

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

Injury No.: 00-173492

Employee: Michael Olden
Employer: MiTek Industries, Inc.
Insurer: Specialty Risk Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: September 28, 2000
Place and County of Accident: St. Louis County

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 October 19, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John K. Ottenad, issued October 19, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 9th day of February 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Michael Olden

Injury No.: 00-173492

Dependents: N/A

Employer: MiTek Industries, Inc.

Additional Party: Second Injury Fund

Insurer: Specialty Risk Services

Hearing Date: June 29, 2006

Before the
Division of Workers'
Compensation
Department of Labor and
Industrial Relations of Missouri
Jefferson City, Missouri

Checked by: JKO

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: (allegedly) September 28, 2000
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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 was employed as a District Sales Manager for Employer and allegedly suffered a heart attack after returning from a business trip.
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: (allegedly) Body as a Whole—Heart
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: Michael Olden

Injury No.: 00-173492

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,923.00
19. Weekly compensation rate: \$599.96 for TTD/ \$314.26 for PPD
20. Method wages computation: By agreement (stipulation) of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: None

\$0.00

22. Second Injury Fund liability: None \$0.00

TOTAL: **\$0.00**

23. Future requirements awarded: None

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of any TTD benefits awarded during medical care hereunder in favor of the following attorney for necessary legal services rendered to the claimant: William K. Meehan.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Michael Olden	Injury No.: 00-173492
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	MiTek Industries, Inc.	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Additional Party:	Second Injury Fund	
Insurer:	Specialty Risk Services	Checked by: JKO

On June 29, 2006, the employee, Michael Olden, appeared in person and by his attorney, Mr. William K. Meehan, for a hearing for a final award on his claim against the employer, MiTek Industries, Inc., and its insurer, Specialty Risk Services. The employer, MiTek Industries, Inc., and its insurer, Specialty Risk Services, were represented at the hearing by their attorney, Ms. Heidi Jennings. The Second Injury Fund is a party to this case and was represented at the hearing by Assistant Attorney General Gregg Johnson. At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of facts and rulings of law, are set forth below as follows:

STIPULATIONS:

- 1) Michael Olden (Claimant) has alleged an accidental injury claim with a date of injury of September 28, 2000.
- 2) Claimant was an employee of MiTek Industries, Inc. (Employer).
- 3) Venue is proper in the City of St Louis.
- 4) Employer received proper notice.
- 5) The Claim was filed within the time prescribed by the law.
- 6) At the relevant time, Claimant earned an average weekly wage of \$1,923.00, resulting in applicable rates of compensation of \$599.96 for total disability benefits and \$314.26 for permanent partial disability (PPD) benefits.

- 7) Employer has not paid any benefits to date.

ISSUES:

- 1) Did Claimant sustain an accident?
- 2) Did the accident arise out of and in the course of employment?
- 3) Are Claimant's injuries and continuing complaints medically causally connected to his alleged injury at work on or about September 28, 2000?
- 4) Is Claimant entitled to past TTD benefits from the date of injury until the date of maximum medical improvement?
- 5) What is the nature and extent of Claimant's permanent partial or permanent total disability attributable to this accident?
- 6) What is the liability of the Second Injury Fund?
- 7) Is there a credit due the third party STD/LTD carrier (Hartford Life & Accident) for payments made, if compensability is determined in favor of Claimant?

EXHIBITS:

The following exhibits were admitted into evidence:

Employee Exhibits:

- A. Medical treatment records from Missouri Baptist Medical Center
- B. Certified medical treatment records from Nicholas Couchoukos, M.D.
- C. Medical treatment records from Ali Mehdirad, M.D.
- D. Medical treatment records from Scott Johnson, M.D.
- E. Medical treatment records from St. Joseph Hospital
- F. Medical treatment records from Mary Ellen Kleinhenz, M.D.
- G. Medical treatment records from SSM Rehabilitation
- H. Certified medical treatment records from St. John's Mercy Medical Center
- I. Curriculum Vitae for Stephen Schuman, M.D.
- J. Deposition of Stephen Schuman, M.D., with attachments, dated August 24, 2005

Employer/Insurer Exhibits:

1. Deposition of Keith Mankowitz, M.D., with attachments, dated September 30, 2005
2. Letter from Ali Mehdirad, M.D. dated April 16, 2001
3. Deposition of Michael Olden taken on May 22, 2006
4. Deposition of Roxanne Olden taken on May 22, 2006
5. Certified medical treatment records from Family Medicine West-Mercy Medical Group
6. Records from Metro West Fire Protection District dated September 28, 2000
7. Compilation of medical treatment records from various providers
8. Claimant's personnel records from Employer
9. Claimant's Long Term Disability records from Hartford Life & Accident Insurance Company

Second Injury Fund Exhibits:

Nothing presented at the time of hearing

Note: Exhibit 1 was admitted with objections contained in the record. Unless otherwise specifically noted below, the objections are overruled and the testimony fully admitted into evidence.

FINDINGS OF FACT:

Based on a comprehensive review of the substantial and competent evidence, including Claimant's testimony, the expert medical opinions and depositions, the medical treatment records, and the testimony of the other witness, as well as my personal observations of Claimant and the other witness at hearing, I find:

- 1) **Claimant** is a 61-year-old individual who was last employed as a District Sales Manager for Employer. He worked for Employer from January 14, 1985 until September 28, 2000, the day of his heart attack. His job there involved a great deal of travel, since he was responsible for maintaining customer relationships and supervising other sales reps in the field in Indiana, Ohio, Missouri, Texas and Kansas. Claimant took multi-day trips at least one week out of every month. He also supervised five technicians doing development. Claimant described his job as a position of responsibility and he said there was pressure on him to maintain the accounts. He testified that he worked 110-115 hours per week. (In other records submitted at hearing, Claimant apparently reported working approximately 60 hours per week.)
- 2) Claimant denied any prior treatment for, or diagnosis of, heart disease. He did admit, however, going to the doctor about a year before the heart attack with similar complaints. He was having pains down the arms and into the shoulders. Claimant said the doctor told him to buy Maalox for acid reflux. Claimant said that over the course of that year, he had occasional acid reflux treatment. Claimant admitted on cross-examination that he did have chest pain for about 2 years prior to the heart attack on September 28, 2000. He said the chest pain would radiate to his arms. One month prior to the heart attack this pain was not relieved by the Maalox. Then two weeks prior to the heart attack, he was getting shortness of breath.
- 3) The medical records from **Family Medicine West-Mercy Medical Group** (Exhibit 5) show treatment Claimant had for accidents and complaints to various parts of his body prior to the heart attack. The records also contain a report of heartburn symptoms over the last several months on February 16, 1999 and a finding of elevated blood pressure on November 15, 1995.
- 4) Claimant testified that his last business trip for Employer lasted 2 or 3 days and involved stops in multiple locations, including Dallas, Texas, Meridian, Mississippi, and Atlanta, Georgia. He flew into each of these locations and rented cars there to get to the customers he had to meet. He was carrying a soft briefcase with a laptop in it that weighed about 45 pounds and a hanging bag with his clothes. All total he estimated the bags weighed 60 pounds. He testified that during this trip he experienced crushing pains in his chest and a little nausea. He got some Maalox that helped temporarily. He also described chest pain with exertion such as walking to and from the rental car and the gate at the terminal. Claimant said that his schedule included 4 calls in Texas, and one major client in Meridian.
- 5) When he was asked whether there was anything extraordinary or unusually stressful about this trip as compared to his other business trips, Claimant responded his friend had been fired and he was taking over these new markets from his friend. He was meeting new clients and making calls on these clients with whom he had not done business in the past.
- 6) On his flight back to St. Louis on September 28, 2000, Claimant said he felt very ill. He described pain in his chest and a burning sensation in his heart. He said he vomited in the airport and at home. Despite the complaints he said he was having, he drove by St. John's Hospital on his way home from the airport, but did not stop there. He said that he did stop at a drug store to get more Maalox. He said he took a shower which relaxed him considerably and then laid down and tried to go to sleep. He said he slept for about an hour but then was unable to sleep through the night. At about 9:00 p.m., Claimant told his wife to call 911 because the pain had become very severe and he also had pain shooting down his arms and legs.
- 7) Claimant's wife, **Roxanne Olden**, also testified at the hearing that her husband worked a lot, and traveled at least one week out of every month. She said they were not aware of any prior heart problems, but she did know that his personal doctor told him to take Maalox. On September 28, 2000, she said Claimant looked terrible and was having chest pains when he came in the door. He said he would take a shower and lay down. She said she found him sitting on the floor of the shower and he said he had nausea. He was only home about an hour when this happened. She called 911.
- 8) A **Metro West Fire Protection District** ambulance crew went to Claimant's house to respond to the 911 call. (Exhibit 6) Claimant was found laying in bed with complaints of severe chest pain and pain down both arms. He noted that he had collapsed earlier before they arrived. He was transported to **St. John's Mercy Medical Center**. (Exhibit H) During an inpatient stay from September 28, 2000 until October 9, 2000, he was diagnosed with an

acute myocardial infarction, post-infarction angina, and three vessel coronary artery disease. He was surgically treated with a cardiac catheterization and an emergency coronary artery bypass grafting times three. His cardiac risk factors in the hospital records were listed as hypertension, remote tobacco use, and positive family history. The records also contained a notation that he had a long history of heartburn complaints with symptoms relieved by Maalox, but over the last month the Maalox did not provide relief. He discussed additional complaints while he was on his business trip and then the collapse at home that precipitated the call to the ambulance. Claimant continued to see **Dr. Scott Johnson** (Exhibit D) and **Dr. Ali Mehdirad** (Exhibit C) in follow up for his cardiac care.

- 9) Mrs. Olden admitted on cross-examination that they were told about some heart damage from a prior heart attack during his first hospitalization. She said that prior to the September 28, 2000 heart attack she thought he looked poorly, and the month before that heart attack, he seemed to her to be a weaker person.
- 10) Because of shortness of breath and recurrent angina complaints, a repeat cardiac catheterization was performed at **St. John's Mercy Medical Center** (Exhibit H) on December 29, 2000 which showed occlusion of some of the grafts that had been placed only three months earlier. His treatment was transferred to **Dr. Nicholas Kouchoukos** (Exhibit B) who took Claimant to surgery at **Missouri Baptist Medical Center** (Exhibit A) on January 9, 2001 for a St. Jude's Mitral valve replacement and a bypass graft to two vessels. According to the hospital records, Claimant's recovery was somewhat prolonged because of complications. According to Dr. Kouchoukos' records, Claimant was progressing nicely until he had a recurrence of chest discomfort. In his last note dated March 28, 2001, Dr. Kouchoukos indicated Claimant continues to have evidence of congestive failure and it would be appropriate to consider transplantation in the future.
- 11) Because of the recurrence of chest pain with minimal exertion, on March 23, 2001, Claimant had another cardiac catheterization at **St. John's Mercy Medical Center** (Exhibit H) which showed moderate to severe disease and occlusion in a number of the vessels again. **Dr. Ali Mehdirad** (Exhibit C) continued to follow Claimant's progress and noted in records culminating on October 12, 2001 that Claimant was still having some shortness of breath if he did not walk slowly, and a continued occasional burning sensation in his chest.
- 12) Apparently in response to a request for an opinion on causation from Claimant's attorney, **Dr. Ali Mehdirad** (Exhibit 2) issued a letter dated April 16, 2001. In that letter, Dr. Mehdirad notes risk factors commonly associated with coronary artery disease and heart attack. He notes that Claimant had two of those risk factors, high blood pressure and high cholesterol. He then stated, "While these known risk factors have been well demonstrated to cause coronary artery disease and subsequently heart attack, it is much more difficult to draw a direct correlation between occupation and development of coronary artery disease and subsequently heart attack."
- 13) Due to progressive chest discomfort and shortness of breath, Claimant underwent another cardiac catheterization at **St. Joseph Hospital** (Exhibit E) on February 7, 2002 that showed very severe failure of one of the previously placed grafts. A standard stenting procedure was suggested. An angioplasty and placement of a stent was performed, after which Claimant suffered an intracranial bleed. Surgeons that same day then performed a right femoral temporal parietal craniotomy with evacuation of the intracranial hematoma and subdural hematoma.
- 14) Medical records from **SSM Rehabilitation** (Exhibit G) and **Dr. Mary Ellen Kleinhenz** (Exhibit F) document his recovery from the significant neurological damage caused by the intracranial bleed.
- 15) Claimant clearly had very limited physical capabilities at the time of his testimony at the hearing. Even before the stroke, he said that the heart attack kept him from being able to walk very far or carry heavy loads. He said the stroke had paralyzed his right side and he was blind in the right eye. He admitted he had pretty good vision in the left eye. He cannot drive. He cannot walk unassisted. In order to move around, he needs a walker or his electric wheelchair. He requires assistance at home to use the bathroom, shower, dress and make his meals. He has no use of the right arm and he said that if his wife was not there, he would need a caregiver. His speech is clearly affected, but his hearing is unaffected. His daily activities now consist of watching television or listening to books on tape. He does no outside activities except sitting on the patio.
- 16) Mrs. Olden confirmed that her husband has severely limited abilities. She said that he has judgment issues, reverses things (up/down or on/off), has difficulty following directions, and his desires do not match up with his physical abilities. She said this has affected his mood and personality, but she noted that his memory is excellent.
- 17) Following the heart attack, while Claimant was off work, he received short term disability payments for the first three months (until December 29, 2000) and then long term disability payments of \$2,300.00 per month from that date until he turns age 65.
- 18) **Dr. Stephen Schuman** testified by deposition on Claimant's behalf on August 24, 2005 in order to make his opinions in this case admissible at hearing. (Exhibit J) Dr. Schuman is Board Certified in Internal Medicine and Cardiology. (Exhibit I) Dr. Schuman was given a history of Claimant working 60 hours a week, and was also told that he was under a lot of pressure to keep up sales and justify his position with the company. He noted that when

Claimant got home on September 28, 2000, after being stuck in traffic from the airport, he looked pale and so his wife immediately called 911. Mrs. Olden told Dr. Schuman that they were told Claimant may have had a heart attack a year prior to September 28, 2000 because he was having chest pain, but the doctor just told him to take Maalox. Dr. Schuman noted that Claimant had a family history of vascular disease at older ages. He was under the impression that Claimant's father died from a heart attack at age 78 and a brother had one at age 73. (The records of St. John's indicate the father's age was 62, and the ambulance records indicate he was in his 50s.) Claimant recalled a history of high cholesterol, but not hypertension. He also admitted to a pack a day smoking habit for 22 years. He quit about 19 years prior to the heart attack.

- 19) After taking this history, performing a physical examination and reviewing the medical records, Dr. Schuman concluded Claimant's work was mentally stressful with significant physical exertion from carrying heavy luggage. He opined that the combination of these stresses would be substantial and would be a substantial factor in this acute heart attack. He opined that the heart attack in and of itself would be totally disabling. He believed the risk factors were then more difficult to control following the heart attack, requiring the additional surgical procedures and thus resulting in the stroke that further disabled him. In his opinion, Claimant was permanently and totally disabled.
- 20) On cross-examination, Dr. Schuman admitted that Claimant had coronary artery disease prior to September 2000. He also admitted that the disease progressed at a rate influenced by the cardiac risk factors Claimant had. He agreed that being male and 55 years old were both risk factors Claimant had. Dr. Schuman did not think Claimant had a positive family history for heart disease as a risk factor based on the age he was told when Claimant's father had the heart attack, but he had to admit that if the ages in the medical records were correct as opposed to his, then perhaps Claimant did have a positive family history. He admitted that there was a discrepancy between his report and the other records regarding whether or not he previously had hypertension, but Dr. Schuman did not think it mattered. He explained that while Claimant did have pre-existing coronary artery disease and the risk factors would go to how that disease progressed, "the causation of an MI is sometimes due to stress" and he believed in this case the heart attack was caused by the work stress Claimant described. He did admit that as far as risk factors are concerned, Claimant was positive for just about every one except diabetes.
- 21) **Dr. Keith Mankowitz** testified by deposition on Employer's behalf on September 30, 2005 in order to make his opinions in this case admissible at hearing. (Exhibit 1) Dr. Mankowitz is Board Certified in Internal Medicine and Cardiology, and he is an Assistant Professor of Medicine at Washington University School of Medicine. In his first report, after review of the extensive medical treatment records in this case, Dr. Mankowitz found that Claimant had multiple coronary risk factors and was having angina for some time prior to the myocardial infarction on September 28, 2000. He opined that Claimant developed coronary artery disease as a result of these risk factors and further developed an aggressive form of atherosclerosis as evidenced by the repeat blockages within months of his bypass surgeries. Dr. Mankowitz explained that occupational stress is very unlikely to cause significant atherosclerosis. He opined that "the development of his myocardial infarction was the inevitable consequence of his severe coronary blockages and at some time period around September, 2000, Mr. Olden would have suffered a myocardial infarction regardless of whether he was at home or at work."
- 22) In a subsequent report dated September 19, 2005, Dr. Mankowitz further explained the physiology behind the myocardial infarction and why it supported his opinion in this case. He explained that the vessel responsible for the myocardial infarction was the distal right coronary artery. When testing was done on September 29, 2000, Claimant had high grade narrowing of all 3 coronary arteries which Dr. Mankowitz believed was the reason more likely than not why he had been experiencing chest pain in the days, months and year prior to the heart attack on September 28, 2000.
- 23) Dr. Mankowitz explained in his deposition that the grafts surgically placed in the vessels should have lasted approximately 10 years, but in this case they only lasted about 3 months before they were blocked again and causing physical complaints. He said this was further evidence of the aggressiveness of the coronary artery disease and also further evidence to show how susceptible he was to blockages in his vessels because of that disease. He opined that it was unlikely that the mental stress or even the physical stress that day caused the occlusion of the coronary artery. He did not believe they were substantial factors in the heart attack. He further described Claimant as a "walking time bomb", and believed that he was going to have the heart attack at this point in his life based on the severity of the disease. Finally, Dr. Mankowitz opined since Claimant reported the chest pain woke him up, he was fairly certain that he was having the heart attack at home when he was lying down. Dr. Mankowitz did not believe someone could go to sleep while having a heart attack because of the pain, but the pain certainly could wake you up from a sleep.

RULINGS OF LAW:

Given the nature of this Claim and the evidence submitted, these three issues in this case can be addressed at the same time.

Issue 1: Did Claimant sustain an accident?

Issue 2: Did the accident arise out of and in the course of employment?

Issue 3: Are Claimant's injuries and continuing complaints medically causally connected to his alleged injury at work on or about September 28, 2000?

Based on a comprehensive review of the substantial and competent evidence described above, including Claimant's testimony and the testimony of the other witness, the expert medical opinions and testimony, the medical records, and my personal observations of Claimant and the other witness at hearing, as well as based on the applicable laws of the State of Missouri, I find the following:

Claimant bears the burden of proof on all essential elements of his Workers' Compensation case. *Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute*, 793 S.W.2d 195 (Mo.App. E.D. 1990) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). Claimant must establish a causal connection between the accident and the injury. *Id.* at 198. The fact finder is charged with passing on the credibility of all witnesses and may disbelieve testimony absent contradictory evidence. *Id.* at 199. "Arising out of employment" means that a causal connection exists between the employee's duties and the injury for purposes of workers' compensation. *Cruzan v. City of Paris*, 922 S.W.2d 473 (Mo.App. E.D. 1996) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). An injury is compensable only if it is clearly work related, and an injury is clearly work related only if work was a substantial factor in the cause of the injury and the resulting medical condition. However, an injury is not compensable if work was merely a triggering or precipitating factor. **Mo. Rev. Stat. §287.020.2 (2000)**. Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. *Kelley v. Banta & Stude Construction Co., Inc.*, 1S.W.3d 43 (Mo.App. E.D. 1999)

Considering the competent and substantial evidence listed above, I find that Claimant failed to meet his burden of proving that an accident occurred which arose out of and in the course of employment for Employer and which was medically causally connected to it.

The threshold issue in this case is whether or not Claimant's work was a substantial factor in causing the heart attack and his resulting medical conditions. The dispute essentially came down to a difference of opinion between medical experts, with Claimant's doctor, Dr. Schuman, saying the heart attack was work related, and Employer's expert, Dr. Mankowitz, saying the heart attack was not work related. After a review of their opinions, and the contemporaneous medical records, as well as a review of the testimony submitted at hearing, I find Dr. Mankowitz is more credible and persuasive on this issue than Dr. Schuman. Accordingly, I find Claimant's employment was not a substantial factor in causing the heart attack or Claimant's other resulting medical conditions. I further find that the coronary artery disease and the myocardial infarction were not medically causally related to Claimant's employment on or about September 28, 2000.

I find Dr. Mankowitz' opinion on causation to be more credible and persuasive than that of Dr. Schuman, because Dr. Schuman relied on an inaccurate history when formulating his opinion on causation. Dr. Schuman formulated his opinion based on a history that Claimant arrived home on September 28, 2000, making complaints and looking pale, so Claimant's wife immediately called 911. This is not accurate based on Claimant's and his wife's testimony. In fact, Claimant was home for at least an hour, took a shower and was lying in bed when he was awakened by the chest pain and 911 was called. Although this may not seem like a big discrepancy, Dr. Mankowitz quite clearly testified that had Claimant been having the heart attack already when he got home, he would not have been able to sleep at all. The fact that he was awakened by the chest pain pointed out the time, according to Dr. Mankowitz, when the actual heart attack began.

Additionally, when considering Claimant's risk factors, Dr. Schuman ruled out family history as a risk factor based on faulty information he was given. He was told Claimant's father died of a heart attack at age 78, but the medical records from St. John's list an age of 62 and the ambulance records indicate an age in the 50s. Dr. Schuman admitted that if those younger ages were correct then perhaps Claimant did have a positive family history risk factor. There was also a discrepancy over whether or not Claimant previously had hypertension, which could potentially be another risk factor not considered by Dr. Schuman.

Dr. Schuman apparently did not think it mattered what risk factors Claimant had before this heart attack, because he said the risk factors would go to how the coronary artery disease progressed, but the stress was the actual cause of the heart attack. To accept Dr. Schuman's proposition though, would require me to ignore the long history of chest pain and problems Claimant had prior to this heart attack, and also require me to ignore the physical evidence discovered in the post heart attack testing and the aggressive nature of the disease to so quickly clog the grafted vessels within months of when they were originally repaired. I cannot ignore this competent and substantial evidence and thus, I cannot find Dr. Schuman's opinion to be credible and persuasive.

Dr. Mankowitz, on the other hand, clearly and credibly described a coherent history of problems Claimant was having, leading up the actual heart attack. He explained how the multiple risk factors played a part in the disease. He credibly explained, based on the physiology of the heart attack, how some of the blockages clearly pre-existed this attack on

September 28, 2000. He explained how the recurrent blockages within months of the grafts pointed to an aggressive form of the coronary artery disease based on those multiple risk factors. Using a proper history of the onset of the attack, he explained the importance of the timing and how that fit into his opinion. When all was said and done, I agreed with Dr. Mankowitz, based on the totality of the evidence, that Claimant was a walking heart attack waiting to happen, and it just so happened that the heart attack happened an hour or so after he got home from a business trip.

I also did not find that there was anything specific about Claimant's employment that lead to a heart attack on that date. Claimant suggested that perhaps it was because he was carrying luggage while rushing through the airport. He suggested that it was the stress of the business trip. However, I specifically asked Claimant if there was anything extraordinary or unusual about this trip that made it more stressful than the many business trips he said he had been on for this company. The only thing he mentioned was that this one was more stressful because he was making calls on new clients that he had to take over because a friend of his had been fired. After being in this business for over 15 years, I am certain this was not the first time he had to make calls on new clients. I also know from his testimony that this was not the first time that he had a multi-day business trip spanning different cities, which would mean this is not the first time that he had to carry luggage through an airport and perhaps rush to catch a plane. Given then that these were all activities that he would have done many times before, both in and out of work, I find his employment at that time was not a substantial factor in the heart attack. If anything, at most the employment was a mere triggering or precipitating event, which is not enough under the statute to make this a compensable case.

I should also note that the opinion of Dr. Mehdirad given to Claimant's attorney in the letter dated April 16, 2001, that it is difficult to draw a direct correlation between occupation and the heart attack, bolsters the opinion of Dr. Mankowitz that this is not a work related heart attack. Certainly, this treating doctor is very familiar with Claimant's condition, and so his inability to draw any connection between Claimant's work and the heart attack is significant.

Given the totality of the evidence presented at hearing, and further given my finding that the opinion of Dr. Mankowitz is more credible and persuasive than the opinion of Dr. Schuman, I was left with the ultimate conclusion, that Claimant failed to meet his burden of proving an accident that arose out of and in the course of employment or that was medically causally related to his work for Employer. Given that finding, the remaining issues in this case become moot and will not be addressed.

CONCLUSION:

Claimant failed to meet his burden of proving that he sustained an accident arising out of and in the course of his employment or that was medically causally related to it, by failing to provide credible, competent and persuasive medical testimony to support his claim. As such the rest of the issues presented for determination are moot and the Claim for Compensation against Employer and the Second Injury Fund is denied.

Date: _____

Made by: _____

JOHN K. OTTENAD
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation