

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

Injury No.: 04-145585

Employee: Steve Biondo  
Employer: Dial Corporation  
Insurer: Sentry Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated November 23, 2009.

**Preliminaries**

The issues stipulated at trial were whether employee sustained an injury due to an accident arising out of and in the course of employment; whether employee properly provided notice of the alleged injury to employer; whether employee's injuries were medically causally related to the alleged accident; whether employer was liable for past temporary total disability benefits from October 2, 2004, to the date of maximum medical improvement; and the nature and extent of any permanent partial disability against the employer and/or the Second Injury Fund, if any.

The administrative law judge determined and concluded that employee sustained an injury due to an accident arising out of and in the course of employment. The administrative law judge further found that employer was provided proper notice of employee's injuries; that employer is liable for past temporary total disability benefits from October 2, 2004, until his date of maximum medical improvement; that employee suffered a 100% permanent disability measured at the level of the left eye; that employer is liable for permanent partial disability benefits; and that the Second Injury Fund is not liable due to any combination of disabilities.

A timely Application for Review with the Commission was submitted by employer alleging that the award issued by the administrative law judge was erroneous because employee failed to prove that he sustained a compensable accident. The employer further asserted that employee failed to demonstrate that the alleged accident was a substantial factor in causing his left eye condition; that employee is not entitled to temporary total or permanent partial disability benefits; and that employee failed to provide timely notice of his alleged injury to employer.

For the reasons set forth in this award and decision, the Commission reverses the award of the administrative law judge.

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### **Findings of Fact**

Employee is a forty-seven-year-old male with diabetes. Employee has been insulin-dependent since the age of six. On September 16, 1999, employee's personal doctor, Dr. Abraham Phillips, treated employee for diabetes and related conditions. The treatment notes from that visit reveal that Dr. Phillips found mild background retinopathy in both of employee's eyes. Dr. Phillips also noted that employee needed close follow-up treatment and that employee needed retinal care soon. Employee was to return to Dr. Phillips in six to eight weeks; Dr. Phillips would refer employee to a retinal care doctor.

Employee did not return to see Dr. Phillips to seek a referral for retinal care or to follow-up on the September 1999 visit until approximately five years later, on September 1, 2004.

Before employee began working for employer, he underwent a physical on December 19, 2002. Employee's uncorrected visual acuity was 20/40 in both eyes and 20/30 corrected. Employee's blood pressure ranged from 150/106 to 160/100. Employee was instructed to see a physician for his high blood pressure, for blood sugar testing, and to follow-up on findings of abnormal vision.

Employee worked as a raw material unloader for employer. Employee's job duties included unloading and transferring raw materials from railcars and semi trucks into silos using a vacuum system. Part of the process required the placement of a "salt pan" underneath the railcars to catch stray raw materials lost during transfer. Employee used the vacuum system to empty the salt pan. In order to empty all of the material from the pan, it was necessary to squat down and pull and drag the salt pan out from underneath the railcar. An empty salt pan weighed between 20 and 30 pounds. A full salt pan weighed between 200 and 300 pounds.

At the hearing before the administrative law judge, employee testified that on August 27, 2004, he felt something go in his left eye when pulling a salt pan from underneath a railcar at work. Employee testified that the pan wasn't hooked up properly, which made the task of pulling it out more difficult. Employee testified that he washed out his left eye at an employee wash station, that his left eye became bloodshot, and that he experienced a little pain.

The medical records reveal that on August 28, 2004, employee sought treatment at the Christian Hospital Northeast emergency room, with complaints of pain and decreased vision in his left eye. Employee reported experiencing pain in his left eye for two and a half weeks. Employee also told treating physicians that he believed he got dust in his eye at work ten days prior, and that he had experienced pain in his left eye for two days. Employee's blood pressure was 214/131. Employee's condition was diagnosed as retinal hemorrhage and high blood pressure.

Employee next sought treatment with Dr. Phillips on September 1, 2004. Dr. Phillips referred employee to Dr. Thomas Krummenacher for treatment of his eye condition. On September 3, 2004, Dr. Krummenacher diagnosed proliferative diabetic retinopathy. In

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addition to employee's left eye condition, Dr. Krummenacher was concerned about the immediate threat to vision in the right eye. On September 7, 2004, Dr. Krummenacher found no change in the vitreous hemorrhage which overlaid a tractional retinal detachment in employee's left eye. Dr. Krummenacher believed the situation in employee's left eye was dire and potentially inoperable, and referred employee back to Dr. Phillips to get employee's diabetes under control in anticipation of surgery. On October 4, 2004, Dr. Krummenacher performed a lensectomy, vitrectomy, membranectomy, fluid-gas exchange, endophotocoagulation, and indirect laser photocoagulation of the left eye, and laser surgery on the progressive retinopathy in the right eye. Dr. Krummenacher's post-operative diagnosis was proliferative diabetic retinopathy of both eyes. Employee's vision continued to deteriorate over the course of several subsequent visits with Dr. Krummenacher. On December 13, 2004, Dr. Krummenacher again performed surgery on both eyes; his post-operative diagnoses were proliferative diabetic retinopathy of both eyes, with tractional retinal detachment and vitreous hemorrhage in the left eye.

Dr. Phillips examined employee again on March 30, 2005. During the exam, employee discussed disability benefits with the doctor and whether employee's condition was job related. At this visit, employee reported that he felt something pop in his eye in late August 2004.

Dr. Krummenacher saw employee again on April 28, 2005. Employee's right eye was improving, but the left eye was irreparable with no light perception due to poor retinal circulation. Dr. Krummenacher saw no evidence that an injury in August 2004 affected employee's long term vision. Dr. Krummenacher opined that employee has a classic case of advanced proliferative diabetic retinopathy, and this, and only this, is the cause of employee's permanent disability. Dr. Krummenacher believed employee was at serious risk of further vision loss from poor circulation, and noted that employee was urged to do his utmost to control his underlying diabetes as aggressively as possible.

Employee sought treatment for left eye pain, headaches, dizziness, and facial pressure and pain from September 2005 through February 2007. Treating doctors consistently diagnosed high blood pressure and diabetes.

Dr. Joan Pernoud examined employee on June 7, 2005. Dr. Pernoud found employee's visual acuity to be 20/100 in the right eye and only peripheral light perception in the left eye. Dr. Pernoud found that employee had severe loss of vision in his left eye and that the left optic nerve was essentially dead. Employee also had definite signs of diabetic retinopathy in his right eye. Dr. Pernoud opined that employee suffered from severe ischemia, or lack of proper blood supply, to his eyes with the left being more severe. Dr. Pernoud opined that employee's acute left eye condition was caused by employee's performance of a Valsalva maneuver when he pulled a salt pan from under a railcar at work on August 28, 2004. Dr. Pernoud explained that a Valsalva maneuver occurs when someone takes a deep breath and holds it forcefully in preparation for heavy lifting or pulling a heavy object. Dr. Pernoud explained further that a Valsalva maneuver results in increased pressure to the veins coming from the head, so that blood does not drain properly from the head.

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Dr. Pernoud outlined four different possibilities that could have occurred as a result of employee's performance of the Valsalva maneuver. First, pressure from engorged retinal veins could have compressed the adjacent arteries, which, being narrow and weakened from thirty-seven years of diabetes, could have occluded, causing permanent vision loss; this could have happened absent any trauma or Valsalva maneuver. Second, if employee had carotid artery disease, ischemic ocular syndrome could have occurred, causing the symptoms of a red painful eye, with a fixed dilated pupil, and a cataract. Third, abnormal vessels in the iris could have bled into the anterior chamber of the eye, causing glaucoma, corneal edema, and a longstanding increase in intraocular pressure to the point of destroying the optic nerve fibers; this also could have occurred spontaneously. Fourth, Valsalva retinopathy could have resulted from intraocular vitreous bleeding, as employee's fragile venous system ruptured from vascular engorgement. Dr. Pernoud believed that the fourth possibility was more consistent with employee's history, and probably best reflects what occurred.

In Dr. Pernoud's opinion, employee's performance of the Valsalva maneuver while engaged in his work duties was the precipitating or triggering event, and was the substantial factor in causing employee's left eye condition. Dr. Pernoud opined that diabetic retinopathy was the cause of employee's right eye condition. Dr. Pernoud acknowledged that employee had diabetic retinopathy before any reported injury based on the notes from employee's September 1999 examination by Dr. Phillips. Dr. Pernoud also acknowledged that employee's underlying condition is diabetic retinopathy in both eyes, and that this condition is fairly severe because employee has had diabetes for such a long period of time, and because employee did not follow up as he probably should have regarding care and treatment of his diabetes. Dr. Pernoud acknowledged that employee's underlying diabetic condition was so severe that his left eye complaints could have occurred spontaneously, absent any traumatic event or Valsalva maneuver.

Dr. Elliot Korn examined employee on January 5, 2006, and October 4, 2007. On January 5, 2006, Dr. Korn found employee's right eye visual acuity to be 20/50 minus three. There was no light perception in the left eye. Pathology in employee's left eye included a swollen cornea, scarring, and new blood vessel formation of the iris secondary to a period of severe ischemia. Dr. Korn diagnosed a blind left eye, severe ischemic and proliferative diabetic retinopathy of the left eye, and iris revascularization of the left eye. Dr. Korn opined that neither employee's action of pulling the salt pan on August 28, 2004, nor the performance of a Valsalva maneuver, were substantial causative factors of employee's condition. Dr. Korn acknowledged that a Valsalva maneuver can cause hemorrhages in the eye, but explained that if there are other key factors present, a Valsalva maneuver would not be a substantial factor. Dr. Korn opined that there are many other factors present in employee's case that better explain the pathology of his left eye, namely, employee's preexisting diabetic retinopathy, longstanding poor glucose control, and malignant hypertension. Dr. Korn agreed with Dr. Krummenacher that employee's condition was a classic case of advanced proliferative diabetic retinopathy. Dr. Korn noted that when employee was treated at the Christian Hospital emergency room on August 28, 2004, his blood pressure was extremely elevated; Dr. Korn explained that blood pressure that high can cause retinal

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hemorrhages and blindness. Dr. Korn believed that the treatment employee received was reasonable and necessary to address employee's diabetic retinopathy, but that the treatment was not related to the August 2004 incident. Dr. Korn believed that any lost time in connection with treatment was not due to the August 2004 incident.

In Dr. Korn's opinion, even if employee performed a Valsalva maneuver, it would not be a substantial causative factor in the ultimate diagnosis or condition of employee's left eye. Dr. Korn explained that a Valsalva maneuver, by definition, is self-limited with low possibility of causing symptomatic pathology. Ultimately, Dr. Korn opined that the work incident on August 28, 2004, was not a substantial factor causing employee's condition, diagnosis, or need for treatment. Rather, in Dr. Korn's opinion, employee's poor diabetic compliance caused severe secondary malignant hypertension and diabetic retinopathy with loss of vision in the left eye, and very guarded vision in the right eye.

### **Conclusions of Law**

Under the Missouri Workers' Compensation Law, employee bears the burden of proving all the essential elements of his claim, including medical causation. *Roberts v. Mo. Highway & Transp. Comm'n*, 222 S.W.3d 322, 331 (Mo. App. 2007). For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. *Id.*

In *McGruff v. Satellite Sprinkler Systems*, 877 S.W.2d 704 (Mo. App. 1994), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003), the court stated that "[m]edical causation not within the 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." *Id.* at 708. Even if supported by scientific medical evidence, "[a] medical expert's opinion must [also] be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence." *Silman v. Williams Montgomery & Assoc.*, 891 S.W.2d 173, 176 (Mo. App. 1995), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

This case presents conflicting medical evidence on the issue of whether there is a causal connection between the alleged work incident of August 28, 2004, and employee's left eye condition and disability. The administrative law judge credited the opinion of Dr. Pernoud, finding that employee's performance of a Valsalva maneuver at work precipitated the retinopathy in employee's left eye and triggered the deterioration that resulted in employee's present condition. The administrative law judge found the opinion of Dr. Pernoud to be more credible than Dr. Korn. We disagree.

The Commission may accept or reject medical evidence, and is free to accept one of two conflicting medical opinions. *Pavia v. Smitty's Supermarket*, 118 S.W.3d 228, 233-234 (Mo. App. 2003). The Commission, based on the totality of the medical opinions and supporting facts in the record, finds the opinions of Dr. Korn and Dr. Krummenacher to be more credible than that of Dr. Pernoud.

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Employee suffers from years of uncontrolled diabetes and related conditions including elevated glucose levels and severe hypertension. As early as 1999, Dr. Phillips noted the presence of background retinopathy in both of employee's eyes, and recommended that employee needed close follow-up treatment and retinal care soon. Employee did not seek that treatment. In his pre-employment physical for employer, physicians noted findings of abnormal vision and instructed employee to seek follow-up care for this condition and for high blood pressure and blood sugar testing. Again, employee did not seek this follow-up treatment, and his diabetes continued on an unchecked course. We agree with Dr. Korn and Dr. Krummenacher that employee's left eye condition is consistent with the natural progression of his unchecked diabetes.

Dr. Korn considered the substantial evidence in the record in arriving at his conclusion, whereas Dr. Pernoud's opinion relies on facts that are not corroborated by the record, namely, that employee engaged in a Valsalva maneuver at work on August 28, 2004. This proposition is contradicted by the contemporaneous treatment records. These records reveal that employee told treating physicians at the emergency room on August 28, 2004, that he had been experiencing pain in his left eye up to two weeks before seeking treatment. Employee alternatively claimed to have gotten dust in his eye at work ten days earlier. There is no indication in the contemporaneous treatment records that employee ever mentioned a pulling event or any sort of activity that would be consistent with the performance of a Valsalva maneuver. The first mention of a "popping" incident appears in the treatment records from Dr. Phillips dated March 30, 2005. To the extent that employee's hearing testimony suggests that treating doctors made false or incorrect notations of his complaints and history, we find employee's testimony self-serving and lacking in credibility. As a result of Dr. Pernoud's reliance on a factual assumption that is not corroborated by the record, we find that her opinion is not "supported by facts and reasons proven by competent evidence," and her opinion does not have "sufficient probative force to be substantial evidence." *Silman*, 891 S.W.2d at 176.

Further, we find the opinion of Dr. Korn credible inasmuch that, even if employee performed a Valsalva maneuver in the performance of his work duties on August 28, 2004, this would not constitute a substantial causative factor resulting in the present condition of employee's left eye. We find credible Dr. Korn's testimony that a Valsalva maneuver is self-limited with a low possibility of causing symptomatic pathology. We agree that the performance of a Valsalva maneuver would not constitute a substantial factor causing employee's current condition, in light of the severity of his unchecked diabetes and related conditions. As Dr. Korn astutely noted, when employee was seen at the emergency room on August 28, 2004, his severe hypertension alone was enough to cause retinal hemorrhages or even blindness.

For the foregoing reasons, the Commission finds that employee failed to meet his burden of proving medical causation. We conclude that any work incident on August 28, 2004, was not a substantial factor causing employee's condition, diagnosis, or need for treatment. Rather, the Commission concludes that employee's diabetes and severe secondary malignant hypertension resulted in diabetic retinopathy and the loss of sight in his left eye.

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Because we have concluded that employee failed to meet his burden of demonstrating that the work incident of August 28, 2004, was medically causally related to his symptoms and condition, all other issues are moot.

**Conclusion**

Based on the foregoing, the Commission concludes and determines that employee failed to demonstrate that the work incident of August 28, 2004, was the substantial factor causing his left eye condition and disability. Accordingly, employee's claim for benefits is denied.

The First Amended Award and decision of Administrative Law Judge Matthew D. Vacca, issued November 23, 2009, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 24<sup>th</sup> day of June 2010.

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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**DISSENTING OPINION FILED**

John J. Hickey, Member

Attest:

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Secretary

Employee: Steve Biondo

### **DISSENTING OPINION**

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the award and decision of the administrative law judge should be affirmed. I dissent from the majority's decision to deny benefits for employee's left eye injury and resultant disability.

In this case there is conflicting medical evidence as to the causation of employee's left eye injury and symptoms. In workers' compensation cases, "[a]ny doubt as to the right of an employee to compensation should be resolved in favor of the injured employee." *Wolfgeher v. Wagner Cartage Service, Inc.*, 646 S.W.2d 781, 783 (Mo. 1983). The administrative law judge made his determination after hearing live testimony and reviewing the testimony of the medical experts. After considering the entire record, the administrative law judge found employee's evidence to be substantial, credible and persuasive.

I disagree with the credibility determination of the majority. I find credible employee's testimony and his description of his work activities on August 28, 2004. I also find the opinion of Dr. Pernoud credible that employee performed a Valsalva maneuver when he pulled the salt pan out from under a railcar, and that the Valsalva maneuver resulted in the retinopathy and subsequent deterioration of vision in employee's left eye.

I do not find credible Dr. Korn's opinion that employee's left eye blindness was the result of a natural progression of employee's diabetic retinopathy. I acknowledge that the medical record contains evidence that employee suffered from "mild background radiculopathy" as early as 1999. I further acknowledge that employee suffers from diabetes and attendant conditions including hypertension. At the same time, it is undisputed that employee did not complain of eye problems nor did he seek treatment for left eye pain or complaints related to his vision until after his work shift on August 28, 2004. Prior to that date, employee had no difficulty performing his work and had no vision problems whatsoever. Now, as a result of employee's left eye blindness, he has difficulty with excess light, experiences dizziness and difficulty in standing and moving around due to bumping into objects, is unable to drive for long distances, can't read due to headaches, and can't operate a computer because the light bothers him too much.

It is well settled that, under the law applicable to employee's claim, a preexisting but non-disabling condition does not bar recovery of compensation where a job-related injury causes the condition to escalate to the level of disability. *Miller v. Wefelmeyer*, 890 S.W.2d 372, 376 (Mo. App. 1994), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). Likewise, disability that results from the "aggravation of a preexisting nondisabling condition or disease caused by a work-related accident is compensable even though the accident would not have produced the injury in a person not having the condition." *Kelley v. Banta & Stude Constr. Co.*, 1 S.W.3d 43, 48 (Mo. App. 1999). Therefore, even if, as Dr. Korn suggests, employee would have sustained only mild trauma or retinopathy as a result of the performance of a Valsalva maneuver on August 28, 2004, if that trauma caused employee's asymptomatic diabetic retinopathy to become disabling, employee is entitled to compensation.

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Unlike the majority, I do not attribute great weight to the emergency room records from Christian Hospital on the question of whether employee's left eye injury was the result of his performance of a Valsalva maneuver. Despite notations to the contrary, employee credibly denied that he told any treating physician that he hurt himself days or weeks before his visit to the emergency room on August 28, 2004. Employee remembers telling treating doctors that he might have scratched or got dust in his eye at work. The fact that employee did not understand the exact nature of what happened to his left eye when he first sought treatment is no reason to discount the opinion of Dr. Pernoud. This is a case in which the mechanism of injury is beyond lay understanding. I do not think employee should have been expected to tell the emergency room doctors that what was happening with his left eye was the result of his performance of a Valsalva maneuver, but this appears to be what the majority would require of employee if his medical expert is to be believed.

Based on the above, I believe that employee has carried his burden in proving that the work injury sustained in the performance of his duties for employer on August 28, 2004, was the substantial factor in causing his disability and condition of his left eye. I find that, as a result of this work injury, employee suffered a 100% permanent partial disability at the level of the left eye.

I would affirm the award of 36 weeks of temporary total disability benefits and 140 weeks of permanent partial disability.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

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John J. Hickey, Member

## FIRST AMENDED AWARD

(Correcting Clerical Error)

Employee:	Steve Biondo	Injury No.:	04-145585
Dependents:	N/A		Before the
Employer:	Dial Corporation		<b>Division of Workers'</b>
			<b>Compensation</b>
Additional Party:	Second Injury Fund		Department of Labor and Industrial
			Relations of Missouri
Insurer:	Sentry Insurance Company		Jefferson City, Missouri
Hearing Date:	August 16, 2009	Checked by:	MDV:cw

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: August 18, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis, County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Straining to lift when eye hemorrhaged
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: Left eye
14. Nature and extent of any permanent disability: 100% left eye
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Issued by DIVISION OF WORKERS' COMPENSATION

Employee: Steve Biondo Injury No.: 04-145585

17. Employee's average weekly wages: \$1275.16

18. Weekly compensation rate: \$673.90/\$354.05

19. Method wages computation: Agreed

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

36 weeks of temporary total disability (or temporary partial disability)	\$24,260.40
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140 weeks of permanent partial disability from Employer	\$49,567.00
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21. Second Injury Fund liability: No

TOTAL:	\$73,827.40
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22. Future requirements awarded: None

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

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

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Steve Biondo	Injury No: 04-145585
Dependents:	N/A	Before the
Employer:	Dial Corporation	<b>Division of Workers'</b>
Additional Party: Second Injury Fund		<b>Compensation</b>
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Sentry Insurance Company	Checked by MDV:cw

### **ISSUES PRESENTED**

The issues presented for resolution by way of this hearing are accident, notice, arising out of and in the course of employment, medical causation, past temporary total disability benefits from October 2, 2004 to the date of maximum medical improvement and the nature and extent of any permanent partial disability against the Employer and/or the Second Injury Fund.

### **FINDINGS OF FACT**

1. Claimant is a 46 year old, married male with uncontrollable diabetes and blood pressure.
2. On or about August 4, 2004, Claimant's left retina became detached and the optic nerve died. Due to Claimant's diabetic condition, there is a lack of oxygen being supplied to the eye itself. New blood vessels form in the eye as a result of natural processes and in order to feed more oxygen to the eye. Unfortunately, the vessels that formed were of poor quality and tend to cause increased blood pressure in the eyes. The new vessels form where fluid drains from the eye and ocular pressure is increased from fluids unable to drain and also the new vessels ooze blood into the eye causing scarring which in turn complicates the drainage problem. Claimant's left optic nerve is dead and he is completely blind in the left eye. Claimant is starting to develop the same condition in the right eye.
3. The essential question in this case is whether a work event on August 18, 2004 may have precipitated the hemorrhage in Claimant's left eye causing his blindness.
4. On that date Claimant was working as a raw material unloader for the Dial Corporation. This involved taking inventory off rail cars and transferring them into the custody of the Dial Corporation. In essence, Claimant would hook up a train to unloading machines and pump out the rail car or the trucks into the storage silos on the Dial Corporation property.
5. Dial Corporation made wet and dry soaps, and the trucks and trains came in loaded with raw materials of salt, soda ash, sulfate, L-24's and silcants.

6. The Dial Corporation routinely would place what is called a "salt pan" under the empty train so that inventory was prevented from spilling to the ground and contaminating it. It was easier to clean up from under a rail car when the pan contained the spillage. A vacuum was hooked up to the pan which pumped spillage into the silo. When the stainless steel pan was empty it weighed 20 to 30 lbs and it weighed 200 to 300lbs when full.
7. On the date of the accident, Claimant was working third shift, midnight. Claimant was wearing safety glasses and ear plugs. The salt pan had not been hooked up properly. Witnesses from the Dial Corporation corroborate that there had been difficulty with this particular pan immediately prior to Claimant's injury. Claimant was pulling on the pan to dislodge it when he felt a pop on his face or a brush of salt into his eye. Claimant was wearing safety glasses.
8. More particularly the salt pan was two to three feet under the rail car. Claimant reached forward to pull the salt pan and drag it out. At that time he was pulling and straining and using a vacuum hose which weighed 150 lbs when it felt like something went into his left eye. After Claimant removed the salt pan he went into the shack to wash out his eye. Claimant cleaned out the eye with water in the restroom and had pain in the left eye. Claimant looked at his eye later on working his shift the same night and it was bloodshot.
9. The next evening Claimant went to Christian Northeast Hospital in the emergency room with a severe increase in pain and told the doctor that he scratched his eye or got some dust in it or some sort of a foreign body. Claimant told the shop steward on the night of the accident and the following Monday he told his acting supervisor which was the next day of work. Claimant told Sarah Israel that he was going to be missing some work because he injured his eye Friday night at work. Sarah sent Claimant down to the nurse who was not around. Sarah did not say much to Claimant but sent him to the nurse. One to one and a half weeks after the accident Claimant told Sarah that he went to the emergency room on Saturday and had also seen Dr. Phillips his regular doctor. Dr. Phillips sent Claimant to see Dr. Korn, and Dr. Krummenacher eye specialists.
10. Two to four weeks after the accident Claimant let the employer know that he was going in for laser surgery and then major eye surgery one month after that.
11. Claimant has had a total of three surgeries on his left eye. No procedures have been able to stop the bleeding; they have actually caused it to become worse. Claimant did not have any problems before the accident, he had more pain before the surgery but after the surgery Claimant lost all vision in his left eye.
12. At one point during treatment, the left side of Claimant's face became completely numb. At first it was not bad but then it got progressively worse. Claimant started developing a bloody nose and bleeding out of his ear and left nostril. Claimant continued to work several days and had to refuse some jobs. Claimant's last day of work was October 20, 2004.

13. Dr. Territo performed the second operation on Claimant's left eye and also looked at the right eye.
14. Dr. Phillips also pulled a blood clot out of Claimant's ear the size of a golf ball.
15. Claimant was sent to Dr. Bonacoursi, an ear, nose and throat physician.
16. The Claimant is blind out of his left eye and can see a little out of the right eye. Claimant has difficulty in his right eye with depth perception and light perception. The left side of Claimant's head is numb and painful across the face to the head, light makes him dizzy. Claimant stays at home and does not work, drives very short distances once or twice a week. Claimant is not on any prescriptions, reading causes headaches, use of computer causes headaches. Claimant receives social security disability and can watch television without getting headaches.
17. One of the employer's managers at Dial Corporation, Sarah Israel, specifically asked Claimant if his eye problem was work related and she recalled him saying "no they weren't". Claimant told the plant manager about the incident and he laughed according to Claimant. Claimant also told Robert Herman, the shop steward, about the incident, but he did not appear and testify.
18. On behalf of the employer, Dr. Korn, does not believe that Claimant's retinal detachment was caused by work, he believes that it is secondary to his diabetes.
19. Dr. Pernoud on the other hand, is intimately familiar with Evaluation of Worker's Compensation eye injuries and the legal terminology used therein and has no bias in these matters. She testified that Claimant did indeed suffer from uncontrolled diabetes and blood pressure at the time he was working pulling on the heavy salt pan in August 2004. However Claimant used what is known as a valsalva maneuver in which one takes a deep breath, holds it and prepares for moving a heavy object. The transmission of pressure to the veins in the neck is like choking and the venous system is not draining properly. This precipitates a vascular decomposition in Claimant's right eye, which was already severely deteriorated and weak due to the diabetes and causes hemorrhaging, leaking and ultimate death of the optic nerve. Therefore, she believes that when Claimant was lifting or pulling on the salt pan, the pressure increased in his head engorging and dilating the venous return vessels which were already weakened and narrow to begin with and precipitated the hemorrhage.
20. She notes that the American Diabetes Association advises diabetics to avoid lifting heavy weights for job or recreation due to the risk of hemorrhage from fragile blood vessels in the eye. Dr. Pernoud believes this is exactly what happened in this case. She says that a hemorrhage is not likely to happen spontaneously and needs an event. She believes that the reason Claimant did not give an accurate description to Employer is that he had no idea what happened to him at the time of the hemorrhages. Dr. Pernoud believes that the valsalva maneuver was not the prevailing factor, but was definitely the precipitating factor and a substantial factor in the injury. Dr. Korn, on the other hand, believes that the

Valsalva maneuver was a factor but not a substantial factor in causing the retina to detach.

21. I find it not credible and irrelevant that Claimant specifically told Sara Israel the injury was not work related. Given the complex medical question involved, Claimant would hardly be able to make that difficult medical determination so close to the event in time and before surgery. Even if Employee initially told Israel it was not work related, when he learned that it was from Dr. Pernoud, the claim was filed within thirty days.

### **RULINGS OF LAW**

1. On August 2005, or a date near then, Claimant sustained an accident where, while pulling on a salt pan, he performed a Valsalva maneuver, which caused an increased pressure in his left eye causing the hemorrhage and eventual retinal detachment and optic nerve death from which he currently suffers.
2. Claimant first became aware of the work related nature of this incident when Dr. Pernoud pronounced it to be a work related accident as a result of the Valsalva maneuver sometime in June of 2005, one year later. The claim had been filed by that date. The Employer was aware of the surgery and the claim was filed within 30 days of Dr. Pernoud's pronouncing this as a work related injury. Her report was dated June 23, 2005. The claim was filed July 18, 2005. The Employer had proper notice.
3. The accident Claimant sustained clearly rose out of and in the course of his activities as he was lifting the salt pan at the time on the Employer's premises doing his normal job when he sustained an incident which was a substantial or precipitating factor in his injuries. Those injuries are medically and causally related to the accident which occurred in August of 2004.
4. Claimant is entitled to past temporary total disability benefits from his last date worked on October 2, 2004, until his date of maximum medical improvement. I note that Dr. Pernoud filled out the workers' compensation physician's report on injuries, Form 9A, on June 10, 2005, which in its final section indicates the time frame that must elapse before final examination shall be made upon which the report may be based. Therefore, I will use that date as the date of maximum medical improvement as I can find no others declarations relating thereto.
5. Following his treatment and medical care rendered therein, Claimant suffered a 100% permanent partial disability measured at the level of the left eye.
6. Pre-existing these injuries, Claimant suffered from a similar diabetic deterioration in the right eye, although his vision in the right eye at the time of the accident was corrected to 20/40. Therefore, I find no preexisting disabilities that I am able to combine with the blindness in the left eye to create any Second Injury Fund liability.
7. Therefore, Claimant is entitled to 36 weeks of temporary total disability and 140 weeks of permanent partial disability.

**DISCUSSION**

This case falls under the pre 2005 Amendment which eliminated cases where work was only a triggering factor in causing a condition. This claim would not be compensable under the “New Law”, (post 2005), but as the accident happened in 2004, it is covered under the precipitating factor or substantial factor theories of causation and accident.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Matthew D. Vacca  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest: