

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

Injury No.: 08-020510

Employee: Mohamed El Karanchawy
Employer: AED Enterprises d/b/a Dewey's Pizza
Insurer: Acuity Mutual Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 23, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued December 23, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of May 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee:	Mohamed El Karanchawy	Injury No.:	08-020510
Dependents:	N/A		Before the
Employer:	AED Enterprises, dba Dewey's Pizza		Division of Workers'
Additional Party:	N/A		Compensation
Insurer:	Acuity Mutual Insurance Company		Department of Labor and Industrial
Hearing Date:	October 6, 2011		Relations of Missouri
			Jefferson City, Missouri
		Checked by:	SC

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 March 6, 2008
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? 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: Claimant alleged he injured his abdomen and low back when he lifted boxes at work.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged Body as a whole referable to the abdomen and low back
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$453.34

Employee: Mohamed El Karanchawy

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$474.00
- 19. Weekly compensation rate: \$316.00 (Permanent partial disability)
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

- 21. Amount of compensation payable: None

- 22. Second Injury Fund liability: No

- TOTAL: None

- 23. Future requirements awarded: N/A

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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Joseph Robbins

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Mohamed El Karanchawy	Injury No.: 08-020510
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	AED, dba Dewey's Pizza	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Acuity Mutual Insurance Company	Checked by: SC

PRELIMINARIES

On October 6, 2011, Mohamed El Karanchawy (Claimant) appeared before the undersigned administrative law judge for a hearing for a final award at the Division of Workers' Compensation (DWC). Attorney Joseph Robbins represented the Claimant. Attorney Pat Patterson represented Dewey's Pizza (Employer) and Acuity Mutual Insurance Company (Insurer).¹ Claimant seeks permanent partial disability (PPD) benefits. Venue is proper and jurisdiction properly lies with the DWC. The record closed after presentation of the evidence. The Second Injury Fund did not participate in the proceeding.

Claimant submitted two separate claims for disposition, 08-020510 and 08-118204. Although separate awards are issued, the body of each award contains similar facts and issues.

The parties stipulated that on or about March 6, 2008:

1. The Claimant was employed by the Employer;
2. The Employer and Claimant operated under the Missouri Workers' Compensation Law;²
3. Venue is proper in St. Louis County, located in Missouri;
4. Employer's liability was fully insured;
5. The Employer had notice of the injury;
6. A Claim for Compensation was timely filed;
7. The Claimant's average weekly wage was \$474.00 and the rates for temporary total disability(TTD) and PPD were \$316.00;
8. The Employer paid no TTD benefits; and
9. The Employer paid medical benefits totaling \$453.34

¹ Any reference in this award to the Employer also includes the Insurer.

² All references in this award are to the 2005 Revised Statutes of Missouri unless otherwise stated.

ISSUES

The parties identified the following issues for disposition:

1. Did Claimant sustain an accident as defined by Section 287.020.2 in regard to Claimant's abdominal and low back strains?
2. Are Claimant's abdominal and low back strains medically and causally related to his employment?
3. If so, what is the nature and extent of PPD owed by the Employer, if any?

EXHIBITS

Claimant's Exhibits A through F and Employer's Exhibit 1 through 6 were admitted.³ However, a ruling was reserved on Exhibit 5. Any objections contained in the Exhibits but not expressly ruled on in this award are now overruled. To the extent that marks and highlights are contained in the Exhibits they were present before they became a part of this record and were not placed there by the undersigned administrative law judge.

SUMMARY OF EVIDENCE

All evidence was reviewed but only evidence which supports this award will be summarized below.

