claims for benefits in all three cases, Injury Numbers 04-114314, 05-102617, and 06-135712<sup>6</sup> are denied and all other issues are moot.

Made by: /s/ Robert B. Miner  
Robert B. Miner  
*Administrative Law Judge*  
*Division of Workers' Compensation*

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<sup>6</sup> Claimant's claim in Injury Number 07-134329 has been combined by the Division of Workers' Compensation into Injury Number 06-135712. Claimant's claim relating to Injury Number 07-134329 is also denied.

This award is dated and attested to this 12th day of August, 2010.

/s/ Naomi Pearson

Naomi Pearson  
*Division of Workers' Compensation*

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

Injury No.: 06-135712

Employee: Christopher Baldwin  
Employer: Harley Davidson Motor Company  
Insurer: American Casualty Co. of Reading

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 12, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Robert B. Miner, issued August 12, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17<sup>th</sup> day of February 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Christopher Baldwin

Injury No.: 06-135712

Employer: Harley Davidson Motor Company

Before the  
**Division of Workers'  
Compensation**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri

Insurer: American Casualty Co. of Reading

Hearing Dates: April 23, 2010 and June 24, 2010

Checked by: RBM

## 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: Alleged: November 27, 2006 and approximately June 2007.
5. State location where accident occurred or occupational disease was contracted: Alleged: Kansas City, Platte 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? 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 accident occurred or occupational disease contracted: Employee alleged injury to neck, lower back, and hernia surgery from doing the same task night out and night in without any rotation (lifting tanks.)

12. Did accident or occupational disease cause death? No.
13. Part(s) of body injured by accident or occupational disease: Alleged: neck, lower back, hernia.
14. Nature and extent of any permanent disability: Not determined.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$874.00.
19. Weekly compensation rate: \$587.67 per week for temporary total disability and \$376.55 per week for permanent partial disability.
20. Method wages computation: By agreement of the parties.

#### COMPENSATION PAYABLE

21. Amount of compensation payable: None. Employee's claim is denied.
22. Second Injury Fund liability: None. The Second Injury Fund is not a party in this case.

TOTAL: None.

23. Future requirements awarded: None.

Employee's entire claim is denied.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Christopher Baldwin Injury No's: 04-114314, 05-102617 & 06-135712

Employer: Harley Davidson Motor Company

Before the  
**Division of Workers'**  
**Compensation**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri

Insurer: American Casualty Co. of Reading

Hearing Dates: April 23, 2010 and June 24, 2010

Checked by: RBM

PRELIMINARIES

A non-section 287.203, RSMo temporary hearing regarding Employee's request for medical benefits from Employer/Insurer in Injury Numbers 04-114314, 05-102617, and 06-135712 was held on April 23, 2010 in Riverside, Missouri. Employee, Christopher Baldwin, appeared in person and by his attorney, Patrick B. Starke. Employer, Harley Davidson Motor Company, and Insurer, American Casualty Co. of Reading appeared by their attorney, Samantha Benjamin House. The Second Injury Fund is not a party to these cases and was not represented at the hearing. Patrick B. Starke requested an attorney's fee of 25% from all amounts awarded.

Prior to issuance of an award in connection with the April 23, 2010 hearing, Employee's attorney informed the Administrative Law Judge and Employer/Insurer's attorney by letter dated May 10, 2010 that Employee was no longer seeking a hardship medical benefit, and they would be filing for a final hearing in the near future. Employee's attorney filed Requests for Final Hearing in these cases on May 11, 2010. Pursuant to a conference call between the Administrative Law Judge and the attorneys for the parties on May 13, 2010, the parties agreed that a final hearing on Employee's claims be held on June 24, 2010 in Riverside, Missouri. The parties also agreed that the June 24, 2010 hearing should be considered a continuation of the April 23, 2010 hearing, and that the stipulations made and evidence admitted at the April 23, 2010 hearing should continue to be in effect and be a part of the record made in connection with the final hearing. This agreement was confirmed at the June 24, 2010 hearing.

A final hearing was held in these cases on Employee's claims against Employer/Insurer on June 24, 2010 in Riverside, Missouri. Employee, Christopher Baldwin, appeared in person and by his attorney, Patrick B. Starke. Employer, Harley Davidson Motor Company, and Insurer, American Casualty Co. of Reading appeared by their attorney, Samantha Benjamin House.

## STIPULATIONS

The parties stipulated to the following:

1. On or about October 31, 2004, October 6, 2005, and November 27, 2006, Christopher Baldwin ("Claimant") was an employee of Harley Davidson Motor Company ("Employer") and was working under the provisions of the Missouri Workers' Compensation Law.

2. On or about October 31, 2004, October 6, 2005, and November 27, 2006, Employer was an employer operating under the provisions of the Missouri Workers' Compensation Law and was fully insured by American Casualty Co. of Reading ("Insurer").

3. Employer had notice of Claimant's alleged injuries.

4. Claimant's alleged November 27, 2006 Claim for Compensation was filed within the time allowed by law.

5. Venue for the hearings is proper in Riverside, Platte County, Missouri.

6. The average weekly wage was \$874.00 and the rate of compensation for temporary total disability is \$587.67 per week in all three cases, and the rate of compensation for permanent partial disability is \$354.05 per week for Injury Number 04-114314, \$365.08 per week for Injury Number 05-102617, and \$376.55 per week for Injury Number 06-135712.

7. Employer/Insurer's attorney stated at the April 23, 2010 hearing that no compensation has been paid by Employer for temporary disability in any of these cases.<sup>1</sup>

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<sup>1</sup> On August 6, 2010, Claimant's attorney emailed a letter to the administrative law judge (with a copy shown sent via email to Employer/Insurer's attorney), that states:

1. Mr. Baldwin is not abandoning his request for additional medical treatment, his records, specifically from Dr. Wright dated 10-25-05 reflect that HD refused to provide him medical treatment so that he sought treatment elsewhere. Dr. Wright's note of 10-25-05 is part of the medical that was submitted to the court. I have scanned and attached a copy for your convenience.

8. Employer/Insurer's attorney stated at the April 23, 2010 hearing that no medical aid has been paid or furnished by Employer in any of these cases.

## ISSUES

The parties agreed at the final hearing that there were disputes on the following issues:<sup>2</sup>

1. Whether on or about October 31, 2004, October 6, 2005, and November 27, 2006, Claimant sustained injuries by accident or occupational disease arising out of and in the course of his employment for Employer.

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2. Mr. Baldwin states that the stipulation regarding temporary total disability is incorrect inasmuch as he was paid for one week of temporary total disability in the amount of \$532.51 from the injury sustained in 2004. A copy of his check is attached.

3. Mr. Baldwin is seeking present and future medical inasmuch as HD refused to provide him treatment. He currently is pursuing treatment in Chicago with a urologist there.

Attached to the email was a copy of a check from CNA Insurance dated 11/8/04 in the amount of \$532.51 that references "1 wk of TTD", and a copy of a medical record dated 10-25-05. The August 6, 2010 email, and August 6, 2010 letter, with referenced check and medical record have been marked, "Court's Exhibit 1."

<sup>2</sup> Claimant's proposed Award filed on July 9, 2010 identified the following issues to determine:

1. Whether Claimant sustained an accident arising out of and in the course of employment?
2. Whether the statute of limitations has run on the 2004 and 2005 claims?
3. The nature and extent of Claimant's temporary total and permanent partial disability relating to any of the claims filed.

Claimant's amended proposed Award filed on July 27, 2010 identified the following issues to determine:

1. Whether Claimant sustained an accident arising out of and in the course of employment?
2. Whether the statute of limitations has run on the 2004 and 2005 claims, or whether such injuries are repetitive [*sic.*]
3. The nature and extent of Claimant's temporary total and permanent partial disability relating to any of the claims filed.

2. Whether Claimant's current condition is medically causally related to the alleged work injuries of October 31, 2004, October 6, 2005, and November 27, 2006.

3. Employer's liability for permanent partial disability benefits, including nature and extent of permanent partial disability.

4. Whether Claimant's claims in Injury Numbers 04-114314 and 05-102617 were filed within the time prescribed by law and are barred by the statute of limitations.

Claimant testified in person. In addition, Claimant offered the following exhibits which were admitted in evidence without objection:

- A—Dr. Douglas Rope report
- B—Employer's medical Records
- C— Employer's medical Records
- D— Medical Records
- E— Medical Records
- F— Report of Injury for 2004 claim
- G— Report of Injury for 2005 claim
- H— Report of Injury for 2006 claim
- I—Comparison of Tanks
- J—Employee Incident Report

Employer offered the following exhibits which were admitted in evidence without objection:

- 1—Disability Insurance Application
- 2—Outpatient Admission
- 3—Gill Wright, M.D. Progress Note
- 4—James Carter, M.D. Progress Note
- 5—Internet Research "Causes"

The parties offered Joint Exhibit 1, copies of Workers' Compensation Reports of Injury, Claims for Compensation, and Answers to Claims for Compensation, which was admitted in evidence without objection.

Any objections not expressly ruled on during the hearing or otherwise in this award are now overruled. To the extent there are marks, tabs or highlights contained in the exhibits, those markings were made prior to being made part of the record, and were not placed thereon by the Administrative Law Judge.

A record was made at the April 23, 2010 hearing that Claimant's case in Injury Number 07-134329 was combined by the Division of Workers' Compensation into his 2006 case, which is Injury Number 06-135712.

The proposed awards of the attorneys have been considered.

## **Findings of Fact**

### Summary of the Evidence

Claimant testified that he worked in the finesse paint department for Employer from 2002 through 2008. He did the same job for the most part. He performed detail work on Harley Davidson motorcycles, including putting on stickers, medallions, race stripes, and decals. He worked in the Dyna press tank department in the finesse paint department for about three to four years without much rotation.

Claimant described his job duties when he worked for Employer. Part of his job required that he push tanks that weighed between twenty and twenty-five pounds each. Twelve to sixteen tanks were pushed to Claimant on a cart. He started from the very top shelf, which is about shoulder length for him. There are about four racks and four tanks going across. He started from the very top and removed each tank off the cart and placed it into a fixture. He placed medallions on the tank, one on each side. He rotated the tank and placed the medallion on the opposite side. He released the tank and moved it to a presser and placed it into a fixture. He pressed buttons and a lever came down and pressed the medallions onto the tank. He then removed the tank from the fixtures and replaced it back onto the shelf and started the process all over again.

Claimant testified he did between fifty to seventy tanks a night. There was a steady flow of tanks that he was Dyna-pressing. He did a different task if he finished working on the tanks.

Claimant stated that he was principally doing the tank work from 2003 until he was terminated on April 29, 2008. He worked an eight hour shift for the most part. He estimated half of his work was Dyna-pressing. He testified he ran through fifty or sixty tanks within three or four hours. He did the tanks day-in and day-out consistently. He did not have assistance when he worked on the tanks.

Claimant testified he did more than his fair share of Dyna press work. He said Employer's rotation policy was not being implemented. He complained to the medical department at Employer that his work was taking a toll on his body and something needed to be done to enforce the rotation policy. He said nothing was done.

Claimant testified at the June 24, 2010 hearing that he began to notice physical problems at work that started with his neck and progressed to his back. He filed worker's compensation claims in 2004 and 2005 due to continuous lifting. There was not a specific incident. He voiced concerns to his group provider and union.

Claimant developed back pain and back complaints and went to his own family physician. The family physician suggested a back specialist. Claimant saw a back specialist who told him his back pain was work-related. The back specialist said Claimant needed to go to Corporate Care of Employer, which is what he did. Corporate Care gave him pain pills, but he could not take them because they made him drowsy. He would have been walked out the door if he was caught sleeping on the job. Claimant said that he was not having problems with his groin in 2004—just basically his lower back, shoulder and neck.

Claimant's third injury relates to problems with his groin. Claimant testified he was bending picking up a tank, and when he was going to place it on a fixture, he heard something pop. He noticed a bulge in his midsection when he got home that night. He first thought it was a sexually transmitted problem and did not know it was a hernia at first. He learned it was a hernia after he went to his personal doctor in June 2007. His family doctor told him he believed it was a hernia.

Claimant could not remember the exact date of this injury. He thought that happened in the summer of 2007. Claimant could not remember the actual date of the popping sensation, but said it should probably be on the incident report he filed. Claimant testified on June 24, 2010 that the problem in his groin developed in 2007.

Claimant testified he reported this injury to Employer the night it happened. Claimant then went to Employer's medical department and told them he heard a pop in his back. He did not tell them he had a hernia that night because he did not realize he had a hernia.

Employer's medical department sent Claimant to Corporate Care. Corporate Care provided treatment with a physical therapist and a doctor. Claimant testified on cross-examination that he first went to Corporate Care after he felt the pop and noticed the bulge inside his abdomen.

Claimant was not satisfied with Employer's Corporate Care, and believed they had released him from care. Claimant did not want Employer to provide medical treatment for the hernia. Claimant obtained treatment for the hernia on his own.

Claimant thought he saw his personal physician, Dr. James Carter, a week after the incident. He told Dr. Carter he thought he had a sexual injury because he had never had a

hernia before. Dr. Carter sent Claimant to an urologist. The urologist told Claimant he had a hernia and to make plans for surgery.

Claimant then went to Dr. Herman Watson, his own surgeon, on his own. Claimant had surgery on a bulge in his midsection that was determined to be a hernia. He had complications after the surgery. He had a blood clot and his testicles were swollen. He was taken from his home by ambulance to the emergency room because of his swollen testicles. He had a second surgery within twenty-four hours of the hernia surgery to release the pressure in his testicle. Claimant missed work as a result of the surgical repair.

Claimant testified he developed a hydrocœle, which is fluid in the testicle, after his hernia. He said it feels like a water balloon. He testified that his right testicle is a "whole lot larger than my left" due to the fluid that it is retaining. Claimant was asked what difficulties that caused him. He testified the testicle rubbed against his inner thigh and caused a rash and irritation. He had to see a dermatologist. He testified at the April 23, 2010 hearing that he wanted to meet with his urologist to weigh options of having the hydrocœle drained or having surgery to release the fluid.

Claimant received short-term disability benefits when he had surgery for his hernia. He was shown an Application for Short-term Disability Benefits, Exhibit 1. He acknowledged his signature on the Application, but said he did not fill it out. A part of the Application was filled out and signed by Dr. Watson. That part has a question that asks if the condition is related to the patient's employment. Dr. Watson answered, "No."

Claimant met with Dr. Rope for an evaluation. He told Dr. Rope that he did not have any history of groin discomfort prior to 2007. Claimant was shown Exhibit 3, a note of a Corporate Care visit dated October 7, 2005. Page 2 of Exhibit 3, under "Review of Symptoms," states in part: "He also said he has some aching off and on of the testicles." Claimant stated he did not remember saying anything like that.

Claimant has been treated for bronchitis because of smoking. Claimant was asked about a medical report from Dr. Carter where Claimant was diagnosed with bronchitis and was smoking three blunts of marijuana every day in April 2005. He testified a blunt is about the size of a cigar. Claimant said he did that for a good month at one time. He testified he is a social drinker.

Claimant read a portion of Dr. Carter's April 18, 2005 record in Exhibit 4 stating that Claimant began smoking marijuana at the age of sixteen, but did not become a heavy user until the age of twenty-six and presently smokes three joints of marijuana every day and admitted to heavy alcohol use two or three times a week. Claimant said that he

currently smoked one or two blunts a day. He testified smoking marijuana causes him to cough.

Claimant stated he is currently drawing unemployment benefits and had been drawing benefits for close to two years since he had been terminated by Employer. He has not worked anywhere since he was terminated. Claimant has not played league baseball since he had his hernia surgery. He was asked if he does anything physically to keep fit. He answered that he was not able to run, but before the hernia, he ran. He works out with arm bands.

Claimant was born on August 2, 1969. He testified he was drug-free at the time he sustained the hernia at work in 2007.

Claimant testified on June 24, 2010 that he was a whole lot better since the April 23, 2010 hearing. He recently went to a second urologist who gave him cream that relieved the fungus. It relieved the rash caused by his testicle rubbing against his thigh. He also received an antibiotic for infections and he takes a tablet for inflammation.

Claimant said he does not have pain in the area of his hernia. He has discomfort that impacts his ability to bend and lift. He said the most weight he can lift is thirty to forty pounds. He has a swelling like a balloon in his testicle area that affects his ability to run and twist. The swelling is constant twenty-four hours a day, seven days a week. Claimant testified the rash on his thigh and testicle impacted his ability to work.

Claimant does housework. He said he can pretty much function, but he takes five to ten minute breaks to rest. He said what used to take an hour now takes two to two and a half hours. What was a hydrocoele is now a knot. He has had improvement for the rash. The medication that he has been taking does not help his swelling.

Claimant said that he also has a fungus on his face and scalp. He has ingrown hair.

I find this testimony of Claimant to be credible unless discussed otherwise later in this Award.

### Records Relating to Medical Treatment

A Corporate Care Initial Injury Record dated November 1, 2004 in Exhibit D notes the Claimant's history: "On 10-1-04 at work approx. 5 a.m. patient was at dye and press lifting tanks approx. weight twenty pounds-he lifts the tanks at least 5x approx thirty tanks a night-he states some nights up to forty tanks are lifted. At the time on 10-1-04 he was lifting these tanks the pain started in his low back and it has moved up to his shoulder and neck area."

Dr. Gill Wright's November 1, 2004 report in Exhibit D notes Claimant complained of neck pain at work around October 1, 2004 that started "probably a month before that." Claimant blamed it on spending the last two years doing the same job without rotation. Claimant reported increasing low back pain, neck pain and shoulder pain. Dr. Wright performed a physical examination and diagnosed cervical neck strain and lumbar muscle strain. He started Claimant on Naproxen and restricted Claimant not to work over shoulder height with either arm or lift over fifteen pounds. He also started Claimant on physical therapy.

A Shawnee Mission Medical Center lumbar spine evaluation dated November 3, 2004 notes a date of injury of October 1, 2004 with onset of back pain while lifting motorcycle tanks.

Dr. Gill Wright's Progress Note dated November 17, 2004 states Claimant was in for follow-up of his cervical and lumbar muscle strains. Claimant said he was not having any pain at that point. Dr. Wright noted full range of motion in the cervical and lumbar regions. He notes, "There is no tenderness on palpation and no muscle spasm noted. Neurologic and vascular exams are grossly normal." Dr. Wright's diagnosis was cervical muscle and lumbar muscle strains, resolved. The Progress Note concludes: "The patient is returned to work today without restrictions. He is discharged from further follow-up. I expect no long-term sequelae or disability related to this injury."

Dr. Gil Wright's October 7, 2005 Progress Note (page E3 in Exhibit E) states Claimant reported back pain. The Progress Note states in part: "He is very negative and angry about his job, the company and how they are treating him. He makes multiple references throughout the interview to all of the wrongs that he has suffered. He said that they are supposed to rotate him, but they never do."

Dr. Wright's Progress Note states Claimant reported to Dr. Wright he was working on the Dyna-press, a job he had done for three-and-a-half years. Claimant reported he lifted twenty to twenty-five pound tanks from varying levels up, placed them on a press and placed them back on a rack, again at varying heights. The report states Claimant typically does thirty to thirty-five tanks per shift. At his low point he was doing around twenty-five, and at most he has done forty to forty-five a shift.

Dr. Wright's October 7, 2005 Progress Note states Claimant was taking the "purple pill," which the doctor thought was Prilosec, for gastro-esophageal reflux disease. The report notes Claimant thought he might have a urinary infection. The report states in part: "He said that he sometimes feels like he has to go to the bathroom to urinate very bad and has a hard time holding it. He also said he has some aching off and on in the testicles."

A Corporate Care Functional Capacity Evaluation dated October 19, 2005 in Exhibit E states Claimant's Medallion Press work station was analyzed again on October 20, 2005 and it was found "tanks (22 lbs. max.) are lifted in a range from 8 to 65 inches."

Dr. Gil Wright's October 25, 2005 note states in part: "At this point, due to his refusal to fully participate in the functional capacity evaluation and lack of reproducible objective findings, I have returned him to full work without restrictions and discharged him from any further follow-up."

Exhibit E contains the report of Dr. James Carter dated April 18, 2005. It states in part that Claimant "first began smoking marijuana at age sixteen, but did not become a heavy user until age twenty-six. He presently smokes three blunts of marijuana every day." The report notes that on examination, Claimant was without an inguinal hernia.

Exhibit B contains records of Dr. David Bock pertaining to Claimant. Dr. Bock's April 5, 2006 note states Claimant saw Dr. Bock for evaluation and management for infertility status as well as urgency of urination. The note states in part that Claimant has "about a 5-6 year history of marijuana consumption, which sounds like about two marijuana cigarettes a day. He has had no marijuana for the last five to six weeks."

Exhibit C contains records related to Claimant. An entry dated June 12, 2007 at page C9 notes Claimant "States he needs to exercise more, and stop smoking so much."

Exhibit B includes Dr. Bock's June 29, 2007 note that states in part: "He does have what I think is a small right inguinal hernia." He thought Claimant should undergo a consultation with a general surgeon. Claimant had reported a several week history of intermittent right groin discomfort with swelling. The note also states that Claimant has a bulge in his right subpubic area that he states is oftentimes bigger than it is now.

A note of Employer dated July 11, 2007 of "MEDKC" in Exhibit C states:

p/c from EE stating has had a hernia for past 3 weeks. Got it here at work. Works in Finesse. Has been lifting the Dyna Tanks which are the heaviest tanks in the building for the past 4-5 months with no rotation. Operates the Dyna Press. Denies any specific incident caused hernia. Denies feeling pain. Has a lump in pubic area. Went to his doctor who diagnosed a hernia and they said he [sic] if this was work related he needed to talk to employer. Confirmed that if this was WC needs to come to medical dept. and complete an incident report and then will need to see doctor at Corp Care. EE asked if paper could be left up front and he could pick them up. Informed EE that he needs to come to medical dept. and complete the

incident report and medical staff will explain process. EE states will come to medical in AM.

Dr. Watson's July 11, 2007 note in Exhibit C states that Claimant came in with a mass in the right inguinal area that appeared to be a hernia. Claimant stated he had had some pain there and "it has been there for about two months and he wishes to be seen." They discussed the need for surgery.

A July 12, 2007 note of Employer in Exhibit C states:

States has hernia that was caused by work. Does not trust WC doctors. Has decided to go to his own doctor. Surgery already scheduled. STD & FMLA application dispensed.

Exhibit C includes Dr. Watson's Operative Report dated July 24, 2007 pertaining to Claimant's right inguinal hernia repair. Exhibit C also includes an Operative Report of Dr. Watson dated July 25, 2007 for evacuation of hematoma, right groin.

Exhibit C includes Dr. Watson's Discharge Summary from Research Medical Center for admission on July 25, 2007 and discharge on July 28, 2007. It documents treatment for hematoma. A Research Medical Center testicular ultrasound dated July 26, 2007 in Exhibit C notes the impression of small to moderate sized right hydrocœle. The Discharge Summary notes a urologist had seen Claimant and that a CT showed only "edematous hematoma and perhaps even hydrocœle, which was not noted prior to that. . . ."

Dr. Bock's August 21, 2007 note states in part: "From the standpoint of the hematoma, I think that his activity restrictions can be lifted."

Exhibit C also includes Dr. Herman Watson's return to work/school form dated September 19, 2007 pertaining to Claimant. It states in part: "Disability: 7/24/2007-9/18/2007. Date returned to work: 9/19/2007 light duty third shift night of 9/19/2007. Restrictions: No strenuous activity or lifting over 15 pounds from 9/19/2007-10/31/2007. Next appointment on 10/31/2007. Anticipate release to full duty on 11/1/2007."

Dr. Watson's November 28, 2007 notes states that Claimant's swelling had gone down "and his function is fairly normal. He does have some discomfort from the hydrocœle, which was about the size of an egg. We will have him see an urologist. . . ."

Exhibit B includes Dr. Bock's November 28, 2007 note that states Claimant came in reporting right scrotal swelling. The report notes: "It is really not painful, but it's uncomfortable and it changes the way his testicles hang." Dr. Bock's impression is noted

to be right hydrocœle. The report states, "He does have a small right hydrocœle. No evidence of recurrence hernia."

Dr. Watson's Return to Work/school form dated 11/28/07 notes restrictions: "light duty 12/2/07-12/31/07."

Exhibit C includes Dr. Watson's December 4, 2007 "Detailed Restriction Fact Sheet" pertaining to Claimant for the period December 2, 2007 to December 31, 2007. It restricted bending, crawling, crouching, kneeling, and stooping to occasional, and restricted lifting to occasional to a maximum weight fifteen pounds.

Exhibit C includes Dr. Watson's Return to Work/school form dated 1/3/2008 pertaining to Claimant. It notes: "disability from: 12/2/2007-12/31/2007. Return to work/school: 1/1/2008. Restrictions: None as of 1/1/2008."

Exhibit C includes Dr. Herman Watson's January 9, 2008 report pertaining to Claimant. It notes Claimant had an uneventful right inguinal right hernia repair on July 24, 2007. The report states Claimant did well and was discharged to home. Claimant noticed pain and swelling about midnight, went to the emergency room at Research Medical Center and Dr. Watson was called. He went to surgery about 3 a.m. and Dr. Watson evacuated a large hematoma from the operative site. Claimant was in the hospital for three days. The report further states: "No transfusion was needed in follow up has shown great improvement and he is doing fine with little to no restrictions."

Exhibit C includes a note, apparently of Dr. Watson, dated August 13, 2008 that states in part: "The patient had a hernia repair with a hematoma and has had a hydrocœle for years. Now, he is concerned about the hydrocœle." The notes states, "I told him that if it were me, and he wasn't having any more problems, I wouldn't have anything done."

Exhibit B includes a report of Dr. Bock dated March 11, 2009 addressed to Ms. Benjamin-House. The report states in part: "1. I do feel that his hydrocœle is connected to the hernia surgery from November 2006. I had the opportunity to examine Chris before his hernia surgery, and he did not have a significant hydrocœle at that time. It is my opinion that he has developed a reactive hydrocœle following that surgery." Dr. Bock's report further states: "3. I do not believe that this condition is due to a personal health condition."

Dr. Bock's March 11, 2009 note in Exhibit B states that Claimant complained about the right hemiscrotal contents rubbing against his inner thigh and causing skin irritation. Claimant reported significant discomfort late in the day from his testicle. The report also states that Dr. Bock did not recommend that Claimant undergo

hydrocelectomy. He prescribed cream and stated if that did not help, he should see a dermatologist.

### Evaluation of Dr. Douglas Rope

Exhibit A contains the medical report of Dr. Douglas Rope dated October 14, 2009 pertaining to Claimant. The report notes Dr. Rope examined Claimant on October 14, 2009. Dr. Rope's report notes that he has practiced internal medicine and occupational medicine since 1978. He graduated from the University of Kansas Medical School and is licensed in the states of Missouri and Kansas. He is Board Certified in Internal Medicine and is a Fellow of the American Academy of Disability Evaluating Physicians. His Curriculum Vitae identifies hospital staff affiliations, medical staff positions, guest lectureships, publications, and presentations. Dr. Rope's report notes that he reviewed records of Providence Medical Center, OHS and David Bock, M.D. His report notes that the opinions expressed in his communication are done so to a reasonable degree of medical certainty.

Dr. Rope's report recites the history of Claimant's injury. It notes Claimant developed discomfort in the right groin area and was evaluated by urologist David Bock on June 29, 2007 with a "several weeks" history of intermittent discomfort with swelling. Dr. Rope's report notes that "neither Dr. Bock's note nor the Claimant, when asked, mentioned any specific incident temporally associated with the acute appearance of those symptoms."

Dr. Rope's report notes that on Dr. Bock's examination, Claimant was stated to have a probable small right inguinal hernia. He was subsequently evaluated by surgeon Herman Watson and underwent repair of a right inguinal hernia at Providence Medical Center on July 24, 2007. Claimant's post-operative recovery is noted by Dr. Rope to have been complicated by abnormal bleeding at the operative site which required a second surgery the next day. Claimant was off work for three months.

Dr. Rope notes post-operatively, Claimant returned to his customary assembly work at the plant until he was terminated in April 2008. Claimant developed an enlargement at the right testicle post-operatively. Claimant reported the enlargement was somewhat painful and tended to irritate his skin.

Claimant was evaluated by Dr. Bock on May 11, 2009 and was assessed as having a reactive hydrocœle secondary to the hernia repair surgery. Dr. Bock recommended cream for the irritation and discussed possible operative removal of the hydrocœle.

Claimant reported to Dr. Rope that he had continued discomfort and swelling in the right testicle. He reported the pain is intensified by being on his feet for long periods as well as by frequent or heavy lifting.

Claimant denied history of groin discomfort or swelling prior to 2007.

Dr. Rope's report states that Claimant is a non-smoker.

Dr. Rope's report notes Claimant worked for Employer from 2002 to April 2008. The report notes in Claimant's last four years there, the majority of his time was spent applying medallions to the gas tanks of motorcycles. Claimant told Dr. Rope the gas tanks weighed twenty-five pounds. Claimant reported taking them from rolling racks on which they were stacked three or four shelves high, putting them onto a stand for application of the medallions, and returning them to the carts.

Dr. Rope's report notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and "The weight of the tanks in that note was estimated at 20 to 25 pounds." Dr. Rope's report notes Claimant stated that he placed medallions at the rate of sixty to eighty tanks per shift the final two years of his employment.

Dr. Rope performed a physical examination of Claimant. Dr. Rope found an operative scar consistent with a herniorrhaphy. The report notes that no inguinal masses were present. Some redness of the skin around the groin was noted. The report states that there was a large right hydrocœle with an estimated diameter of one and a half to two inches with some tenderness to compression.

Dr. Rope's Impression is stated to be "right inguinal hernia, status post-operative removal July 24, 2007 complicated by post-operative bleeding requiring repeat operative procedure for drainage July 25, 2007 and chronic painful hydrocœle." Dr. Rope sets forth the following regarding causation:

According to MayoClinic.com  
(<http://www.mayoclinic.com/health/inguinal-hernia/DS00364>), frequent heavy lifting is an accepted risk factor for the development of inguinal hernias. Other risk factors, which in this case are not relevant, include the need frequently to strain for example at the stool or being overweight. In some cases, inguinal hernias occur in the absence of any known risk factors.

The claimant gives a history of lifting most likely at least 40 gas tanks nightly, which is a potential risk factor. Heavy lifting as

defined in the United States Department of Labor Dictionary of Occupational Titles includes movement of 25 to 50 pounds on a frequent basis, and if, as he stated, he was regularly processing close to 80 tanks on a nightly basis in the manner he describes over the two year period prior to his termination, that would reasonably fulfill the definition of "frequent," making his work activities the prevailing factor in his having contracted an inguinal hernia as well as the postoperative complication of a reactive hydrocoele."

Dr. Rope assigned permanent partial disability to the whole person in the amount of 16%.

Exhibit 5 is a document from MayoClinic.com pertaining to causes and risk factors related to inguinal hernias. Page one states in part, "Other inguinal hernias develop later in life when muscles weaken or deteriorate due to factors such as aging, strenuous physical activity or coughing that accompanies smoking." Page one also states in part:

Whether or not you have a preexisting weakness, extra pressure in your abdomen can cause a hernia. This pressure may result from – straining during bowel movements or urination – heavy lifting – fluid in the abdomen (ascites) – pregnancy, excess weight. Family history, certain medical conditions including cystic fibrosis, chronic cough, such as occurs from smoking, chronic constipation, excess weight, certain occupations: having a job that requires standing for long periods or doing heavy physical labor increases a risk of developing an inguinal hernia.

#### Division of Workers' Compensation Records

Exhibit F is a Division of Workers' Compensation Report of Injury dated April 6, 2009 pertaining to alleged date of injury/illness "2006-11-27". The part of the body affected is listed to be "low back area (inc: lumbar and & lumbo-sacral)." The "date administrator notified" is shown to be "2009-04-06."

Exhibit G is a copy of Division of Workers' Compensation Report of Injury pertaining to alleged date of injury/illness of "10/31/2004" pertaining to "back (lower)." The "date administrator notified" is shown to be "11/01/2004." The carrier is shown to be "American Casualty Company of Reading."

Exhibit H is a copy of a Missouri Division of Workers' Compensation Report of Injury pertaining to alleged injury/illness of "2005-10-06" pertaining to Claimant's "low back area (inc: lumbar and lumbo-sacral)."

Joint Exhibit 1 contains copies of Missouri Division of Workers' Compensation Reports of Injury, Claims for Compensation and Answer to Claim for Compensation pertaining to Claimant. An attorney for Claimant is not shown on any of the Claims.

Joint Exhibit 1 includes a Claim for Compensation bearing Injury Number 07-134329 alleging injury to "neck, lower back, hernia surgery" with a date of accident or occupational disease of November 27, 2007. That claim is shown to be received by the Division of Workers' Compensation on September 23, 2008.

Joint Exhibit 1 includes a Claim for Compensation in Injury Number 06-135712. It alleges injury to "neck, lower back and hernia" with an alleged date of accident or occupational disease of 11-27-06. That Claim is shown to have been received by the Division of Worker's Compensation on October 6, 2008.

Joint Exhibit 1 includes an Amended Claim for Compensation in Injury Number 06-135712 alleging "hernia surgery midsection." The alleged date of accident or occupational disease was left blank. A description of what employee was doing and how the injury occurred is left blank. The Amended Claim, which is shown to have been received by the Division of Workers' Compensation on May 13, 2009, is not signed.

Joint Exhibit 1 includes a Claim for Compensation in Injury Number 07-134329 that alleges injury to "neck, lower back, hernia surgery." The Claim alleges date of accident or occupational disease of "Nov. 27, 07." The Claim contains statement 8 that recites: "Describe what the employee was doing and how the injury occurred." The handwritten response states: "doing the same task night out and night in w/o any rotation (lifting tanks.)" The Claim is dated September 23, 2008 and is shown to have been received by the Division of Workers' Compensation on September 23, 2008.

Joint Exhibit 1 includes Claimant's Claim for Compensation in Injury Number 04-114314 pertaining to date of alleged accident or occupational disease of 10-31-04 alleging injury to low back from Dyna-press and repetitive injury. The Claim in Injury Number 04-114314 is shown to have been received by the Division of Workers' Compensation on May 29, 2009.

Joint Exhibit 1 includes Claimant's Claim for Compensation dated October 4, 2008 in Injury Number 05-102617 shown to have been received by the Division of Workers' Compensation on September 4, 2008. The Claim alleges injury to lower back, neck, and hernia. Paragraph 3 of the Claim alleges date of accident or occupational disease of 10-6-05, and contains the words "NFC 7, 2007 not reported" next to the date "10-6-05."

Claimant's case in Injury Number 07-134329 was combined into his 2006 case, which is Injury Number 06-135712.

### Other Exhibits

Exhibit J is Employee Report of Incident/Injury dated December 7, 2007 of Claimant. The Employee Report contains spaces to note "Date of Incident/Injury" and "Date Reported to Medical." Both spaces are left blank. The form reports "prolonged exposure to Dyna tanks."

A box next to "lower body" is checked under the "Describe the injury" portion of the Employee Report. Also, the words "hernia surgery" are written adjacent to the box "Other." The Employee Report states: "Describe the pain," and is followed by the Comment, "More of a discomfort than a pain and some swollen and fluid retained from hernia surgery currently still having problems with lower back."

Exhibit 1 contains a Disability Insurance Employer/Employee Statement dated July 30, 2007 pertaining to Claimant. Page one of the Statement, under the portion titled, "To be completed by employee," contains the question: "1. Is your disability work related?" The box next to "yes" is marked in response to that question. Paragraph 7 on page one references "Dyna robot by lifting a Dyna tank," next to the portion stating, "Action, when and where did it happen?" The form also states, "beginning of July. Hernia," next to "Illness, When did you first notice and what is the nature of your disability?"

The Attending Physician's Statement portion of Exhibit 1 is shown to have been completed by Herman Watson, M.D. It relates to Claimant's right inguinal hernia. It notes Claimant's most recent visit was July 25, 2007. The Attending Physician's Statement contains the question, "Is this condition related to the patient's employment?" Dr. Watson answered, "No."

Employer's Job Analysis of Claimant's job working with Dyna tanks in the Medallion Press Department (pages D35-D38 of Exhibit D) states at page D37 that the weight of the fuel tank is "22 lbs."

### **Rulings of Law**

Based on a comprehensive review of the substantial and competent evidence and the application of the Missouri Workers' Compensation Law, I make the following Rulings of Law.

Section 287.800, RSMo<sup>3</sup> provides in part that administrative law judges shall construe the provisions of this chapter strictly and shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

Section 287.808, RSMo provides:

The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

Claimant states in page 5 of his proposed Awards (original and amended proposed Awards):

The Claimant has filed 4 separate claims relating to either low back injuries or hernia. The only medical reports and opinions offered were those of Claimant indicating that the Claimant had suffered a permanent partial disability associated with his hernia and subsequent sequelae. Neither party presented evidence suggesting any disability, temporary or otherwise, with respect to the low back injury. Nor was there any evidence of medical expense or anyother [sic] type of benefits due with respect to these earlier claims [sic] Consequently, the issue of the statute of limitations is moot in as much as both the 2004 and 2005 claims relate to a low back injury for which there was no evidence of any benefits due for those injuries.

Claimant states in page 6 of his proposed Awards (original and amended proposed Awards):

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<sup>3</sup> All statutory references are to RSMo 2006 unless otherwise indicated. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc.*, 20 S.W.3d 579, 585-86 (Mo.App. 2000). See also *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo.App. 2007). Prior to August 28, 2005, Section 287.800, RSMo provided in part: "Law to be liberally construed.—All of the provisions of this chapter shall be liberally construed with a view to the public welfare. . . ."

The issue of the statute of limitations with respect to the 2004 and 2005 injuries is moot given that no evidence was presented subscribing any benefits due Claimant as a result of these claimed injuries. The limitations described by Claimant and the permanency [*sic*] outlined by Dr. Rope all deal with the hernia such that no benefits are due for the earlier injuries irrespective of the statute of limitations.

Dr. Rope did not diagnose any injury to Claimant's neck or lower back. Dr. Rope's report contains no reference of any complaints of Claimant or treatment to Claimant for his neck or low back. No physician assessed any disability specifically relating to Claimant's neck or back.

I find that Claimant failed to prove that he sustained an injury to his low back or neck by accident or occupational disease arising out of or in the course of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. I further find that Claimant failed to prove that he sustained any permanent disability relating to his low back and neck arising out of and in the course of his employment for Employer. Claimant's claims for benefits relating to alleged injuries to his low back and neck are denied.

Claimant alleges he is entitled to benefits under the Workers' Compensation Law in Injury Number 06-135712 for a hernia and a reactive hydrocoele that resulted from the hernia. Claimant's Claim for Compensation in Injury Number 05-102617 filed in 2008 alleges injury to lower back, neck, and hernia.<sup>4</sup>

Section 287.195, RSMo provides:

In all claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission:

- (1) That there was an accident or unusual strain resulting in hernia;
- (2) That the hernia did not exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed.

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<sup>4</sup> Claimant's claims were filed pro se. It is believed Claimant's Claim for Compensation in Injury Number 05-102617 mistakenly references Claimant's hernia. Claimant first complained about hernia symptoms in 2007. He was first diagnosed with a hernia in 2007. He first reported a hernia injury to Employer in 2007. He had hernia surgery in 2007.

Section 287.190.6(2), RSMo provides:

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

The Court in *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823 (Mo.App. 2009) discusses the burden of proof before and after the 2005 amendments to the Workers' Compensation Law. The Court states at 830:

Prior to this amendment, it has been stated that “[t]he purpose of Workers' Compensation Law is to ‘place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment and, consequently, the law should be liberally construed so as to effectuate its purpose and humane design.’” *Rogers v. Pacesetter Corp.*, 972 S.W.2d 540, 542-43 (Mo.App.1998). Therefore, “[a]ny question as to the right of an employee to compensation must be resolved in favor of the injured employee.” *Jennings v. Station Casino St. Charles*, 196 S.W.3d 552, 557 (Mo.App.2006) (quoting *Rogers*, 972 S.W.2d at 543). However, under the current requirements of section 287.800, not only is the law to be strictly construed, but it is also required that the evidence shall be weighed “impartially without giving the benefit of the doubt to any party.” Section 287.800. The legislature by this amendment has made it abundantly clear that previous cases which have applied a liberal construction of the law to resolve questions in favor of coverage for the employee should no longer be followed.

The quantum of proof is reasonable probability. *Thorsen v. Sachs Electric Company*, 52 S.W.3d 611, 620 (Mo.App. 2001); *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 227 (Mo. banc 2003)<sup>5</sup>; *Fischer v. Archdiocese of St.*

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<sup>5</sup> Several cases are cited herein that were among many overruled by *Hampton* on an unrelated issue (*Id.* at 224-32). Such cases do not otherwise conflict with *Hampton* and

*Louis*, 793 S.W.2d 195, 199 (Mo.App. 1990). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Thorsen*, 52 S.W.3d at 620; *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App 1986); *Fischer*, 793 S.W.2d at 198. Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A. B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. 1974). Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo.App. 1992). "Medical causation of injuries which are not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Thorsen*, 52 S.W.3d at 618; *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App 1991).

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelley v. Banta & Stude Constr. Co. Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999); *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992); *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 162 (Mo.App. 1986). The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith*, 182 S.W.3d at 701; *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 263 (Mo.App. 2004).

A claimant has the burden to prove all the essential elements of his or her case, and a claim will not be validated where some essential element is lacking. *Thorsen*, 52 S.W.3d at 618; *Cook v. Sunnen Products Corp.*, 937 S.W.2d 221, 223 (Mo. App. 1996).

The Court in *McClain v. Yellow Cab Co.*, 439 S.W.2d 200 (Mo.App. 1969), denied a taxicab driver's workers' compensation claim alleging a hernia from lifting a passenger's heavier suitcase to the trunk. His usual duties involved lifting. The Court noted that Section 287.195, RSMo requires in a hernia claim it must be definitely proved that there was an accident or unusual strain resulting in hernia. The Court stated at 203:

Performance of any manual task is accompanied by a certain degree of straining the muscles and other parts of a workman's body. The amount of strain incurred will, of course, vary according to the work to be accomplished and the circumstances and conditions under which it is being performed. Injuries produced by strains which are normal

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are cited for legal principles unaffected thereby; thus *Hampton's* effect thereon will not be further noted.

for the job to be performed in a customary fashion are not compensable although the amount of straining may be great or would be considered abnormal in other classes of employment or if performed in an abnormal manner under unusual circumstances.

The Court noted at 204 that the record in the case was

barren of any suggestion that McClain, when injured, was doing something beyond and different from his normal routine because 'a lot of times we have passengers that have a lot of luggage and we have to load that and unload it.' There is no evidence the claimant was subjected to any strain, either usual or unusual, because he slipped, tripped, fell, twisted, turned, became overbalanced or unbalanced, struck any object or was struck by any object before or at the time he 'felt a stinging in my side.' McClain did not assume an unusual stance or position, and does not claim he experienced any strain because his handhold slipped or because the suitcase was unwieldy or because its unknown contents shifted any weight onto him. The trunk of the taxi, as far as we know, was the standard height from the ground and did not require the employee to undertake a higher-than-usual lift. Nothing is said to indicate that McClain, in stowing the luggage, gave or was required to give 'a kinda extra surge' or that he exerted 'his full force' or used 'all the strength I had.' No person or object was encountered that produced any strain by causing him to deviate from the usual method employed in his work. The suitcase did not strike anything or get 'hung' on any object; neither was its weight dropped or thrown onto the employee.

The Court stated at 205 that "'Any theory of abnormal strain involves a consideration of the degree of physical exertion. And the very use of the term 'abnormal' (usually joined with the tautological 'unusual') necessitates a reference to the comparative.'" The Court continued at 205:

In our opinion there is a failure of proof that the claimant, on the occasion in dispute, experienced either by way of physical exertion or from forces external to his body a strain of such an exceptional degree that it could be properly classified as being unusual or abnormal to that customarily experienced in the discharge of his usual duties.

The Court in *Pattengill v. General Motors Corp.*, 845 S.W.2d 630 (Mo.App. 1992), upheld a finding of compensability in a hernia case involving an employee who was injured while standing on top of a 12-foot ladder and reaching up as far as he could

to guide a 300- to 500-pound object suspended over his head by ropes held by four men. The Court set forth Section 287.195, RSMo, and stated at 632:

We turn first to whether an unusual strain occurred. “[A]n unusual or abnormal strain may be classified as an accident even though not preceded by a slip and fall. The unexpected or abnormal strain *usually* results from the performance of work in an abnormal manner or in a manner not routine, but this is not necessarily so. Abnormal strain may also result from the lifting of heavy objects while in an awkward or unbalanced posture where the worker is subjected to stress of unforeseen force or duration.”

The *Pattengill* Court found at 632 that Claimant’s injury qualified as an unusual strain.

Based on the substantial and competent evidence and the application of the Missouri Workers’ Compensation Law, I find that Claimant’s claim for hernia and the resulting hydrocœle should be denied. I find that Claimant failed to prove that he sustained a compensable hernia under Section 287.195, RSMo. Section 287.195, RSMo governs Claimant’s claims for benefits relating to his hernia. It states in part: In *all* claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission: (1) That there was an accident or unusual strain resulting in hernia. . . .” (Emphasis added.)

I find that Claimant did not establish that there was an accident or unusual strain arising out of and in the course of his employment for Employer resulting in hernia. While I find that Claimant sustained a hernia that was diagnosed in 2007, and he had a reactive hydrocœle connected to his hernia surgery, I find that Claimant did not have an accident or unusual strain in the course of his employment for Employer that resulted in a hernia. This conclusion is supported by the following.

Dr. Bock stated, and I find that Claimant developed a reactive hydrocœle following his July 24, 2007 hernia surgery, and that his hydrocœle is connected to the hernia surgery. Dr. Rope also noted a postoperative complication of a reactive hydrocœle after Claimant’s hernia surgery. I find that Claimant’s hydrocœle resulted from and was caused by his hernia.

Claimant testified he lifted tanks that weighed between 20 and 25 pounds when he worked in the Dyna tank department for Employer. Dr. Rope’s report states notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and “The weight of the tanks in that note was

estimated at 20 to 25 pounds.” Dr. Rope’s report states Claimant told him the tanks he lifted weighed 25 pounds. Employer’s Job Analysis for Claimant’s job and the functional capacity evaluation both document the weight of the tanks that Claimant lifted when he worked for Employer was 22 pounds, not 25 pounds. I find the 22 pound weight of the tanks set forth in the job description and functional capacity is accurate and more reliable than Claimant’s 25 pound estimate of the weight of the tanks. I find that Claimant lifted 22 pound tanks when he worked for Employer.

The evidence establishes, and I find that Claimant lifted between 25 and 80 tanks per shift, and that he placed medallions at the rate of 50 to 80 tanks per shift the final two years of his employment. Claimant testified he lifted between 50 to 70 tanks per shift. Dr. Wright’s October 7, 2005 Progress Note states Claimant typically did 30 to 35 tanks per shift, and at his low point he was doing around 25, and at most he has done 40 to 45 a shift. Dr. Rope’s report states notes a Shawnee Mission Corporate Care record dated November 2, 2004 stated Claimant would lift 30 to 40 tanks nightly five times each and “The weight of the tanks in that note was estimated at 20 to 25 pounds.” Dr. Rope’s report notes Claimant stated that he placed medallions at the rate of sixty to eighty tanks per shift the final two years of his employment.

Claimant handled each tank when he removed it from a cart and placed it into a fixture. He placed medallions on the tank, one on each side. He rotated the tank and placed the medallion on the opposite side. He released the tank and moved it to a presser and placed it into a fixture. He pressed buttons and a lever came down and pressed the medallions onto the tank. He then removed the tank from the fixtures and replaced it back onto the shelf and started the process all over again.

None of the treatment records relating to Claimant’s hernia make any reference to Claimant’s hernia being caused by or related to his work for Employer. Claimant saw Dr. Bock in 2007 for abdominal complaints. Dr. Bock’s records are silent as to the cause of the complaints. Claimant was treated by Dr. Watson in 2007 for the hernia. Dr. Watson’s records and the hospital records make no reference to Claimant’s hernia being related to his work for Employer. Claimant worked for several years performing the same tasks without hernia complaints until the summer of 2007.

Claimant testified that he was bending and picking up a tank to put it on a fixture when he heard something pop and noticed a bulge in his midsection. He thought it happened in the summer of 2007. He saw his personal doctor after that in June 2007. Claimant testified that he went to Employer’s medical department and told them he heard a pop in his back. There are no records in evidence that document any such report of a pop. Further, Claimant’s application for disability benefits makes no reference whatsoever to any accident, unusual strain or other event or incident relating to the hernia.

None of the medical records state that Claimant reported he sustained an accidental injury or unusual strain that resulting in a hernia. Claimant did not testify that he had an accident or unusual strain when he first noticed the bulge in his abdomen. Claimant's report to Employer in July 2007 regarding the hernia denied any specific incident. Dr. Bock's June 29, 2007 note states that Claimant reported a several week history of intermittent right groin discomfort with swelling. Dr. Bock diagnosed a small inguinal hernia then. That is the first time Claimant's hernia was diagnosed. Dr. Watson's July 11, 2007 note states that Claimant came in with what appeared to be a hernia and described pain that had "been there for about two months." There is no reference whatsoever in these records to any unusual event or abnormal strain or accident at work that caused or contributed to cause the hernia.

Claimant's own evaluating doctor, Douglas Rope, did not diagnose that Claimant's hernia was caused by an accident or unusual strain. Dr. Rope's report states that neither Dr. Bock's note nor the Claimant, when asked by Dr. Rope, "mentioned any specific incident temporally associated with the acute appearance of those symptoms." Dr. Rope's report makes no reference to any accident, unusual strain or abnormal work activity that caused Claimant's hernia.

I find Claimant did not prove that he performed his job in any manner other than what was customary or normal. I find that Claimant failed to prove, either by way of physical exertion or from forces external to his body a strain of such an exceptional degree that it could be properly classified as being unusual or abnormal to that customarily experienced in the discharge of his usual duties.

As in the *McClain* case, Claimant did not prove that he was doing anything beyond and different from his normal routine. As in *McClain*, there is no evidence that Claimant was subjected to any strain, either usual or unusual, because he slipped, fell, twisted, turned, became overbalanced or unbalanced, struck any object or was struck by any object before or at the time he "heard the pop" or felt the bulge.

There is no evidence that when Claimant alleged he noticed an abdominal injury that he was undertaking a higher than usual lift. As in *McClain*, no person or object was encountered or produced any strain by causing Claimant to deviate from the usual method employed in his work. A tank did not strike anything or get "hung" on any object.

The case at hand is clearly distinguishable from the *Pattengill* case where Claimant was standing on top of a twelve foot ladder and reaching up as far as he could to guide a three hundred to five hundred pound object suspended over his head by ropes held by four men at the time he sustained his hernia injury.

It is also noteworthy that Dr. Watson, Claimant's treating physician, responded "No" to the question, "Is this condition related to patient's employment?" that is in a July 2007 Attending Physician's Statement in Claimant's disability insurance form relating to Claimant's hernia.

Dr. Rope's report states that heavy lifting as defined in the United States Department of Labor Dictionary includes movement of "twenty to fifty pounds on a frequent basis." The report continues: "If, as he stated, he was regularly processing close to eighty tanks on a nightly basis in the manner he describes over the two year period prior to his termination, that would reasonably fulfill the definition of 'frequent,' making his work activities a prevailing factor in his having contracted an inguinal hernia as well as a post operative complication of a reactive hydrocoele." I find this opinion of Dr. Rope is not credible. I find Claimant did not prove his work activities at Employer were the prevailing factor in his having contracted an inguinal hernia as well as a post operative complication of a reactive hydrocoele.

Dr. Rope's report references heavy lifting as being twenty-five to fifty pounds. Claimant reported to Dr. Rope that he took tanks weighing 25 pounds from rolling racks on which they were stacked three or four shelves high, putting them onto a stand for application of the medallions, and returning them to the carts. I have found the tanks weighed 22 pounds, a weight that is below the "heavy weight" definition of the Dictionary of Occupational Titles. Dr. Rope notes that "frequent heavy lifting" is an accepted risk for the development of inguinal hernias according to MayoClinic.com. I find that Claimant was not engaged in frequent heavy lifting as defined by the Dictionary of Occupational Titles.

Dr. Rope's conclusion is subject to question because he did not consider what effect Claimant's coughing from smoking may have had in causing Claimant's hernia. The Mayo Clinic record (Exhibit 5) notes that coughing that accompanies smoking is a risk factor related to inguinal hernias. Dr. Rope's report states Claimant was a non-smoker. I find Claimant was a smoker at the time he sustained his hernia and that smoking causes him to cough. Claimant testified that he smoked one or two marijuana blunts a day and that smoking marijuana causes him to cough. Employer's record dated June 12, 2007 notes Claimant stated he needed to "stop smoking so much." Claimant treated with Dr. Bock in 2006. Dr. Bock noted then that Claimant had a five to six year history of marijuana consumption "which sounds like about two marijuana cigarettes a day." Dr. Rope did not address whether Claimant coughed from smoking at the time he sustained the hernia.

In addition, Dr. Rope did not explain why lifting was a greater risk than any other risk factor.

I find that Claimant failed to prove that he had an accident or unusual strain resulting in hernia arising out of and in the course of his employment for Employer. I find that Claimant failed to prove that he sustained a compensable injury resulting in hernia arising out of and in the course of his employment for Employer. I find that Claimant did not have an accident or unusual strain in the course of his employment for Employer that resulted in a hernia. Claimant's claims for benefits resulting from the hernia and hydrocœle are denied.

I also find Claimant did not prove that he sustained an injury to his neck or back in 2006 or 2007 arising out of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. Dr. Rope did not diagnose any injury to Claimant's neck or lower back. Dr. Rope's report contains no reference to any complaints of Claimant or treatment to Claimant for his neck or low back. No physician assessed any disability specifically relating to Claimant's neck or back. Claimant acknowledged in his proposed Award that the limitations described by Claimant and the permanency outlined by Dr. Rope all deal with the hernia.

I find that Claimant failed to prove that he sustained any injuries to his low back or neck arising out of or in the course of his employment for Employer that resulted in any disability or in any entitlement to benefits under the Workers' Compensation Law. I further find that Claimant failed to prove that he sustained any permanent disability relating to his low back or neck arising out of and in the course of his employment for Employer. I find that Claimant failed to prove he is entitled to any benefits under the Workers' Compensation Law relating to his neck or back. Claimant's claims for benefits relating to alleged injuries to his low back and neck are also denied.

Claimant's entire claims for benefits in all three cases, Injury Numbers 04-114314, 05-102617, and 06-135712<sup>6</sup> are denied and all other issues are moot.

Made by: /s/ Robert B. Miner  
Robert B. Miner  
*Administrative Law Judge*  
*Division of Workers' Compensation*

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<sup>6</sup> Claimant's claim in Injury Number 07-134329 has been combined by the Division of Workers' Compensation into Injury Number 06-135712. Claimant's claim relating to Injury Number 07-134329 is also denied.

This award is dated and attested to this 12th day of August, 2010.

/s/ Naomi Pearson

Naomi Pearson  
*Division of Workers' Compensation*