

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

Injury No. 13-082412

Employee: Jerry Murray  
Employer: Unilever United States, Inc.  
Insurer: Insurance Company of the State of PA

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 30, 2014, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Lawrence C. Kasten, issued December 30, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24<sup>th</sup> day of April 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Jerry Murray Injury No. 13-082412  
Dependents: N/A  
Employer: Unilever United States, Inc.  
Additional Party: None  
Insurer: Insurance Company of the State of PA  
Appearances: Mike Moroni, attorney for the employee.  
Matthew Barnhart, attorneys for the employer/insurer.  
Hearing Date: September 30, 2014 Checked by: LCK/rf

**SUMMARY OF FINDINGS**

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? N/A
5. State location where accident occurred or occupational disease contracted: N/A.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Undetermined.
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 happened or occupational disease contracted: N/A.
12. Did accident or occupational disease cause death? N/A
13. Parts of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to date for temporary total disability: \$0.00
16. Value necessary medical aid paid to date by employer-insurer: \$0.00
17. Value necessary medical aid not furnished by employer-insurer: N/A
18. Employee's average weekly wage: Undetermined.
19. Weekly compensation rate: Undetermined.
20. Method wages computation: N/A
21. Amount of compensation payable: None.
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the employee 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 employee: N/A

## **STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW**

On September 30, 2014, the employee, Jerry Murray, appeared in person and with his attorney, Mike Moroni, for a temporary or partial award. The employer-insurer was represented at the hearing by their attorney, Matthew Barnhart. The parties agreed on certain undisputed facts and identified the issue that was in dispute. These undisputed facts and issue, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS:**

1. Unilever United States, Inc. was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Insurance Company of the State of PA.
2. On or about October 10, 2013, Jerry Murray was an employee of Unilever United States, Inc. and was working under the Workers' Compensation Act.
3. The employee's claim was filed within the time allowed by law.
4. The employer-insurer paid no medical aid.
5. The employer-insurer paid no temporary disability.

### **ISSUE:**

1. Accident.

### **EXHIBITS:**

#### Employee's Exhibits

1. Medical records of Cape Radiology.
2. Medical records of Express Care.
3. Medical records of Ferguson Medical Group.
4. Medical records of Regional Brain & Spine.
6. Report of Dr. Woiteshek.
7. Withdrawn.
8. Acknowledgement of Claim form dated November 8, 2013.

#### Employer-Insurer's Exhibits

- A. Report of Injury dated December 9, 2013.
- B-1. Photograph of the area where the alleged event took place.
- B-2. Photograph of the area where the alleged event took place.
- B-3. Photograph of the area where the alleged event took place.
- B-4. Photograph of the area where the alleged event took place.
- B-5. Photograph of the area where the alleged event took place.
- B-6. Photograph of the area where the alleged event took place.

- B-7. Photograph of the area where the alleged event took place.
- C. Email sent by Angela McAfee dated October 18, 2013.
- D. Email sent by Angela McAfee dated December 7, 2013.
- E. Acknowledgement of Claim form from Division of Workers' Compensation dated January 15, 2014, and Answer to Claim for Compensation and Acknowledgement of Answer form dated January 22, 2014.

Joint Exhibits:

1. Acknowledgment of Claim form and request for insurer information dated November 8, 2013, and returned envelopes.
2. Notice of lien of workers' compensation benefits and returned envelope.
3. Notice of Pre-Hearing dated November 13, 2013, and returned envelope.

Judicial Notice of the contents of the Division file for the employee was taken.

**WITNESSES:**

Jerry Murray, Rodney Tidey, Shawn Clinton, Doyle Burgess and Angela McAfee.

**BRIEFS:**

The employee filed his proposed Award on October 27, 2014. The employer-insurer filed their proposed Award on October 30, 2014.

**STATEMENT OF THE FINDINGS OF FACT:**

The employee testified that he was born in 1962 and lives in East Prairie. He started working at Unilever on July 7, 2013, in the mix room as a material handler. His job included disposing or recycling product which were in 30-32 or 55 gallon drums. The barrels usually contained mixed product that was waste or out of date.

The employee testified that on October 9, 2013, his shift started at 6:00 p.m. and ended at 6:00 a.m. on October 10, 2013. That night was busy and there were several 55-gallon barrels and 30-32-gallon barrels that were to be disposed of. Normally a pump was used to empty the barrels but the pump had been out of service the last four days. Employer Exhibit B-3 is a photograph of the pump that was used to drain the barrels that were usually on pallets. The materials would be pumped out of the barrel into the waste machine.

The employee testified that since the pump was broken they had to manually dump at least five 55-gallon barrels containing waste into the waste machine. Employer Exhibit B-5 is the machine they dumped the waste into. Since the pump was not working, they took the barrels off the pallets, slid them to the edge, leaned them against the vat machine, and lifted them manually into the waste vat. The picture shows that the pallet was close to the edge of the machine but normally the pallets of barrels were further away than the pictures depict. The

waste was typically 4-5 inches from the top, and when the barrels were leaned some of the waste would spill out. The employee and another employee Rodney Tidey were dumping the last barrel which had an indentation or bend at the top. They leaned the barrel over and both started to pick the barrel up. The employee was on the left side of the barrel and Rodney Tidey was on the right side of the barrel. The employee's left arm was on the bottom edge of the barrel and his right arm was at the top edge as they were picking it up. As they started to lift, the front of the top part began to slide off the machine. Mr. Tidey released his side of the barrel to go to the front to pull it back on the machine to keep the barrel from falling off. At that point all of the liquid went to the back part of the barrel and the employee was holding the full weight of the barrel. The employee felt pain in his shoulder and it felt like a pulling of the muscle. He got a tingling sensation in his arm and neck. He did not think about it at the time but continued working. The accident happened at 1:00 a.m. He did not tell anyone about the incident that night because he did not think about being injured since there was so much going on and they were behind.

Rodney Tidey testified that he started working at Unilever on June 3, 2013, and worked with Jerry Murray in material handling. October 10, 2013, was the only time that he and the employee lifted barrels. They were dumping a pallet of molded strawberries. They had to tip the barrels over to dump the content into the melting vat. Employer Exhibit B-6 shows the silver melting vat. The barrels were 55 gallons and were heavy with some weighing up to approximately 200 pounds. They were almost full and contained 40-50 gallons of product. He did not remember if one of the barrels had a bend or dent in it. It may have but he does not recall. Mr. Tidey remembers lifting the barrels with the employee. Mr. Tidey stated that they were lifting the barrels and not using the pump because he thought it would be quicker to lean them over and dump them.

Mr. Tidey testified that on October 10, 2013, they were working with the black barrels pictured in Exhibit B-1. The material was about three inches above the top ring. When they were reworking the material the barrels were on the pallet. The pallet and barrels were about as close to the machine as what is shown in Employer Exhibit B-5. In order to dump the product into the vat, they tipped the barrel, rolled it onto the ledge and then tipped the barrel over which put some of the material into the vat prior to picking up the barrel. During the work shift of October 9-10, 2013, the employee never suggested that he hurt himself. Mr. Tidey has not had any contact with the employee since October 10, 2013.

Mr. Tidey testified that he did not know if the pump was not working. He dumped the barrels manually because he wanted to save time and not go find a pump. He was not sure if there was a pump with a red tag on it in that area. They usually kept red tag items across the hall to be fixed. He was in a hurry because it was shut down night; and there are generally more buckets those nights. He did not want to leave the next crew a mess. That is the only time he performed that job manually. Afterwards, the employer talked to him about the accident and there was an operational procedure learning to show what not to do. The pump should have been used instead of manually lifting 55-gallon drums.

The employee testified that when he got off work at 6:00 a.m. he went home and told his wife what happened and that his arm was bothering him. He ate breakfast, took a hot shower and

went to sleep around 8:00 a.m. When he woke up at 3:00 p.m. on Wednesday, October 10 he had a bad headache and did not think he could go to work. He called into work and spoke to Shawn who was the mix room supervisor. He told Shawn that he hurt his neck and shoulder but did not explain in detail what happened and did not specifically say it was work related. He told Shawn that he was having problems with headaches and pain in his neck and shoulder; and could not come into work on that shift which started at 6:00 p.m. on Wednesday, October 10 and ended at 6:00 a.m. on Thursday, October 11, 2013. The employee was scheduled off work for four days being the evenings of October 11, 12, 13, and 14. Over the weekend he just laid in bed all weekend due to the pain and headaches.

Shawn Clinton testified that he is a mix room lead tech at Unilever, and has worked there for 17 years. In October of 2013, he was a lead tech and worked with the employee for an hour each shift. Mr. Clinton worked from 7:00 a.m. to 7:00 p.m. and the employee worked 6:00 p.m. to 6:00 a.m. Mr. Clinton's last hour at work was the employee's first hour at work. On October 10, 2013, the employee called and told him that he would not be in at work due to a migraine headache. The employee did not mention anything to him about a work accident during that conversation.

The employee testified that he was scheduled to work on the evening of October 15 and called Shawn that day. He told Shawn that he hurt his neck and shoulder and had headaches and specifically stated that it happened at work. He told him that he could not go in. In his deposition, the employee did not remember exactly what was discussed and did not reference what he was doing on October 10, 2013. The employee testified that on October 15 he contacted Shawn and told them he had a work-related accident.

The employee testified that Mr. Clinton told him that he needed to call Doyle Burgess, the main supervisor. He called and left a message for Mr. Burgess and Angela McAfee in Human Resources. In his message to Doyle Burgess, he said that he hurt himself, and had pulled a muscle in his neck and shoulder. He thought he said that he was trying to get an appointment for medical treatment. He did not believe he specifically told Mr. Burgess that it happened due to work. He never spoke to Mr. Burgess but did speak with Ms. McAfee.

Mr. Clinton testified that the employee was off work for the next four days and the next night that he was due in he said he still had a headache and would not be in. There was not a suggestion or statement that he had a work accident; the employee never told him the he pulled a muscle in his back or neck, and never requested medical care. Mr. Clinton never told the employee to leave a message for Doyle Burgess and never told him to contact Human Resources. If the employee would have reported a work accident, Mr. Clinton would have referred the employee to the Safety Health and Education department. There was not any referral made to that department because the only thing he knew was that the employee had a migraine. The employee never reported to him after October 16.

Doyle Burgess testified that he is a supervisor in the mix room and has worked there about 35 years. He hired Jerry Murray but they did not work the same shift. Mr. Burgess testified that the employee never called and left a message on his voice mail stating that he had

hurt his neck and back and pulled a muscle and was going to seek medical treatment. Work-related injuries are reported to him. If someone reports a work accident he normally is aware of that. He never received notice from any other employee that Jerry Murray had sustained a work injury on or about October 10, 2013. Mr. Burgess checks his voice mail each morning. At some point he became aware that the employee filed a Claim but does not remember the exact date. It was quite some time after Shawn told him that the employee had called in that he was not coming into work.

The employee testified that he could not get an appointment with his regular doctor so he went to Express Care on October 16, 2013. The employee told them he got hurt on Thursday morning but does not remember specifically telling them he was injured lifting the barrel. He told the person there what he did and where he worked. The employee then testified that at Missouri Delta Express Care he explained exactly what had happened on October 10, 2013. In his deposition, the employee was asked if he described what happened on October 10, 2013, to the people at Missouri Delta, and his answer was that no, he just told them he was hurting. In the deposition, he was then asked if he told them how he hurt himself, he stated, no, he did not, and does not recall explaining to them what happened. The employee then testified he does not believe that he told them the exact events that happened but did tell her what he did and where he worked. He does not recall whether he told them what happened and does not believe he specially told them he hurt himself at work.

The employee went to Missouri Delta Express Care on Wednesday, October 16, 2013, for back and neck pain and headaches. The back and neck pain was 8 out of 10. His chief complaint was pain that radiated from the middle of the back up to the left shoulder and left side of the neck that had been ongoing for five days. The history showed an onset last Thursday morning when the employee awoke with occipital headaches and shoulder pain. The employee had a history of migraines. The employee had been out of work on Friday and Monday due to pain; and he worked at Unilever from 6 p.m. to 6 a.m. Tuesday through Friday. At best the pain was a 5-6 and at worst was an 8. Diagnosed was back pain, neck pain, and shoulder pain. The employee had injections and was prescribed pain medication and a muscle relaxer. He was taken off work for four days. It was noted that he could return to work on Wednesday, October 23, 2013, only if his symptoms improved. He was to follow up with Dr. Douglas if there was no improvement.

An email from Shawn Clinton on October 16, 2013, to Doyle Burgess and Jonathan Cribbs stated that Jerry Murray had called at 4 p.m. that day and stated that he would not be in.

Mr. Clinton testified that the October 16, 2013 email was to Jonathan Cribbs, the lead tech on duty that night. The email was standard protocol to let the lead tech and the supervisor know that the employee would not be in.

Angela McAfee testified that she has worked at Unilever for almost 15 years and is an HR specialist. Her duties include short-term disability. She was an HR specialist in October of 2013. Employer Exhibit C is an email dated October 18, 2013 that she sent. When an employee calls her regarding short-term disability, she sends out an email to notify the supervisor that they will be out on short-term disability and that a return to work slip is required. When she gets a

call from an employee regarding short-term disability she tells them that they need to contact Liberty Mutual. If there is any indication that they are off work due to a work injury, she will immediately contact their safety supervisor and let them handle it because she does not handle workers' compensation. An application for short-term disability would not be sent in if there was any indication that it was a work-related injury.

Ms. McAfee testified that she talked to the employee when the employee was requesting leave by email on October 18, 2013. She gave him the number at Liberty Mutual to call short-term disability. The employee initiated the telephone call to her. If the employee had reported a work-related accident to her, the email in Exhibit C would not have been sent out. Anytime there is a mention of a work-related incident, she would have passed that information to Nezli Leon.

An email from Angela McAfee on October 18, 2013, with the subject noted as Jerry Murray Leave Request stated that Jerry Murray was requesting leave from October 10, 2013, through unknown and that a return to work slip was required.

The employee testified that he went to Dr. Douglas his regular primary care doctor on October 21. Although the records said no specific injury, when Dr. Douglas asked how he was injured he told Dr. Douglas exactly what he did. He did not recall if he told them specifically he had been hurt at work. He does not know why Dr. Douglas put into the records that there was no specific incident. The employee does not believe that he told Dr. Douglas that he was injured at work. He did tell them where he worked and what he did.

The employee saw Dr. Douglas on Monday, October 21, 2013, with left shoulder and neck pain. It was noted that the pain started at the end of last week. He awoke with pain in the left shoulder and neck. He went to Express Care and was given medications and injections. It was noted the employee had no specific injury. X-rays of the left shoulder, cervical spine, and thoracic spine were taken. A cervical MRI was ordered due to suspected nerve impingement. Flexeril was prescribed.

The employee testified that Ms. McAfee returned his call on October 23. He explained to her what happened and it was a work-related injury. She told them that since it was reported as a work-related injury there had to be an investigation and she would get in contact with Doyle Burgess. When the investigation was completed, if it was determined to be work related, then it would be changed to a workers' compensation case. She was supposed to call him back but never did. Ms. McAfee gave him the number to Liberty Mutual and instructed him to call them to continue to get paid. He left a voice mail message that day and Jessica Lim called back on October 24. He explained to Ms. Lim that it was work-related incident. He compiled checks that were deposited in his account from Liberty Mutual for short-term disability. The first payment was on October 29, 2013.

The employee testified that he received short-term disability benefits but does not remember the specific dates. He talked to Jessica Lim at Liberty Mutual regarding his short-term disability and explained to her about the injury from the first day that Angela McAfee gave him

the Liberty Mutual phone number. He was paid short-term disability even though they were aware the injury was at work.

The employee had a cervical MRI without contrast on October 30, 2013. The history was neck and shoulder pain with left-sided cervical radiculopathy since October of 2013. At C5-6 there was a disc bulge/osteophyte complex eccentric to the left. At C6-7 there was disc protrusion and osteophyte formation along the left C6-7 foramen causing marked foraminal stenosis. At C7-T1 level there was a disc protrusion and osteophyte formation along the left C7-T1 foramen causing marked foraminal stenosis.

The employee testified that he thought he needed an attorney, and went to his attorney's office and the claim was filed on November 4, 2013.

The employee signed his Claim for Compensation on November 4, 2013. The Claim was filed with the Division of Workers' Compensation on November 6, 2013. The Claim stated that at 1:30 a.m. on October 10, 2013, the employee was lifting a 55-gallon barrel of strawberry flavoring and felt a pull in his neck that got progressively worse over the next few days. The parts of the body injured were left side back, neck and shoulder.

On November 8, 2013, the Division sent the Claim for Compensation to the incorrect address of the employer. The address was the one listed in the Claim for Compensation which was 1600 Rose Parkway, Sikeston, Missouri with a zip code of 63901. It was returned to the Division on November 19, 2013, due to the incorrect address.

Ms. McAfee stated that anything to do with workers' compensation goes directly to the Safety Department. Unilever is located at 2400 Rose Parkway and not 1600 Rose Parkway in Sikeston.

On November 15, 2013, the employee went to Missouri Delta Express Care due to left shoulder and arm pain which radiated up to left arm to shoulder. He had 8 out of 10 pain. It was noted that he was out of medications and had been unable to get into to see Dr. Douglas. On examination there was limited range of motion due to pain in the left arm, neck and shoulder. Diagnosed was left shoulder pain. A Toradol injection was given and Ultram and Flexeril were prescribed. The employee was to follow up with Dr. Douglas.

The Notice of Pre-Hearing for the November 26, 2013 setting was sent to the same incorrect address. It was returned to the Division on November 25, 2013.

The minute entry from the November 26, 2013 pre-hearing stated that the employee was represented by its attorney Mike Moroni and no one appeared for the employer-insurer.

The employee testified that after the MRI, Dr. Douglas referred him to Dr. Colle and when he went he filled out a form and told Dr. Colle that he was hurt at work.

The employee saw Dr. Colle on December 5, 2013, for neck, left shoulder, and back pain. In the New Patient First Appointment Form the employee stated that he was having neck, left shoulder and back pain since October 10, 2013. He checked the box that an injury caused the pain; and that the injury occurred on October 10, 2013, at Unilever. The history noted he had sudden onset of left arm and shoulder pain after feeling a pop in his neck and the pain radiated from his neck down into his shoulder. Norco was prescribed. Dr. Colle's impression was radiculitis, cervical and cervicgia. Dr. Colle reviewed the MRI and stated that the employee had foraminal stenosis on the left side at C5-6 and C6-7 which could be accounting for his difficulty but he really did not have pain in the C6 or the C7 distribution. Dr. Colle wanted an EMG and nerve conduction velocities. The employee was returned to work with the restrictions of no highly repetitive bending, stooping or twisting, and no overhead work, with a 10-pound lifting restriction.

On December 6, 2013, an email from Jessica Lim at Liberty Mutual was sent to Angela McAfee with a copy to Doyle Burgess with the subject being Liberty Mutual Short-term disability. Ms. Lim noted that she was managing the employee's short-term disability claim and the employee advised her that he believed that his injury may involve a workers' compensation injury. She inquired of Ms. McAfee whether a workers' compensation claim had been filed.

Ms. McAfee testified that Exhibit D is the December 6, 2013, email from Jessica Lim, a case manager at Liberty Mutual that handled the short-term disability claim. Ms. Lim was letting her know that the employee had advised that his injuries may be a workers' compensation injury. Ms. McAfee immediately copied Nezli Leon, the safety supervisor and safety manager. Ms. McAfee replied on December 7 that the employee did not mention anything about being injured on the job before he went out on leave.

On December 7, 2013, Angela McAfee sent an email forwarding the email from Jessica Lim and stated that the employee did not mention anything about being injured on the job when his claim was reported prior to him going out on leave on October 10, 2013.

The employee testified that he was ultimately contacted by a person at Broadspire named Judy by letter. He called her and she took a statement and filled out information about the incident. He was contacted by Nezli Leon the head of the safety department at Unilever. On December 9, 2013, he received a call from Nezli Leon and Angela McAfee was also on the call. They interviewed him about the incident.

Ms. McAfee testified that she had a conference call on December 9, 2013, with Nezli Leon and the employee. That was first time that Unilever received notice of a potential work-related injury.

The Report of Injury was prepared on December 18, 2013, by Nezli Leon the Safety Supervisor. It stated that the employer was notified of the injury on December 9, 2013, and the administrator was notified on December 18, 2013. It showed that on October 10, 2013, at 1:00 a.m. the employee strained his neck and shoulder from lifting a barrel. The employee stated he

was lifting a 55-gallon barrel of waste with assistance from employee Rodney Tidey when he felt something pulling in his neck and shoulder.

The employer's address was corrected in January of 2014. An Acknowledgement of Claim form from the Division of Workers' Compensation dated January 15, 2014 was sent to the employer's correct address. The employer-insurer filed an Answer on January 21, 2014.

The employee saw Dr. Woiteshek on April 18, 2014. He told Dr. Woiteshek that on October 10, 2013, he was working in the Mix room and dumping a 55-gallon barrel of liquid flavoring with the assistance of another employee. In process of dumping this heavy barrel, the barrel began to shift causing the coworker to accidentally release his end of the barrel. The employee was left holding all the weight as it shifted. He experienced a "pop" in his cervical spine area with subsequent pain in the same area radiating to his left shoulder.

## **RULINGS OF LAW:**

### ***Issue 1. Accident.***

The employer-insurer has denied that on or about October 10, 2013, the employee sustained an accident arising out of and in the course of his employment.

The burden of proof is on the employee to prove all material elements of his claim. See *Marcus v. Steel Constructors, Inc.*, 434 S.W.2d 475 (Mo. 1968) and *Walsh v. Treasurer of the State of Missouri*, 953 S.W.2d 632,637 (Mo. App. 1997). The employee has the burden of proof that his injuries were the result of an accident that arose out of and in the course of employment. See *Strate v. Al Baker's Restaurant*, 864 S.W.2d 417, 419-420 (Mo. App. 1993) and *Smith v. Donco Construction*, 182 S.W.3d 693, 699 (Mo. App. 2006).

A claim for compensation may be decided solely upon a finding of lack of credibility of uncontradicted and unimpeached testimony. See *Cox v. General Motors Corporation*, 691 S.W.2d 294 (Mo. App. 1985), *Beyer v. Howard Construction Company*, 736 S.W.2d 78 (Mo. App. 1987), *Smart v. Chrysler Motors Corp.*, 851 S.W.2d 62, 64 (Mo. App. 1993) and *Alexander v. D.L. Sitton Motor Lines*, 851 S.W.2d 525 (Mo. Banc. 1993).

There are several evidentiary problems that support a finding that the employee has failed to meet his burden of proof on the issue of accident. These problems are addressed as follows:

### **The testimony of the employee is inconsistent with the other evidence.**

The employee testified that the reason that the barrels were manually dumped was due to the pump that they normally used had been out of service for four days. Rodney Tidey testified that the reason the barrels were dumped manually was because they were in a hurry that night and wanted to save time and thought it would be quicker than using a pump.

The employee testified that the pallets of barrels were further away from the machine than what the pictures depicted. Mr. Tidey testified that the barrels and pallets were about as close to the machine as shown in the pictures.

The employee testified that on October 15, 2013, he called Shawn Clinton and told them he had a work-related accident and injured his neck and shoulder. Mr. Clinton testified that on October 15 when the employee called in he did not tell him that he had a work accident.

The employee testified that on October 15, 2013, Shawn Clinton told him that he needed to call Doyle Burgess. Mr. Clinton testified that he never told the employee to contact Mr. Burgess.

The employee testified that he called and left a message for Doyle Burgess that he had hurt himself and pulled a muscle in his neck and shoulder and was going to get medical treatment. Mr. Burgess testified that that the employee never called and left a message that he had hurt his neck and back, pulled a muscle and was going to seek medical treatment.

The employee testified that when he spoke to Angela McAfee he explained to her how the incident happened and that it was a work-related injury. He was paid short-term disability benefits even though they were aware the injury was at work. Ms. McAfee testified that an application for short-term disability would not be sent in if there was any indication that it was a work-related incident; the October 18, 2013 email would not have been sent if there was any indication that it was a work-related injury, and the employee did not mention anything to her about being injured on the job.

These multiple inconsistencies have an adverse effect on the credibility of the employee.

**The medical history given by the employee to the initial treating health care providers does not corroborate the testimony of the employee regarding the alleged accident.**

The employee testified that when Rodney Tidey released his side of the barrel he was holding the full weight of the barrel and felt pain in his shoulder and it felt like a pulling of the muscle, and he got a tingling sensation in his arm and neck.

The first medical record after the alleged October 10, 2013 accident was when the employee went to Missouri Delta Express Care on October 16, 2013. The history showed an onset last Thursday morning when the employee awoke with occipital headaches and shoulder pain. On October 21, 2013, the employee went to Dr. Douglas noting that the pain had started at the end of last week when he awoke with pain in the left shoulder and neck; and there was no specific injury.

This lack of corroborating medical history to the health care providers after the alleged accident substantially affects the credibility of the employee on the issue of accident, and does not support a conclusion that the employee sustained a work related accident.

**Conclusion**

Based on a thorough review of the evidence including the cumulative effect of the evidentiary problems discussed above, I find that the testimony of the employee was not credible or persuasive. I find that the testimony of Rodney Tidey, Shawn Clinton, Doyle Burgess, and Angela McAfee was credible and persuasive. I find that the employee failed to satisfy his burden of proof on the issue of accident. I find that the employee did not sustain a work-related accident on or about October 10, 2013, that arose out of and in the course of his employment. The employee's claim for compensation is denied. Although this case was heard as a temporary hearing, the award is final.

Made by:

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Lawrence C. Kasten  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*