

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

Injury No.: 01-169682

Employee: James R. Myers  
Employer: Heilig-Meyer Furniture  
Insurer: Fidelity & Casualty Co. of NY c/o Sedgwick CMS  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed 3-13-07)  
Date of Accident: April 13, 2001  
Place and County of Accident: Sedalia, Pettis 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 June 20, 2007. The award and decision of Administrative Law Judge R. Carl Mueller, issued June 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 10th day of March 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## FINAL AWARD

Employee: James R. Myers Injury No: 01-169682  
Dependents: N/A  
Employer: Heilig-Meyer Furniture  
Additional Party: State Treasurer, Custodian of the Second Injury Fund (Dismissed 3/13/2007)  
Insurer: Fidelity & Casualty Co. of NY c/o Sedgwick CMS  
Hearing Date: April 26, 2007  
Briefs Filed: May 16, 2007 Checked by: RCM/cm

### 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: April 13, 2001
5. State location where accident occurred or occupational disease was contracted: Sedalia, Pettis 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 moving furniture
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: right upper extremity at the 210-week level
14. Nature and extent of any permanent disability: Five percent (5%) – right elbow
15. Compensation paid to-date for temporary disability: \$64,900.29
16. Value necessary medical aid paid to date by employer/insurer? \$22,858.77
17. Value necessary medical aid not furnished by employer/insurer? \$0
18. Employee's average weekly wages: \$550.00

- 19. Weekly compensation rate: \$366.67 for temporary/permanent total; \$314.26 for permanent partial
- 20. Method wages computation: by stipulation of parties
- 21. Amount of compensation payable:

Medical Expenses

Medical Already Incurred ..... \$22,858.77  
 Less credit for expenses already paid ..... (\$22,858.77)  
 Total Medical Owing ..... \$0.00

Temporary Disability

176 and 6/7s weeks ..... \$64,900.29  
 Less credit for benefits already paid ..... (\$64,900.29)  
 Total TTD Owing ..... \$0.00

Permanent Partial Disability

5% disability to right elbow (05 x 210 weeks) x \$314.26/week ..... \$3,299.73

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 Total Award: ..... \$3,299.73

- 22. Second Injury Fund liability: N/A
- 23. Future requirements awarded: None

Said payments to begin as of date of this award 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 twenty-five percent (25%) lien totaling \$824.93 in favor of Steve Fritz, Attorney, for reasonable and necessary attorney's fees pursuant to Mo.Rev.Stat. §287.260.1.

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

Employee: James R. Myers Injury No: 01-169682  
 Dependents: N/A  
 Employer: Heilig-Meyer Furniture

Additional Party: State Treasurer, Custodian of the Second Injury Fund (Dismissed 3/13/2007)

Insurer: Fidelity & Casualty Co. of NY c/o Sedgwick CMS

Hearing Date: April 26, 2007

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On April 26, 2007, the employee and employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, James R. Myers, appeared in person and with counsel, Steve Fritz. The employer appeared through Jennifer Yates. While the original claim included the Second Injury Fund, that claim was dismissed on March 13, 2007 on the Claimant's motion. The primary issues the parties requested the Division to determine were whether or not Mr. Myers suffered an accident arising out of and in the course of his employment, whether Heilig-Meyer Furniture must provide him with additional medical care, and whether he sustained any disability and, if so, the nature and extent of his disability and whether the employee is permanently and totally disabled. For the reasons noted below, I find that Mr. Myers sustained a compensable accident on April 13, 2001, and that his disability is five percent (5%) to his right elbow.

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**STIPULATIONS**

- The parties stipulated that:

- On or about April 13, 2001 ("the injury date"), Heilig-Meyer Furniture was an employer operating subject to Missouri's Workers' Compensation law with its liability fully insured by Fidelity & Casualty Co. of NY;
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- James R. Myers ("employee") was its employee working subject to the law in Sedalia, Pettis County, Missouri;
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- Mr. Myers notified Heilig-Meyer Furniture of his alleged injury and filed his claim within the time allowed by law;
  
- Mr. Myers' average weekly wage was \$550.00 resulting in a weekly compensation rate of \$366.67 for temporary total and \$314.26 for permanent partial disability compensation;
- Heilig-Meyer Furniture paid Temporary Total Disability Compensation totaling \$64,900.29 for the period from February 26, 2002 through July 17, 2005 representing 176 and 6/7's weeks; and
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- Heilig-Meyer Furniture provided Mr. Myers with medical care costing \$22,858.77.

**ISSUES**

The parties requested the Division to determine:

- Whether Mr. Myers sustained an accident arising out of and in the course of his employment?
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- Whether Heilig-Meyer Furniture must provide the employee with additional medical care?

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- Whether Mr. Myers suffered any disability and, if so, the nature and extent of the employee's disability and whether the employee is permanently and totally disabled?
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## **FINDINGS**

Mr. Myers testified on his own behalf and called his wife, Kimberly Myers, and his brother, Larry Myers, to testify. In addition he and presented the following exhibits, all but one of which (Exhibit E) was admitted into evidence without objection:

- Exhibit A – Medical Records
- Exhibit B – Vocational Rehabilitation Records
- Exhibit C – Medical Report, P. Brent Koprivica, MD, December 1, 2005  
and Addendum, P. Brent Koprivica, MD, May 13, 2006
- Exhibit D – Deposition, Gary Weimholt, April 24, 2007
- Exhibit E – Addendum, P. Brent Koprivica, MD, April 15, 2007

Although the employer did not call any witnesses, it did present the following exhibits, all of which were admitted into evidence without objection:

- Exhibit 1 – Deposition, John Graham, MD, April 19, 2007
- Exhibit 2 – Deposition, James England, April 18, 2007
- Exhibit 3 – Video Surveillance, August 16-18, 2005

Based on the above exhibits and the testimony of the witnesses, I make the following findings. Mr. Myers is a married, 42-year old male, who lives with his wife and two children in Sedalia, Missouri. He received his high school diploma in 1983 and completed one year of post high school education at State Fair Community College in 1983 and 1984. Mr. Myers began working for Homaker's Furniture when he was approximately 16 years old. Homaker's was bought out by Heilig-Meyer Furniture in 1991 and Mr. Myers continued to work at the same facility. He began working as a store cleaner and warehouse worker, eventually being promoted to senior warehouse manager. Heilig-Meyer Furniture filed for bankruptcy in August 2000 and closed its warehouse on July 1, 2001.

Due to the bankruptcy, Heilig-Meyer Furniture began to lay off some of its employees. Even though Mr. Myers was a senior warehouse manager responsible primarily for supervising other employees, scheduling deliveries and helping out on the showroom floor, he was required to assist with deliveries again due to these layoffs. Mr. Myers testified that on or about April 13, 2001, he was making a large delivery of furniture to an individual's home. He was setting down an entertainment center when he first noticed pain in his right elbow and a sharp pain in his groin area and both testicles. Mr. Myers admitted on cross-examination that he was aware of the bankruptcy at the time of his injury and knew that in a few months he would lose his job that he had had for twenty (20) years.

Mr. Myers initially saw his primary care physician, Dr. William Woolery, on April 17, 2001. *See Claimant's Exhibit A, page 23.* Mr. Myers complained of right elbow pain that started when he was doing a lot of heavy lifting at his job. Dr. Woolery diagnosed right elbow tendonitis and prescribed some medication. Mr. Myers also complained of a "groin pull with some testicular discomfort *which has bothered him off and on for weeks...*" (emphasis added). Dr. Woolery thought the medication prescribed for his elbow tendonitis would also benefit the groin pull and recommended he try to avoid lifting for a while. *Id.*

Mr. Myers testified that he continued working at Heilig-Meyer Furniture from the date of his injury until his layoff with the rest of the employees on July 1, 2001 when the facility closed. Larry Myers, the claimant's brother and supervisor, testified that he was never presented with any off work slips for Mr. Myers during this time.

Mr. Myers was seen by Dr. Steve Foster at the referral of Dr. Woolery. Dr. Foster saw him on July 23, 2001 for inguinal pain. *Id* at 289. Dr. Foster found nothing on physical examination, no varicocele, no hernia. Mr. Myers did not have any testalgia during physical examination; prostate exam was normal; urinalysis was normal; VB3 was normal. Dr. Foster thought the pattern of pain was of muscular skeletal etiology. *Id*. When seen in follow-up on August 15, 2001, Dr. Foster thought the pain was referred from his back. *Id* at 287. He noted Mr. Myers was on Vioxx and recommended a scrotal support and heat to his back.

Mr. Myers was also referred to Dr. Ryan Edwards for evaluation of his right elbow pain. *Id*. at 295. Dr. Edwards evaluated Mr. Myers on August 28, 2001 for a recent re-aggravation of the elbow and dissatisfaction with his pain relief. *Id* at 294. He was given another injection, prescribed medication, and referred for therapy. He began therapy at Bothwell Regional Health Center on September 5, 2001. *Id* at 254.

By August 28, 2001, Mr. Myers was doing reasonably well. *Id* at 22. Mr. Myers was looking for a job and that was distressing him but his right elbow and groin were both better with rest and not so much lifting. Dr. Woolery recommended lumbar spine films which were taken at Bothwell Regional Health Center on August 28, 2001 and were negative. *Id* at 267.

Mr. Myers saw Dr. Edwards again on September 18, 2001. *Id* at 294. His elbow pain was markedly improved. He was advised to continue home exercises, wear the tennis elbow strap, and follow up in 3 months if increase in symptoms occurs. *Id*.

In October 2001, Mr. Myers began working at Tallman's, a wholesale plumbing supply company. He performed tasks similar to those he had at Heilig-Meyer Furniture including warehouse tasks such as taking telephone orders, pulling orders and delivering plumbing items. *See* Claimant's Exhibit C, page 3. Mr. Myers worked at Tallman's for four months, until January 2002, before deciding to leave for a better job. *Id*.

From August 28, 2001 through November 21, 2001, approximately 3 months, Mr. Myers had no evaluations regarding his groin complaints and had begun working at Tallman's.

Mr. Myers then saw Dr. Woolery on November 21, 2001. *See* Claimant's Exhibit A, page 21. Dr. Woolery noted that Mr. Myers was doing better when he was not working but now had a new job and was working a lot causing increased pain. Dr. Woolery recommended a bone scan to rule out a cracked pelvis and increased his Vioxx. *Id*. Mr. Myers had a bone DEXA scan performed at Bothwell Regional Health Center on November 23, 2001 which was normal. *Id* at 252. He also had a partial bone imaging done at the same facility on December 24, 2001 which was also negative. *Id* at 249.

In January 2002, Mr. Myers left his employment at Tallman's for a better job at Missouri Furniture. He worked at Missouri Furniture from January 20, 2002 through February 25, 2002 as a warehouse manager as this was his interest and experience. *See* Claimant's Exhibit C, page 3.

Mr. Myers did not see Dr. Edwards again until February 12, 2002, five months after his previous visit. *See* Claimant's Exhibit A, page 294. He had increasing elbow pain, again after having worked at both Tallman's and Missouri Furniture. Dr. Edwards recommended a lateral epicondylectomy and tennis elbow release. *Id*.

Mr. Myers again saw Dr. Woolery on February 25, 2002 with complaints of groin discomfort. *Id* at 21. Mr. Myers told Dr. Woolery it had gotten a lot worse since he started working the warehouse at a furniture store again and "all the lifting has gotten him in trouble." He diagnosed a chronic groin strain and right arm tendonitis.

From the date of his injury, April 13, 2001 until February 25, 2002, Mr. Myers was able to continue working and had no lost time as a result of his elbow or groin complaints.

Mr. Myers was then seen by Dr. Ronald Carter on March 14, 2002 for a second opinion regarding Dr. Edwards' recommendation for right elbow surgery. *Id* at 306. Dr. Carter recommended an MRI that was performed on March 21, 2002 and was fairly unremarkable. *Id*. at 307. Dr. Carter recommended a splint, medication, and possibly another injection. *Id* at 304. He did not think surgical intervention would improve him enough to warrant the risks.

*Id.* Dr. Carter performed another injection on May 1, 2002 and continued the Vioxx. *Id* at 303. Mr. Myers last saw Dr. Carter on July 30, 2002. *Id* at 302. He still had some lateral epicondylar pain but had some relief from the injection. Dr. Carter wanted to see him back in two months for a final evaluation and rating. Mr. Myers contacted Dr. Carter's office in November 2002 stating he had not yet been released for his groin problems. Dr. Carter stated he would not be able to release Mr. Myers until the urologist had and he had been working for a couple of months. *Id* at 301.

Mr. Myers was then seen by Dr. Joseph Montie on June 17, 2002 for testicular pain. *Id* at 206. Physical examination was essentially normal. Dr. Montie diagnosed probable prostatitis and placed him on medication. In follow-up on August 23, 2002, Dr. Montie notes Mr. Myers has had two courses of antimicrobial agents with no improvement. He recommended an ultrasound of the testes and a consult with the pain clinic. *Id* at 204. The ultrasound was performed on August 23, 2002 and was negative; urine test was also negative. *Id* at 208 and 203. Dr. Montie referred him to Dr. Weinstein for a second opinion. *Id* at 202.

Mr. Myers saw Dr. Weinstein on December 13, 2002. *Id* at 310. Physical examination revealed no masses, swelling, bulging and no evidence of hernia. Dr. Weinstein diagnosed bilateral scrotal pain and placed him on medication. Mr. Myers was seen one month later on January 24, 2003 and received a nerve cord block. *Id* at 314. A note from Dr. Montie dated November 19, 2002 indicated Mr. Myers did not like the cord block because "it was hiding the problem" and he wanted a second opinion. *Id* at 202. Dr. Montie referred him to Dr. Herrick.

Mr. Myers saw Dr. Herrick on March 28, 2003. *Id* at 212. Dr. Herrick noted the cord block performed by Dr. Weinstein improved his symptoms but caused complete numbness and Mr. Myers did not like that. "It did make the pain go away temporarily. He does not want to pursue this any further." *Id.* Dr. Herrick diagnosed bilateral orchialgia, left greater than right and left epididymal pain, questionable etiology. He was prescribed medication and advised that a left epididymectomy was a last resort. In follow-up on May 6, 2003, Mr. Myers noted no improvement. *Id* at 211. Dr. Herrick discussed treatment options including an epididymectomy or orchiectomy. Mr. Myers asked him about a procedure he found on the internet called a nerve stripping of the vas deferens. Dr. Herrick told him he did not do this and did not know anyone in Kansas City who did and referred him back to pain management. *Id.*

Mr. Myers then saw Dr. Brad White on July 30, 2003. *Id* at 144. Dr. White diagnosed "bilateral orchalgia unlikely of a primary testicular etiology as he has had an exhaustive urologic work up by 3 previous urologists. Other etiologies for this could be radicular pain from lumbosacral spine problems or a bulging disc related to his lifting injury." He recommended an MRI of the lumbar spine and continued medication. *Id.* An MRI of the lumbar spine taken on August 6, 2003 showed mild facet hypertrophy at L4-5 and L5-S1 without significant narrowing of the spinal canal or neural foramen. *Id* at 14.

Mr. Myers also saw a Dr. Allyn Sher on October 16, 2003 for evaluation of chronic testicular pain. *Id* at 136-139. Mr. Myers reported normal sexual function, no difficulty with weakness in the lower extremities, no back pain, and no difficulty with bladder control. Dr. Sher diagnosed chronic testicular pain stating he could not detect any neurological basis for his symptoms. Recent MRI scan of his lumbar spine was entirely normal as was his neurologic exam. He had nothing further to offer Mr. Myers. *Id.*

Mr. Myers continued to see Dr. Montie and his colleague, Dr. Michael Cupp, through 2003, 2004, and 2005. *Id* at 155-162. He tried various medications including Vicodin for prostatitis, pelvic pain syndrome, and chronic scrotal pain. Dr. Cupp noted on January 28, 2005 that Mr. Myers should not use more than 3 Vicodin a week for fear of addiction. *Id* at 155.

Mr. Myers saw Dr. Richard Wolkowitz on October 18, 2004. *Id* at 319-321. Dr. Wolkowitz noted Mr. Myers' received an intratesticular block which numbed the testicle and made the pain go away for several hours but provided no long-term relief. Dr. Wolkowitz reviewed his MRI which showed no evidence of midline disc degeneration or protrusion at T11, T12 or L1. He discussed a diagnostic/therapeutic genitofemoral nerve root block. *Id.* This nerve root block was performed on October 28, 2004 and caused numbness in his testicle and penis. *Id* at 322-330. Dr. Wolkowitz said he would not perform a radiofrequency ablation on Mr. Myers due to the results of the nerve root block. His diagnosis remained bilateral testicular pain, worse on the *right* (emphasis added), and possible genitofemoral neuritis. *Id* at 331.

Mr. Myers underwent an MRI of the pelvis on January 24, 2005 and it was unremarkable. *Id* at 335. Mr. Myers cancelled his follow-up appointment with Dr. Wolkowitz after being told of the results of the MRI. *Id* at 337.

Mr. Myers saw Dr. Brad White again on July 18, 2005. *Id* at 141-142. He again diagnosed bilateral orchalgia. Dr. White concluded that Mr. Myers' groin pain is temporally related to his work injury but that he could not see a direct cause of lifting causing testicular pain unless it involves a nerve root compression from a lumbosacral spinous process or bilateral inguinal hernias or exacerbation of bilateral epididymitis, none of which he found clinically. He could not give substantial medical evidence from a urologic standpoint that his lifting injury in 2001 is the source of his testicular pain. *Id*.

Mr. Myers was seen by Dr. John Graham for an independent medical examination at the request of Heilig-Meyer Furniture and Dr. Graham issued his report on July 18, 2005. *See* Employer's Exhibit 1. Dr. Graham diagnosed bilateral testicular pain without any objective abnormality on any testing. *Id* at 64. By history, there was no direct trauma to the genitalia or the pelvis. Dr. Graham stated that no single objective explanation had been found for Mr. Myers' subjective complaints of pain. Some of the possible diagnoses given to Mr. Myers by the many physicians he has seen, such as prostatitis and epididymitis, could not be related to any work injury as these diagnoses are typically due to an infectious process and there is no reason to suspect an infectious process would be related to his job of moving furniture. *Id*.

Dr. Graham also found it unusual that Mr. Myers' complaints vary from day to day, from the left side to the right. If there was an injury to the nerves, one would expect irritation to one side or the other and not both. If there was a central cause such as a disc herniation, one could see bilateral complaints. However, this had been evaluated with MRI's and there was no evidence of a disc herniation in the spine causing his complaints. *Id* at 65. As such, Dr. Graham concluded that Mr. Myers' complaints were not nerve related. *Id* at 66. Dr. Graham also concluded that Mr. Myers' condition was not a soft tissue, muscle injury because, again, his variable intermittent symptoms and lack of objective findings did not support this diagnosis. Furthermore, one would expect a resolution of symptoms from a muscle pull to resolve four years after the alleged injury. *Id*. Dr. Graham also ruled out a vascular issue as the source of his complaints. *Id*.

Due to the lack of objective findings to explain Mr. Myers' complaints, Dr. Graham recommended discontinuation of the Vicodin and use of over the counter medication. *Id* at 17-18. Dr. Graham noted in his report that Mr. Myers does yard work, drives, takes his kids around town to various activities, and was selling real estate. As such, he did not believe Mr. Myers required any work restrictions and had reached maximum medical improvement. *Id* at 67.

A Functional Capacity Evaluation was performed on October 20, 2005. *See* Claimant's Exhibit A, page 361-368. It showed Mr. Myers was capable of working in the light physical demand level, though he did exhibit self-limiting behavior.

Mr. Myers was evaluated by Dr. P. Brent Koprivica on December 1, 2005 at the request of his attorney for an independent medical examination. *See* Claimant's Exhibit C. Dr. Koprivica diagnosed chronic pelvic pain syndrome and though he related this to Mr. Myers' injury on April 13, 2001, he stated the "*precise etiology of his pain in not clear*, although he does have some epididymitis on the left." (emphasis added). *Id* at 17. Dr. Koprivica also stated Mr. Myers had reached maximum medical improvement. He provided work restrictions based on "Mr. Myers' subjective tolerances." *Id* at 18. Dr. Koprivica rated the employee's disability "globally" at twenty-five (25) percent body as a whole. *Id*. at 18. Dr. Koprivica did not apportion this disability between Mr. Myers' right arm and groin. Dr. Koprivica noted that "Mr. Myers' right elbow really is not bothering him since he is not stressing the right elbow." *Id*. at 14. However, Dr. Koprivica did observe that Mr. Myers "does develop right lateral elbow pain with use." *Id*. Dr. Koprivica noted also that "Mr. Myers is married. He is able to have intercourse. He is currently having intercourse about once per week." *Id*. at 14.

Mr. Myers was evaluated by James England for a vocational assessment at the request of Heilig-Meyer Furniture on October 16, 2006. *See* Employer's Exhibit 2. Mr. Myers scored well on the academic tests administered

by Mr. England's office. Mr. England concluded that Mr. Myers' academics were in good shape and that Mr. Myers was bright and articulate enough that he could probably learn a variety of different types of skills or training in either technical school or college. *Id* at 14-15. At the time of his evaluation, Mr. Myers had been retrained and was working in real estate which is a light job from an exertional standpoint. Mr. England did feel Mr. Myers could pursue alternative programs since he was not making enough money selling real estate and certainly was not totally disabled from a vocational standpoint. *Id*.

Mr. Myers testified he only attempted to find jobs in the field with which he was familiar following his layoff from Heilig-Myers. This is evidenced by his jobs at Tallman's and Missouri Furniture. When this was not successful, Mr. Myers sought the assistance of vocational rehabilitation with the State of Missouri. He made a brief attempt to return to school at State Fair Community College but admitted on cross-examination that he was not interested in going back to college, "did not care for it", and only stayed two days. Mr. Myers then decided to try real estate as he knew that he would have flexibility in his schedule and work hours. *See* Claimant's Exhibit C, page 5. He attended real estate classes through vocational rehabilitation in October 2004 in Kansas City. Mr. Myers testified on cross-examination that he attended these classes in Kansas City for eight or nine days and that he drove one and a half hours each way, each day to attend these classes. He then would sit in these classes all day long. He admitted that he took Vicodin but was able to still drive 3 hours each day while taking the Vicodin to attend the classes. Mr. Myers completed the classes and obtained his real estate license in early 2005. It was then that he obtained a job at Preferred Properties as a real estate agent where he is currently employed and intends to remain employed. According to the claimant, he grossed \$19,000 from approximately March 2005 through November 2005, which is comparable to his gross wages during a similar time period at Heilig-Meyer Furniture. *Id*.

## **RULINGS**

### *Arising Out of and In the Course of Employment/Medical Causation*

Based on the evidence presented, I find Mr. Myers did sustain an injury arising out of and in the course of his employment on or about April 13, 2001 resulting in lateral epicondylitis in his right elbow that was treated conservatively with Dr. Edwards and Dr. Carter.

Based on the evidence presented, I do not find that Mr. Myers' subjective complaints of groin and testicular pain are the result of an injury that arose out of and in the course of his employment. Mr. Myers has been to in excess of ten different physicians regarding his complaints of groin and bilateral testicular pain. During his first visit to his primary care physician, Dr. Woolery, on April 17, 2001 the note reflects that Mr. Myers complained of a "groin pull with some testicular discomfort *which has bothered him off and on for weeks...*" (emphasis added) which would pre-date his work injury on April 13, 2001. Furthermore, all of these physicians have been unable to objectively identify the cause of Mr. Myers' subjective complaints of pain. All possible acute injuries which could explain his complaints and which could result from an injury at work have been ruled out through various objective medical tests. *See* Claimant's Exhibit A.

Of all of the physicians seen by Mr. Myers, the only one to causally relate Mr. Myers' complaints to his work injury of April 13, 2001 is Dr. Koprivica, the claimant's own evaluating and rating physician. However, at the same time that Dr. Koprivica causally relates his "chronic pelvic pain syndrome" to his work injury, he states "*the precise etiology of his pain is unclear*" (emphasis added). Contrary to Mr. Myers' testimony, Dr. Montie's records do not reflect a causation opinion regarding Mr. Myers' injury and prostatitis. *Id* at 147-208. Dr. Herrick also questioned the etiology of Mr. Myers' bilateral orchialgia and left epididymal pain. *Id* at 211. Dr. Graham, a pain management specialist, ruled out direct trauma, neurological injury, soft tissue/muscle injury, and vascular injury. *See* Employer's Exhibit 1. Mr. Myers has the burden to prove a causal connection between the accident and the claimed work injury. Medical causation not within common knowledge or experience must be established by scientific or medical evidence showing the cause and effect relationship between the complaint of condition and the asserted cause. Brundige v. Boehringer R. Ingeheim, 812 S.W.2d 200, 202 (Mo. App. 1978). As no medical expert has been able to definitively diagnose Mr.

Myers' condition or identify the claimed work injury, he subsequently has failed to prove a causal connection to the accident.

Furthermore, Mr. Myers condition was improving, he had not missed any time from work and had gone a few months without any treatment or evaluations before beginning employment with two subsequent employers at which point his condition was aggravated to the extent of requiring additional evaluations, testing and treatment.

### Future Medical

As I have found that Mr. Myers did not sustain groin or bilateral testicular pain as a result of an injury that arose out of and in the course of his employment, I do not find that Heilig-Meyer Furniture must provide him with additional medical care. Similarly, even if I had found that Mr. Myers did sustain groin or bilateral testicular pain as a result of an injury that arose out of and in the course of his employment, I still would not have found that Heilig-Meyer Furniture must provide him with additional medical care. By Mr. Myers' own testimony as well as the medical evidence, the only recommended future treatment is continued use of a narcotic medication, Vicodin. The Vicodin is being prescribed by Mr. Myers' primary care physician, Dr. Woolery. Several of Mr. Myers' treating physicians expressed concerns regarding addiction and his continued use of such a potent narcotic. Dr. Graham, a pain management specialist, specifically recommended discontinuation of this narcotic given the lack of objective medical evidence. Dr. Graham testified that it is not reasonable to keep a 40 year old man on narcotic medication for the rest of his life without an objective indication for it. *See* Employer's Exhibit 1, page 17-18.

### Permanent Partial Disability/Permanent Total Disability

Although neither Dr. Koprivica nor Dr. Graham provided a disability rating for Mr. Myers' right elbow, I conclude that, as a result of his lateral epicondylitis, he sustained five percent (5%) permanent partial disability is of the right upper extremity at the 210-week level. Dr. Koprivica noted that Mr. Myers continues to have pain in his elbow with use. I further conclude that Mr. Myers has reached maximum medical improvement regarding his right upper extremity injury and is not in need of any additional treatment for his elbow. Thus, I order Heilig-Meyer Furniture to pay Mr. Myers ten and one-half (10.5) weeks of permanent partial disability totaling \$3,299.73.

Since I have found that Mr. Myers' bilateral testicular pain is not a result of an injury that arose out of and in the course of his employment, I do not find that he has any permanent partial disability nor do I find that he is permanently and totally disabled. Mr. Myers alleges that he is permanently and totally disabled and unemployable in the open labor market. By contrast, he is currently employed as a real estate agent for Preferred Properties and at one point was earning gross wages comparable to his earnings at Heilig-Meyer Furniture. *See* Claimant's Exhibit C, page 5. Mr. Myers has demonstrated academic proficiency in vocational testing administered by James England and independently with vocational rehabilitation with the State of Missouri. He completed tests in Warrensburg, Missouri at the request of the Missouri Division of Vocational Rehabilitation and as a result was approved for college or other alternative training. *See* Employer's Exhibit 2, page 15. He completed a course in real estate and obtained his real estate license. Mr. England felt he could complete alternative training if he was no longer making sufficient money in real estate due to the downward turn in the market and certainly was not totally disabled from a vocational standpoint. *See* Employer's Exhibit 2.

Mr. Myers' has imposed self-limiting restrictions based on his subjective complaints of pain that cannot be verified through objective medical tests. Dr. Graham testified that he could work without restriction as he did not see any objective abnormality that would require restriction. *See* Employer's Exhibit 1, page 18. The Functional Capacity Evaluation indicated he could work in the light physical demand level at a minimum, given his self-limiting behavior. *See* Claimant's Exhibit A, page 361. Dr. Koprivica's restrictions are based solely on Mr. Myers' "subjective tolerances" and are consistent with light physical demand work. *See* Claimant's Exhibit C, page 18. With his academic capabilities, Mr. England opined that there is work available to Mr. Myers in the light physical demand level. Furthermore, his current employment is within the light physical demand level. Mr. Myers' own vocational expert, Gary Weimholt, testified that he has qualifications for other types of light and sedentary jobs. *See* Claimant's Exhibit D, page 34. According to both vocational experts and the State of Missouri, Mr. Myers also scored well on testing for retraining as a teacher, but he voluntarily chose not to pursue that vocation. *Id* at 27.

Mr. Myers finally alleges that his limited activities and continued use of the narcotic, Vicodin, inhibits his ability to work successfully in the open labor market. He testified that he does not want to make mistakes filling out real estate contracts while taking the Vicodin and that he has to be careful driving. However, evidence presented at hearing regarding his actual abilities is inconsistent with this claim. Employer's Exhibit 3, the surveillance video tape, shows Mr. Myers actively driving and moving about town. He did not exhibit any guarded movement while getting in and out of his vehicle or walking around. Mr. Myers also testified he drove three hours a day for eight or nine days to attend real estate classes in Kansas City. He testified that he drove about three hours each way to St. Louis, two days in a row, with his attorney for the expert depositions in this case. While Mr. Myers is not comfortable working while taking Vicodin, he testified that he will drive long distances while taking the narcotic as well as operate a lawn mower. He also testified that he continues to coach his children's soccer teams.

As a result of the above evidence, I do not find that Mr. Myers is permanently and totally disabled from employment in the open labor market.

Thus, the total award due Mr. Myers is \$3,299.73. Mr. Myers' attorney requested a fee equal to 25 percent of all amounts awarded. I find that such request is fair and reasonable and order a lien attach to this award for \$824.93 until paid in full.

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

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

Carl Mueller

*Administrative Law Judge*

*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Lucas Boling

*Acting Director*

*Division of Workers' Compensation*

Not admitted for failing to meet the requirements of 287.210.7 for admission as the date of hearing is the first time claimant's counsel had produced the document.