1. Claimant earned a bachelor's degree in art and education. Employer hired Claimant in 2006 as a dishwasher. Claimant testified his duties expanded to include loading and unloading boxes four times a week. He lifted boxes of olives, cheese, and other items that weighed up to 70 pounds each.
2. Claimant testified he developed low back and abdominal pain after he lifted boxes of cheese, food, and containers in December, 2007. Claimant testified a fast paced environment and low salad work stations contributed to his symptoms.
3. On direct examination, Claimant testified he had no problems with his back or abdomen prior to December 2007. However, on cross examination, Claimant testified he had a prior right-sided hernia in 1998 and 1987. Claimant did not remember if he had a hernia as a child. Dr. Brunt's records show he had a hernia repair shortly after birth.
4. Claimant testified on cross-examination that he missed work in the summer of 2007 for low back pain caused by lifting boxes at work. But during his deposition; Claimant testified he missed work in the summer of 2007 because "they were playing games with him." During the hearing, Claimant testified his back problems began in the summer of 2007.

³ Claimant's objection to Employer's Exhibit 1C overruled based on Section 287.210.3.

5. Claimant testified he reported low back pain to Tom Boe, the kitchen manager. Mr. Boe suggested he work a different job and manager Eric Cole would be contacted. Claimant testified his request for treatment was denied.
6. Claimant testified his problems developed from a specific event, but did not provide a specific date of injury.
7. After the injury, Claimant continued to have pain and took off work for several months. While working, Claimant developed low back pain which made it difficult to work.
8. In March 2008, Mr. David Justice, the owner, authorized medical treatment at BarnesCare. The physician prescribed pain medication, and a cream for muscle pain. Claimant improved, but his symptoms did not fully resolve.
9. Claimant continued to have back and abdominal pain. He testified that one day in August, 2008, he unloaded a truck and worked the salad station. He lifted boxes of cheese, olives, tomatoes, and artichokes. After lifting the boxes, Claimant experienced increased abdominal pain. He asked for medical treatment, but, Mr. Justice suggested Claimant seek treatment from his private physician, because the condition may not be work related.
10. Claimant informed Judy, Zoe, Justin, and Tom that he planned to go to the emergency room. At the emergency room, Claimant was diagnosed with a hernia.
11. The next day, Claimant informed Mr. Justice that he had a hernia and surgery was required, to which Mr. Justice replied "okay."
12. On September 15, 2008, Dr. Brunt performed a hernia operation. Physical therapy and massage was prescribed. On November 10, 2008, Dr. Brunt returned Claimant to work on light duty.
13. Claimant returned to Dr. Brunt in September 2009 to evaluate the surgical site. Claimant was doing much better but still had pain. However, during Claimant's deposition, he testified he did not have hernia problems.
14. Current complaints include slight abdominal pain but low back pain continues. Claimant uses hot and cold packs as needed.
15. **Mr. Jodee Henderson** testified on behalf of Employer. Mr. Henderson has worked for Employer for five years as a Kitchen Manager. Mr. Henderson supervised Claimant in 2008.
16. Claimant worked as a prep cook. He cut green peppers and sausage used by other employees during the day. Claimant worked without restrictions.

17. Claimant did not unload trucks. Mr. Henderson assigned a designated person to unload trucks and lift boxes. Claimant never lifted an entire box. The heaviest item Claimant lifted was a 50 pound package of cheese, which he lifted out of a box.
18. Claimant informed Mr. Henderson that he needed time off for “belly button” surgery, but did not say it was related to his work activities.
19. Mr. Henderson received a physician’s statement that Claimant could return to work. He called Claimant and informed him he could return to work, but Claimant did not return. Mr. Henderson is unaware of any conversation that transpired between Mr. Justice, Zoe, and Claimant.

Medical Treatment

20. On March 6, 2008, Claimant gave **BarnesCare** a history of abdominal and low back pain “after lifting boxes weighing up to 75 pounds today.” Claimant reported he works at a fast pace, bends and twists. BarnesCare diagnosed abdominal wall and lumbar sprains, and prescribed medication and ointment, and placed Claimant on light duty. X-rays were poor quality due to Claimant’s obesity.
21. On March 13, 2008, Claimant reported improvement, was discharged and returned to full duty.
22. Claimant testified he received additional treatment for his low back from Dr. Tom Leep; however, no records are in evidence.
23. On August 26, 2008, Claimant sought treatment from **L. Michael Brunt, M.D.** Claimant gave a history of umbilical pain, tightness, and a bulge, which started at work in March 2008.
24. On August 26, 2008, Dr. Brunt described Claimant as “quite obese and needs to lose some weight,” at 322 pounds. Dr. Brunt also diagnosed an umbilical hernia and recommended surgery.
25. On October 21, 2008, Dr. Brunt surgically repaired Claimant’s umbilical hernia with mesh. Dr. Brunt returned Claimant to limited duty on November 11, 2008, with no lifting over 10 pounds until December 11, 2008. In September 2009, Claimant revisited Dr. Brunt and weighed eight pounds more than in 2008.
26. In a letter dated November 13, 2008 Christy Oditt, with Human Resources, sent a letter to Claimant advising him that his doctor returned him to work on November 11th with limited duty, but Claimant failed to call or report. Claimant was advised to report for work or be terminated. Claimant testified he did not receive the letter.

Pre-existing Medical Conditions

27. On September 25, 1998, Dr. Brunt diagnosed a massive scrotal hernia that Claimant had for five years. Dr. Brunt described it as a massive scrotal hernia. Claimant gave a history of a hernia repair on the right side shortly after birth and a left side repair in 1987. (At the hearing Claimant did not recall having a hernia as a child). Also, Claimant reported continued enlargement of the hernia during his lifetime.
28. On October 5, 1998, Dr. Brunt surgically repaired the recurrent right inguinal hernia.

Expert Medical Evidence

29. **Robert P. Poetz, D.O.**, a physician, board certified in family practice, examined Claimant on April 6, 2009. Claimant gave a history of an accident at work on or about March 16, 2008. Also, Claimant reported abdominal and low back pain which started in December 2007 and increased over time.
30. Claimant reported his job duties as unloading heavy boxes of food from trucks four times a week, moving tables and chairs, chopping and preparing food, cooking, and washing dishes. Claimant further reported the duties were performed at a fast pace, which required "excessive bending and heavy lifting," 50 to 60 hours per week.
31. Claimant reported one prior hernia surgery in 1998. Claimant's leisure activities include playing soccer, reading, and traveling.
32. Dr. Poetz diagnosed Claimant as morbidly obese at 5 feet 11 inches tall and 333 pounds. For the March 16, 2008 injury Dr. Poetz diagnosed an abdominal wall strain and alumbar strain.⁴ Dr. Poetz rated 10% PPD of the body for the abdomen injury, and 15% PPD of the body for the lumbar spine injury.
33. **Russell C. Cantrell, M.D.**, a physician who is board certified in medicine and rehabilitation, examined Claimant on April 14, 2010 at the Employer's request.
34. Claimant provided a history that he was the only person that unloaded delivery trucks four days per week. The trucks contained meat, cheese, and various items to make pizza. The driver would unload boxes onto the ground. Claimant picked up the boxes and stocked items in the refrigerator and non-refrigeration units. The boxes varied in weight.
35. Claimant reported his back pain began at the Kirkwood location, and abdominal pain at the University City location in March 2008 without a specific activity. Also, he prepped meats, cheese, and vegetables prior to lunch time, and made salads or pizza during lunch. He stood in a bent position for long periods at the salad station.

⁴ Dr. Poetz referred to the date of injury as March 6, 2008 and March 16, 2008.

36. Dr. Cantrell diagnosed an abdominal strain and umbilical hernia, but did not find any residual hernia. Also, Dr. Cantrell opined the conditions were not work related. Dr. Cantrell found no disability for the abdominal strain and rated 5% PPD of the body for the umbilical hernia. Dr. Cantrell recommended no additional treatment.
37. Dr. Cantrell opined Claimant's work activities were not the prevailing factor that caused his abdominal injuries leading up to March 6, 2008 and September 14, 2008. Dr. Cantrell questioned Dr. Poetz's history that Claimant performed heavy lifting 1/3 to 2/3 of the day, and still had time to prep and cook food.
38. Also, Claimant provided no "defining injury" that would tear the abdominal wall.

ADDITIONAL FINDING OF FACT and RULINGS OF LAW

At the hearing, Claimant asserted he sustained a work related accident, and the Employer contends he did not.

Claimant has the burden to establish that he sustained an injury by accident arising out of and in the course of employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. App. 1991) (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, .121 S.W.3d 220, 223 (Mo banc 2003)).⁵ Section 287.808 requires proof the facts are "more likely true than not true."

Section 287.020.2 RSMo (2005) defines accident as "...an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of injury caused by a specific event *during a single work shift*. (Emphasis added) An injury is not compensable because work was a triggering or precipitating factor."

Section 287.020.10 states that when applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

I find Claimant is not credible. Claimant gave conflicting testimony about the date of accident. He testified his back complaints began "on that date in December 2007, when he lifted boxes and worked the low salad station. But on cross-examination he said it began in the summer of 2007. Dr. Poetz's records show Claimant's symptoms began in December 2007. However, Dr. Poetz's noted two dates of injury, March 6, 2008 and March 16, 2008. Dr. Brunt's records show Claimant's symptoms began "back in March," with no specific date of onset.

Also, Claimant testified the back pain continued and eventually he developed abdominal pain in 2008 due to lifting and bending at work. However, Claimant did not give a specific date

⁵ Several cases herein were overruled by the *Hampton* case on grounds other than those for which the cases are cited. No further reference will be made to *Hampton*.

of accident, and “sometime in December of 2007” or March is not a specific event during a single work shift. I find Claimant did not meet his burden to show he sustained an unexpected traumatic event or unusual strain, identified by time and place of occurrence, which produced objective symptoms of injury caused by a specific event during a single work shift. I find Claimant did not sustain a compensable work accident.

Having found Claimant did not sustain a compensable work accident, all other issues are moot.

CONCLUSION

I find Claimant did not meet his burden to prove he sustained a compensable work accident on March 6, 2008.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

AWARD

Employee:	Mohamed El Karanchawy	Injury No.:	08-118204
Dependents:	N/A		Before the
Employer:	AED Enterprises/dba Dewey's Pizza		Division of Workers'
Additional Party:	N/A		Compensation
Insurer:	Acuity Mutual Insurance Company		Department of Labor and Industrial
Hearing Date:	October 6, 2011		Relations of Missouri
			Jefferson City, Missouri
		Checked by:	SC:

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 September 14, 2008
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? No
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:
Claimant alleged he injured his abdomen and low back after repeat lifting of heavy boxes at a fast pace.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged low back and abdomen
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Mohamed El Karanchawy

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$538.72
- 19. Weekly compensation rate: \$359.92/359.92
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: None

23. Future requirements awarded: N/A

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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Joseph Robbins

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Mohamed El Karanchawy	Injury No.: 08-118204
Dependents:	N/A	Before the
Employer:	AED/dba Dewey's Pizza	Division of Workers' Compensation
Additional Party:	N/A	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Acuity Mutual Insurance Company	Checked by: SC

STATEMENT OF THE CASE

On October 6, 2011, Mohamed El Karanchawy (Claimant) appeared before the undersigned administrative law judge for a hearing for a final award at the Division of Workers' Compensation (DWC). Attorney Joseph Robbins represented the Claimant. Attorney Pat Patterson represented Dewey's Pizza (Employer) and Acuity Mutual Insurance Company (Insurer).¹ Claimant seeks medical treatment from the Employer. Venue is proper and jurisdiction properly lies with the DWC. The record closed after presentation of the evidence. The Second Injury Fund is not a party to the case.

Claimant submitted two separate claims for disposition, 08-020510 and 08-118204. Although awards are issued separately for each injury number, the body of each award contains similar facts and issues raised in each claim.

The parties stipulated that on or about September 14, 2008:

1. Claimant was employed by the Employer;
2. Venue is proper in St. Louis County, located in Missouri;
3. The Employer and Claimant operated under the Missouri Workers' Compensation Law;²
4. Employer's liability was fully insured;
5. A Claim for Compensation was timely filed;
6. Claimant's average weekly wage was \$538.72 and the rates for temporary total disability(TTD) and permanent partial disability (PPD) were \$359.92;
7. The Employer paid no TTD and medical benefits; and
8. If the claim is found to be compensable, the Employer is liable for TTD benefits from September 15, 2008 through November 10, 2008

¹ Any reference in this award to the Employer also includes the Insurer.

² All references in this award are to the 2005 Revised Statutes of Missouri unless otherwise stated.

ISSUES

The parties identified the following issues for disposition:

1. Did Claimant sustain an occupational disease?
2. If so, did the Employer receive proper notice of the occupational disease?
3. If an occupational disease occurred, did it arise out of and in the course of employment?
4. Was the hernia medically causally related to Claimant's employment?
5. Is the Employer liable for medical expenses totaling \$11,260.08?
6. Is the Employer liable for TTD benefits from September 15, 2008 through November 10, 2008?
7. What is the nature and extent of the Employer's liability for permanent partial disability, if any?
8. Is Exhibit 1(C) admissible?
9. Is Exhibit 5 admissible?

EXHIBITS

Claimant's Exhibits A through F and Employer's Exhibits 1 through 6 were admitted.³ Any objections contained in the Exhibits but not expressly ruled on in this award are now overruled. To the extent marks and highlights are contained in the Exhibits they were present before they became a part of this record and were not placed there by the undersigned administrative law judge.

SUMMARY OF EVIDENCE

All evidence was reviewed but only evidence which supports this award will be summarized below.

1. Claimant earned a bachelor's degree in art and education. Employer hired Claimant in 2006 as a dishwasher. Claimant testified his duties expanded to include loading and unloading boxes four times a week. He lifted boxes of olives, cheese, and other items that weighed up to 70 pounds each.
2. Claimant testified he developed low back and abdominal pain after he lifted boxes of cheese, food, and containers in December, 2007. Claimant testified the fast paced environment and low salad work stations contributed to his symptoms.
3. On direct examination, Claimant testified he had no problems with his back or abdomen prior to December 2007. However, on cross-examination, Claimant testified he had a prior right-sided hernia in 1998 and 1987. Claimant did not remember if he had a hernia as a child. However, Dr. Brunt's records show a history of a hernia repair shortly after Claimant was born.

³ Employer's Exhibit 1C is excluded based on Section 287.210.3. Employer's Exhibit 5 is admitted over Claimant's objections.

4. Also on cross-examination, Claimant testified he missed work in the summer of 2007 for low back pain caused by lifting boxes at work. But during his deposition, Claimant testified he missed work in the summer of 2007 because “they were playing games with him.”
5. Claimant testified he reported low back pain to Tom Boe, the kitchen manager. Mr. Boe suggested he work a different job, and manager Eric Cole would be contacted. Claimant testified his request for treatment was denied.
6. Claimant testified his abdomen and back problems occurred as a result of a specific event, but did not provide a specific date of injury.
7. After the injury, Claimant testified he continued to have pain and took off work for several months. While working, Claimant developed low back pain which made it difficult to work.
8. In March 2008, Mr. David Justice, the owner, authorized medical treatment at BarnesCare. The physician prescribed medication, and a cream for muscle pain. Claimant improved but his symptoms did not fully resolve.
9. On March 6, 2008, Claimant gave **BarnesCare** a history of abdominal and low back pain “after lifting boxes weighing up to 75 pounds today.” Claimant reported he worked at a fast pace, bent and twisted. BarnesCare diagnosed abdominal wall and lumbar sprains, and prescribed medication and ointment, and placed Claimant on light duty. X-rays were poor quality due to Claimant’s obesity.
10. On March 13, 2008, Claimant reported improvement and was discharged and returned to full duty.
11. Claimant continued to have back and abdominal pain. One day in August, 2008, Claimant unloaded the truck and worked the salad station. He lifted boxes of cheese, olives and tomatoes, and artichokes. Each box contained large boxes, and weighed 70 pounds.
12. Claimant testified he experienced increased abdominal pain after lifting the boxes. Pain made it difficult for Claimant to stand. He requested medical treatment, but, Mr. Justice suggested Claimant seek treatment from his private physician, because the condition may not be work related.
13. Claimant informed Judy, Zoe, Justin, and Tom that he planned to go to the emergency room. At the emergency room, Claimant was diagnosed with a hernia.
14. Claimant did not submit written notice of his injury because Mr. Justice did not request it.
15. The next day, Claimant informed Mr. Justice that he had a hernia and needed surgery. According to Claimant, Mr. Justice said “okay.” However, there was no discussion that the need for surgery was work related.

16. On September 15, 2008, Dr. Brunt performed a hernia operation at Barnes Hospital. Claimant received physical therapy and massage. On November 10, 2008, Dr. Brunt returned Claimant to work on light duty.
17. Claimant returned to Dr. Brunt in September 2009 to evaluate the surgical site. Claimant was doing much better but still had pain. However, during Claimant's deposition, he testified he did not have hernia problems.
18. Current complaints include slight abdominal pain and ongoing low back pain. To relieve symptoms, Claimant applies hot and cold packs as needed.
19. Claimant testified Employer did not offer to return him to work after Dr. Brunt released him. Claimant denied receiving a letter from Employer telling him to return to work.
20. Medical bills total \$11,260.08 for medical treatment provided by Washington University and BarnesCare. On January 4, 2008, Claimant declined Employer sponsored medical coverage.
21. Claimant testified he missed work in the summer of 2007 because he began to have low back pain. He did not receive treatment. During Claimant's deposition, Claimant said he missed work because "games being played with him."
22. In 1998, Dr. Brunt surgically repaired Claimant's right-sided hernia. Claimant testified the 1987 hernia was on the right side, not the left. However, Claimant denied knowledge of a hernia repair as a child.
23. **Mr. Jodee Henderson** testified on behalf of the Employer. Mr. Henderson has worked for Employer for five years as a Kitchen Manager. Mr. Henderson supervised Claimant in 2008.
24. Claimant worked as a prep cook. Claimant cut green peppers, sausage, roasted red peppers, and other items needed for the day. Claimant worked without restrictions.
25. Claimant did not unload trucks or perform heavy lifting. Mr. Henderson assigned another employee to unload trucks and lift boxes. Claimant never lifted an entire box. The heaviest item Claimant lifted was a 50 pound package of cheese, which he lifted out of another box.
26. Claimant informed Mr. Henderson he needed time off work for "belly button" surgery, but did not say the surgery was related to his work activities.
27. Mr. Henderson received a physician's statement that Claimant could return to work. Mr. Henderson received Claimant's return to work slip. He called Claimant and informed him he could return to work on November 11, 2008, but Claimant did not return. Mr. Henderson is unaware of any conversation that transpired between Mr. Justice, Zoe, and Claimant.

Medical Treatment

28. On August 26, 2008, Claimant sought treatment from **L. Michael Brunt, M.D.** Claimant gave a history of umbilical pain, tightness, and a bulge, which started at work in March 2008.
29. On August 26, 2008, Dr. Brunt described Claimant as “quite obese and needs to lose some weight,” at 322 pounds. Dr. Brunt also diagnosed an umbilical hernia and recommended surgery.
30. On October 21, 2008, Dr. Brunt surgically repaired Claimant’s umbilical hernia with mesh. Dr. Brunt returned Claimant to limited duty on November 11, 2008, no lifting over 10 pounds until December 11, 2008. In September 2009, Claimant revisited Dr. Brunt and weighed eight pounds more than in 2008.
31. On October 13, 2009, Claimant gave **Michael F. Burns, M.D.** a one year history of lumbar spine discomfort. Claimant denied distinct injury or trauma, and attributed the condition to overuse at work. Claimant was not employed at the time of the examination.
32. X-rays of the lumbar spine revealed mild degenerative disc disease at L5-S1 and mild degenerative changes of the facet joints.
33. In 1998, Dr. Brunt surgically repaired a right inguinal hernia that Claimant had for five years. Dr. Brunt’s records show Claimant sustained a “LIH” in 1987 (interpreted to be a left inguinal hernia), and a hernia repair on the right as a child.
34. **Robert P. Poetz, D.O.**, a physician board certified in family practice, examined Claimant on April 6, 2009. Claimant gave a history of accident at work on or about September 14, 2008. Also, Claimant reported abdominal and low back pain which started in December 2007 and increased over time.
35. Claimant reported his job duties as unloading heavy cases of food from trucks four times a week, moving tables and chairs, chopping and preparing food, cooking, and washing dishes. Claimant further reported the duties were performed at a fast pace, which required “excessive bending and heavy lifting,” 50 to 60 hours per week.
36. Claimant reported one prior hernia surgery in 1998.
37. Dr. Poetz diagnosed Claimant as morbidly obese at 5 feet eleven inches and 333 pounds. Also, Dr. Poetz diagnosed an umbilical hernia, and rated 20% PPD of the body for the abdominal injury.
38. Dr. Poetz did not find Claimant’s umbilical hernia was caused by his work activities.
39. **Russell C. Cantrell, M.D.**, a physician who is board certified in medicine and rehabilitation, examined Claimant on April 14, 2010 at the Employer’s request.

40. Claimant provided a history that he was the only person that unloaded delivery trucks four days per week. The trucks contained meat, cheese, and various items to make pizza. The driver would unload boxes onto the ground. Claimant picked up the boxes and stocked items in the refrigerator and non-refrigerated units. The boxes varied in weight.
41. Claimant reported his back pain began at the Kirkwood location, and abdominal pain began at the University City location in March 2008 without a specific activity. Also, he prepped meats, cheese, and vegetables prior to lunch time, and made salads or pizza during lunch time. He stood in a bent position for long periods at the salad station.
42. Dr. Cantrell diagnosed an abdominal strain and umbilical hernia, but did not find any residual hernia. Also, Dr. Cantrell opined the conditions were not work related. Dr. Cantrell found no disability for the abdominal strain and rated 5% PPD of the body for the umbilical hernia, and recommended no additional treatment.
43. Dr. Cantrell opined Claimant's work activities were not the prevailing factor that caused his abdominal injuries leading up to March 6, 2008 and September 14, 2008.⁴ He noted Claimant's history of multiple hernias. Claimant had a surgically repaired right inguinal hernia in 1998, which was present for five years, a hernia as a child on the same side, and a left sided hernia that was surgically repaired in 1987. During the hearing, Claimant did not remember a childhood hernia. Also, he testified the 1987 hernia was on the right side, not the left.
44. Dr. Cantrell questioned Dr. Poetz's history that he performed heavy lifting one-third to two-thirds of the day, and still had time to prep and cook food.
45. Dr. Cantrell further opined that obesity is a well-known risk factor for the development of umbilical hernias, and Dr. Cantrell considered Claimant morbidly obese at five feet eleven inches tall and 275 pounds. In 2008, Claimant was 322 pounds.
46. Dr. Cantrell concluded Claimant's work activities did not cause his low back complaints, as evidenced by Claimant's ongoing symptoms after he stopped working.
47. Dr. Cantrell further opined Claimant's morbid obesity most likely caused Claimant's back complaints, as evidenced by his improvement after he lost weight. During examination, Claimant reported no back complaints and the exam was normal. Dr. Cantrell recommended no additional treatment for lumbar spine, and found Claimant sustained no PPD.

⁴ Dr. Cantrell's discussion of the March 6, 2008 injury can be found in award number 08-020510.

ADDITIONAL FINDING OF FACT and RULINGS OF LAW

Claimant asserts he developed an occupational disease from heavy lifting and fast paced work. The Employer contends the statute does not provide a remedy for Claimant's hernia as an occupational disease. Furthermore, the hernia and low back injuries are not medically causally related to Claimant's work based on his prior history.

Claimant has the burden to establish that he sustained an injury by accident arising out of and in the course of employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. App. 1991) (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, .121 S.W.3d 220, 223 (Mo banc 2003)).⁵ Section 287.808 requires proof the facts are "more likely true than not true."

Section 287.067 defines "occupational disease" as: An identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

3. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "**prevailing factor**" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

Section 287.195 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.

I do not find Claimant to be credible. Claimant testified he unloaded four trucks a week, and performed heavy lifting at a fast pace. I find Mr. Henderson's testimony more credible than the Claimant's testimony. Mr. Henderson supervised Claimant during the relevant periods of time. Mr. Henderson's uncontroverted testimony is Claimant never unloaded trucks. Mr. Henderson assigned another employee to unload trucks.

Furthermore, the Claimant did not lift any full boxes of product. The heaviest item Claimant lifted was a 50 pound box of cheese from a larger box. Claimant testified he lifted 70 pounds. Also, Claimant did not inform Mr. Henderson that he needed

⁵ Several cases herein were overruled by the *Hampton* case on grounds other than those for which the cases are cited. No further reference will be made to *Hampton*.

surgery for a work related condition.

The Claimant gave conflicting testimony about his prior injuries. On direct examination, Claimant testified he did not have back or abdominal problems before 2008. However, on cross examination, he testified he took himself off work for two weeks in the summer of 2007 for low back problems caused by heavy lifting at work. The Claimant also admitted that he testified during deposition that he took himself off work in the summer of 2007 because “they were playing with him,” not because of low back problems.

Also, Claimant denied knowledge of a hernia repair as a child. However, he gave Dr. Brunt a history of hernia repair shortly after birth, which Dr. Brunt diagnosed as a recurrent right-sided hernia in 1998. Dr. Brunt noted “continued enlargement of the hernia over the course of his life.” Claimant testified the 1987 hernia repair was on the right side, not the left. However, Claimant gave Dr. Brunt a history of a left sided hernia in 1987.

I find Dr. Cantrell’s opinion is more credible than Dr. Poetz’s opinion. Dr. Poetz diagnosed an umbilical hernia, but did not address Claimant’s weight as a risk factor, despite diagnosing morbid obesity. Dr. Poetz’s records do not contain a history of a childhood hernia or a hernia in 1987.

On the other hand, Dr. Cantrell diagnosed abdominal strain and umbilical hernia, but concluded they were not work related based on Claimant’s history of multiple prior hernias, as discussed above.

Dr. Cantrell opined Claimant’s obesity was a risk factor for the development of an umbilical hernia. He noted Claimant weighed 322 pounds at the time of the surgery in 2008, and stood five feet eleven inches tall.

Also, Dr. Cantrell questioned Claimant’s history of lifting boxes one-third to two-thirds of the time, given his other work activities.

Dr. Cantrell further opined Claimant’s low back problems were not related to Claimant’s work activities because they continued after he stopped working. Also, Dr. Cantrell opined Claimant’s morbid obesity contributed to his back problems, as evidenced by decreased complaints after he lost weight. Claimant weighed 275 pounds when Dr. Cantrell examined him in 2010, the examination was normal, and Claimant had been asymptomatic for several months.

I find the Employer’s interpretation of Section 287.195 is not persuasive. However, based on credible testimony by Dr. Cantrell and Mr. Henderson, medical records and reports, and less than credible testimony by Claimant, I find Claimant failed to prove his work activities were the prevailing factor in the development of an umbilical hernia and back strain. I find Claimant did not sustain an occupational disease. Having found no compensable work injury, all other issues are moot.

CONCLUSION

The Claimant did not sustain an occupational disease. All other issues are moot.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

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

Injury No.: 08-118204

Employee: Mohamed El Karanchawy

Employer: AED Enterprises d/b/a Dewey's Pizza

Insurer: Acuity Mutual Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 23, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued December 23, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of May 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary