

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

Injury No.: 04-128541

Employee: Martin Crain

Employer: Johnson Controls, Inc.

Insurer: Self-Insured

Date of Accident: December 8, 2004

Place and County of Accident: Buchanan County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 20, 2007. The award and decision of Chief Administrative Law Judge Nelson G. Allen, issued April 20, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 24th day of September 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Martin Crain

Injury No.: 04-128541

Employer: Johnson Controls, Inc.

Insurer: Self-Insured

Hearing Date: March 12, 2007

Checked by: NGA

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: December 8, 2004
5. State location where accident occurred or occupational disease was contracted: Buchanan 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: Employee was lifting up and yanking on a lever handle
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Bilateral inguinal hernia
14. Nature and extent of any permanent disability: 10% body as a whole
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? \$13,530.42
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$590.21 / \$354.05
20. Method wages computation: By Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$13,530.42
7 weeks of temporary total disability (or temporary partial disability) x \$590.21 =	4,131.47
40 weeks of permanent partial disability from Employer x \$354.05 =	<u>14,162.00</u>

22. Second Injury Fund liability:

weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:

weekly differential beginning	payable by SIF for and, thereafter, for claimant's lifetime.	weeks	
			TOTAL: \$31,823.89

23. Future requirements awarded:

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: David W. Whipple

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Martin Crain Injury No.: 04-128541

Employer: Johnson Controls, Inc.

Insurer: Self-Insured

Hearing Date: March 12, 2007 Checked by: NGA

Prior to presenting evidence, the parties stipulated that the issues to be determined by this hearing are:

1. Whether the claimant sustained an accident arising out of and in the course of his employment;
2. Were the conditions the claimant complained of medically causally related to his alleged accident;
3. Liability of the employer for past medical aid;
4. Liability of the employer for seven weeks of temporary total disability;
5. Nature and extent of claimant's disability;
6. Liability of the employee for costs, including attorneys fees, pursuant to Sec. 287.560 RSMo.

The parties agreed that on or about December 8, 2004, Martin Crain was an employee of Johnson Controls, Inc. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Law. The employer was an authorized self-insurer. The employer had proper notice of claimant's injury and a timely Claim for Compensation has been filed.

The parties further agreed that the correct rate of compensation is \$590.21 per week for temporary total disability and \$354.05 for permanent partial disability. No compensation has been paid. No medical aid has been provided.

The Claimant testified in person. He is 43 years old. He has worked for Johnson Controls for 16 years. I found him to be a believable witness.

Mr. Crain testified that on December 8, 2004, he was working for Johnson Controls as an expanded metal operator. He had been working at this position for over 10 years. He was attempting to tighten coils of a strip on a machine. These coils are quite heavy. They weigh 2500 pounds. The coils have to be tightened onto the machine to prevent them from falling off. This required the use of a lever or handle type of device to tighten them.

As Mr. Crain was pulling and yanking up on this handle, he experienced a sudden onset of pain in his groin. He testified he was exerting a great deal of pressure on this handle as he was trying to pull or yank on it at the time he experienced this sudden onset of pain. He said the pain was across his entire groin area. The pain was much worse on the right side than it was on the left side. He also noticed a bulging in his groin area. The pain was so severe that he had difficulty walking.

The claimant immediately reported the incident and the pain he was suffering to his supervisor who sent him to the company nurse. The nurse referred the claimant to see a doctor at Occupational Health Services or O.H.S.

Mr. Crain went to O.H.S. that same day, where he was seen by Dr. Walter Dean. Dr. Dean examined the claimant and noted bulging above the inguinal ligament bilaterally. He further noted the claimant had a good-size inguinal hernia on both sides. He noted the right side was very tender. He noted the symptoms had started at the time of the incident at 12:30 that day. Dr. Dean diagnosed the claimant with a bilateral inguinal hernia, however, he found it was not work-related.

The claimant returned to Johnson Controls and was told the injury was denied and would not be covered by workers' compensation. He went to his personal physician, Dr. Richard Campbell. Dr. Campbell confirmed the diagnoses of bilateral inguinal hernia and referred Mr. Crain to Dr. Jeffrey Maire for surgery.

Dr. Maire performed surgery for bilateral inguinal hernia on December 15, 2004.

The claimant said he was unable to work from the time of his injury through January 26, 2005, a period of seven weeks. He said he had incurred medical expenses in the amount of \$13,501.00 in medical bills and \$29.42 in out-of-pocket prescription expenses.

The claimant said that he was able to bid to a position that did not require as much physical effort. He said he continues to have pain and continues to feel pressure on both sides of his groin area. He has had to modify the way he does things. He said he has been very cautious regarding his physical activity at work.

Dr. Walter E. Dean, M.D., testified by deposition taken on November 8, 2006 and admitted into evidence as Employer and Insurer's Exhibit Number 1. All objections thereto are hereby overruled.

Dr. Dean saw the claimant on December 8, 2004, the afternoon of his injury. He said he examined the inguinal region on both sides and on inspection there was a bulging just above the inguinal ligament bilaterally. It was not discolored or red and there was no ecchymosis. There was a fairly good-size inguinal hernia on both sides. The right side was very tender.

Dr. Dean said, *"I thought the mechanism of injury probably did not reflect his experience with yanking on the handle because of the bilateral hernias and, especially, the one that was asymptomatic. That would be more in keeping with hernias that had been present for some time."*

When Dr. Dean was asked if heavy lifting or stress or pressure could cause a hernia, he said, *"In a hypothetical sense, a factor or something that may bring on the protrusion of the small bowel, in other words, form the hernia, may be increased intra-abdominal pressure, which can be from straining, holding one's breath and bearing down, so anything that would cause that may produce or cause the hernia to appear."*

The report of Dr. Fernando M. Egea, M.D., dated August 24, 2005, was admitted into evidence as Claimant's Exhibit Number A.

Dr. Egea concluded:

"It is my opinion, within a reasonable degree of medical certainty, that while at work for Johnson Controls, Inc., on or about December 8, 2004, as a result of the force used to crank a machine, the intense intra-abdominal pressure created by this force, produced a rupture of both inguinal canal walls and bilateral direct inguinal hernia.

It is my opinion, within a reasonable degree of medical certainty that Mr. Crain, as direct results of these injuries, suffers from a partial and permanent disability of 10% body as a whole."

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 proven to the satisfaction of the Division or the Commissioners:

- (1) That there was an accident or unusual strain resulting in a hernia;
- (2) That the hernia did not exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed;
- (3) The claimant said he had to use a great amount of effort in order to lift up and yank the handle of the lever. He had to use considerable effort to do this. I believe that even though he had done this many times before, the action still qualifies as an unusual strain. The strain was enough that, no doubt, it could have caused a hernia."

The claimant said that he had sudden intense pain while he was yanking the lever. He never had any prior pain or discomfort in his groin area. There was no evidence that he had any prior pain or discomfort. He denied that he had any prior indication of any bulging.

I believe it is significant that the claimant was in such intense pain and that he sought immediate medical treatment from several providers. He didn't delay but acted as fast as possible to receive medical treatment.

When one weighs the conflicting evidence from Dr. Dean and Egea, I find that Dr. Egea's report is more believable. I believe Dr. Egea.

I find and believe from the evidence, that Mr. Crain sustained a bilateral inguinal hernia on December 8, 2004 resulting from an injury arising out of and in the course of his employment, that there was an accident or unusual strain resulting in the hernia and that the hernia did not exist prior to the accident or unusual strain.

I find and believe from the evidence that the claimant was temporarily totally disabled for a period of seven weeks. I order and direct the employer to pay to the order of the claimant the sum of \$590.21 per week for seven weeks for a total of \$4,131.47.

I find and believe from the evidence that the claimant has incurred medical expenses in the amount of \$13,530.42. These expenses were reasonable and necessary to cure and relieve the conditions caused by the claimant's hernia. I order and direct the employer to pay to the claimant the sum of \$13,530.42 for unpaid medical expenses.

I find and believe from the evidence that as a result of his hernia, the claimant has sustained a permanent partial disability in the amount of 10% body as a whole. I order and direct the employer to pay to the claimant the sum of \$354.05 per week for 40 weeks for a total of \$14,162.00.

The claimant is requesting attorney's fees and costs under 287.560 RSMo. While the employer has been ruled against in every single issue, Dr. Dean had found that to be a non-compensable hernia because he thought it was pre-existing. I do not believe that the employer defended this case without reasonable ground. The claimant's claim for costs of the proceedings is hereby denied.

David W. Whipple is hereby assigned a lien in the amount of 25% of this award for necessary legal services provided claimant.

Date: April 20, 2007

Made by: Nelson G. Allen
Nelson G. Allen,
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Patricia "Pat" Secrest, Director
Division of Workers' Compensation