

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

Injury No.: 07-054080

Employee: Steven Polkinghorne

Employer: Charles F. Vatterott & Company (Settled)

Insurer: American Association of Independent Management  
Workers' Compensation Fund (Settled)

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 September 13, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued September 13, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 21<sup>st</sup> day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
James Avery, Member

\_\_\_\_\_  
**DISSENTING OPINION FILED**  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

Employee: Steven Polkinghorne

### **DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

On March 1, 2007, employee performed work on a retention pond. First, he was digging with a backhoe and then he was shoveling mud by hand. Employee began experiencing back pain radiating to his lower extremities.

Dr. Cohen believes the March 1, 2007, injury was the prevailing factor in causing employee's recurrent lumbar disc herniations. Without explaining why the work activities employee performed before the onset of his pain on March 1, 2007 could not have caused employee's spinal condition, Dr. Mirkin summarily concluded that employee's disc herniations were caused by degeneration resultant from a 2005 surgery. I find the opinion of Dr. Cohen more credible than the opinion of Dr. Mirkin for several reasons.

First, Dr. Cohen's credentials are proven by the record which includes his curriculum vitae. Dr. Mirkin's curriculum vitae is not in the record before us. Second, although both physicians were initially confused regarding the date of employee's 2005 injury, Dr. Cohen identified the confusion and clarified that he stood by his opinions after considering the correct injury date. Dr. Mirkin never identified the proper date of the 2005 injury. Worse yet, Dr. Mirkin used the incorrect injury date to question employee's credibility regarding the timeline of his symptoms. Finally, Dr. Cohen's opinion is consistent with the timing of the onset of employee's symptoms after working on the retention pond. Dr. Mirkin's opinion leaves me to wonder if Dr. Mirkin thought the timing of employee's new pain on March 1, 2007, was a mere coincidence, wholly unrelated to employee's work on the retention pond.

The medical imaging evidence in this case clearly shows that employee's back was in a different condition in 2007 than it was after the 2005 surgery. The myelogram performed on April 4, 2007, revealed, among other things, disc bulging and herniations at L4-5 and L3-4 and bulging at L2. These findings were not present at the time Dr. Sheehan performed the 2005 surgery. Their presence on April 4, 2007, is consistent with employee's description of his injury and Dr. Cohen's causation opinion.

I believe employee has shown that the March 1, 2007, work on the retention pond was the prevailing factor in causing employee's bulging discs and herniations. Consequently, I find that employee has shown that he sustained a compensable injury on March 1, 2007. Employee has a 25% preexisting permanent partial disability of the body as a whole referable to his back and a 25% preexisting permanent partial disability of the body as a whole referable to his abdomen. I find that these preexisting disabilities combine with the 30% permanent partial disability of the body as a whole resulting from his work injury to result in a greater disability than the simple sum of the disabilities. I agree with the opinions of Dr. Cohen and Mr. Dolan that the disability from employee's 2007 back injury combines with his preexisting back and abdominal disabilities to render him permanently and totally disabled.

Employee: Steven Polkinghorne

- 2 -

I would reverse the award of the administrative law judge and award to employee permanent total disability benefits from the Second Injury Fund. For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

---

Curtis E. Chick, Jr., Member

## AWARD

Employee: Steven Polkinghorne Injury No.: 07-054080  
Dependents: N/A Before the  
Employer: Charles F. Vatterott & Company (Settled) **Division of Workers'**  
**Compensation**  
Additional Party: Second Injury Fund Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Insurer: American Association of Independent Management  
Workers' Compensation Fund (Settled)  
Hearing Date: August 18, 2011 Checked by: EJK/lsn

### 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? Yes
4. Date of accident or onset of occupational disease: March 1, 2007
5. State location where accident occurred or occupational disease was contracted: St. Charles 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:  
The employee developed low back pain while shoveling mud out of a retention pond.
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: Low back
14. Nature and extent of any permanent disability: 20% Permanent partial disability to the low back
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: None

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$564.83
- 19. Weekly compensation rate: \$376.55
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Settled

22. Second Injury Fund liability: No

None

**TOTAL:**

None

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 all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Michael J. Sudekum, Esq.

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

Employee:	Steven Polkinghorne	Injury No.: 07-054080
Dependents:	N/A	Before the
Employer:	Charles F. Vatterott & Company (Settled)	<b>Division of Workers'</b> <b>Compensation</b>
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	American Association of Independent Management Workers' Compensation Fund (Settled)	Checked by: EJK/lsn

This workers' compensation case raises several issues arising out of an alleged work related injury in which the claimant, a punch laborer, experienced pain and tightness in his back and down his leg while shoveling wet mud out of a retention pond. The sole issue for determination is Second Injury Fund liability. The evidence compels an award for the defense, because the credible evidence supports a finding that the claimant's pre-existing condition was the prevailing factor causing the claimant's medical condition.

At the hearing, the claimant testified in person and offered three workers' compensation settlement agreements, depositions of Raymond F. Cohen, D.O., and Stephen Dolan, and medical records from Leonard Lucas, D.O., Christian Hospital, St. Luke's Hospital, and Neurospinal Surgery. The Second Injury Fund offered a deposition of Dr. R. Peter Mirkin, M.D.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the accident was alleged to have occurred in Missouri. Any markings on the exhibits were present when offered into evidence.

### **SUMMARY OF FACTS**

This 58 year old claimant, a punch laborer, testified that on March 1, 2007, he experienced pain and tightness in his back and down his leg while shoveling wet mud out of a retention pond after his last load. On March 5, 2007, he reported "extreme pain" in his left hip and leg pain to Dr. Lucas. On March 16, 2007, a CT scan identified a disc protrusion at L3-L4 and L4-L5. On April 4, 2007, a lumbar myelogram showed mild canal stenosis at L4-5 herniating to the left, a disc bulge at L3-4, central disc bulging at L5-S1, and a large hemangioma at L3. The claimant's medical history at that time was "a four week history of severe low back pain with extension into the left thigh and calf. The pain has become progressively worse and intolerable and he has developed numbness and difficulty walking." See Exhibit E. Dr. Marchosky reviewed the radiology testing and opined that the claimant had lumbar canal stenosis at L4-L5 with severe degenerative disc disease and bilateral disc bulge at L4-L5 and the herniation at L4-L5 on the left with nerve root compression. See Exhibit E. He found degenerative disc disease at L3-L4 and at L5-S1. See Exhibit E. On April 11, 2007, Dr.

Marchosky performed L4 and L5 decompressive hemilaminectomies, foraminotomy, and a discectomy. See Exhibit E.

On June 14, 2007, the claimant filed a claim for compensation stating that he suffered a work related injury on March 1, 2007, "due to repetitive motion and the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability."

On June 21, 2007, Dr. Marchosky released the claimant after an office visit that noted back pain with radiation into both lower extremities. Dr. Marchosky opined that the claimant needed to lose weight and a fusion would likely be necessary. The claimant testified that Dr. Marchosky told him to consult his primary care physician and lose weight. The claimant testified that at this time he was worse than before the surgery with extreme pain in both legs and pain in all aspects of life. On July 9, 2007, the claimant returned to Dr. Lucas, who noted low back pain, chronic pain syndrome and prescribed narcotic pain killers.

In December 2007, the claimant reported to Dr. Cohen and Dr. Mirkin that he suffered sudden low back pain while shoveling wet mud out of a retention pond on March 1, 2007.

The claimant testified that he has continued to receive pain medications, including Vicodin for daily pain, Percocet for break-through pain and muscle relaxers from Dr. Lucas since summer 2007. He testified that he has informally discussed future surgery with physicians and each recommended against future surgery. The claimant attempted to make an appointment with a pain management specialist, but did not wish to have the diagnostic studies repeated that the pain management office claimed were necessary for the appointment. The claimant testified his primary care physician did not recommend repeat studies.

#### Pre-existing Conditions

The claimant has two pre-existing conditions that impaired his ability to work before March 1, 2007. The first is a severe back injury from a work related accident on March 15, 2005, and the second condition was an abdominal hernia that became infected resulting from a March 21, 2006, work related accident.

On March 15, 2005, the claimant injured his low back while lifting a power washer into a truck. His primary care physician, Dr. Lucas, examined him five days later and found hip pain. The next day he went to the St. Joseph Hospital West ER for back pain with an onset approximately six days previous. On March 26, 2005, a lumbar spine MRI revealed a central bulge extending into the foramen at L4-5 and L5-S1 bulging with no herniation. Dr. Sheehan performed a lumbar laminectomy, with a discectomy. On May 23, 2005, Dr. Sheehan discharged the claimant. The records note that the claimant was to return to work the following day and that the employer will accommodate his restrictions. See Exhibit B.

The claimant testified that after his release from treatment for the low back injury he continued to experience low back pain and that he had good days and bad days. He tried to limit his lifting to twenty-five pounds and watched his work level but was capable of performing all of his work duties. He occasionally took over-the-counter pain medications. At the end of long

days, he would rest before exiting his truck and take a long shower to reduce his pain in his back. He did not have leg pain.

On March 21, 2006, the claimant responded to a co-worker who had become stuck while attempting to climb a ladder from a lower level to the main floor of the residence where both he and the claimant were working. The co-worker had overloaded a trash can with rocks and debris and was carrying that with him on the ladder. The claimant lifted the trash can to the main floor and immediately felt a pain in his abdomen. He stated that he did not think much about it until he attempted to get dressed for work the next day. At that time, he noticed that his pants would not fit and had to wear a pair of knit pants to work.

On March 27, 2006, Dr. Lucas examined the claimant and diagnosed an abdominal wall hernia. On May 3, 2006, the claimant consulted Dr. Hacker for the right flank hernia. The following day, Dr. Hacker performed a repair of incarcerated incisional hernia with mesh. In June 2006, the claimant developed an incisional infection that resulted in a significant period of hospitalization for diverticulosis, cysts, and inflammation. The claimant underwent an exploratory laparotomy with removal of mesh and replacement with absorbable mesh and closure of abdominal wall. He was discharged from the hospital after ten (10) days. On August 23, 2006, Dr. Hacker released the claimant from treatment.

The claimant testified that he still had the lump when he was released and that he would experience burning and pain when lifting. He testified that he would obtain assistance when lifting any items that would cause the burning or pain and that he was limited to the amount of material that he could lift. The claimant testified that the bulge continued to be a problem. He sought treatment from his employer in early 2008. In April 2008, the claimant underwent a third surgery to his abdomen to repair the hernia. He testified that this revision did little to improve his symptoms and that the bulge remained present. He testified that Dr. Pruett told him these symptoms were permanent and the nature of the condition.

The claimant testified that he has a high school diploma and two years of junior college and had prior employment in the airline industry in the paint shop at McDonnell Douglas/ Boeing and then for a smaller company in Kansas doing similar work. After September 11, 2001, the airline industry slowed and the claimant returned to the St. Louis area to work in the construction field. His last employment was as a punch laborer. He testified that he would generally fix all the problems in new construction residential homes before an owner took possession and that his duties were light to heavy, including such tasks as fixing sinks, plumbing, repairing drywall to digging ditches. The claimant testified his last job was a combination of primarily light work and occasionally heavy work. He testified he would not have been able to do his job prior to either the 2005 or 2006 work injuries if his job had been heavy all of the time. The claimant testified that he has limited understanding of computer skills, other than checking his email. His work experience with computers consisted of viewing monitors for status rather than inputting data. His current source of support is Social Security disability.

Raymond F. Cohen, D.O.

Dr. Cohen evaluated the claimant on December 6, 2007, and diagnosed (1) status post lumbar surgery, noting the procedure was for a left L4-5 disc herniation and left lumbar

radiculopathy, (2) status post lumbar surgery for recurrent lumbar disc herniation at L4-5 on the left and foraminal stenosis at L4-5 on the left, and (3) failed lumbar laminectomy syndrome and left lumbar radiculopathy. See Exhibit B to Deposition of Dr. Cohen, page 8. He attributed the first diagnosis to the claimant's 2005 accident at work and the latter two diagnoses to the claimant's 2007 accident at work. Dr. Cohen also diagnosed pre-existing conditions or disabilities including status post two abdominal surgeries and a recurrent large incisional hernia.

Dr. Cohen opined that the claimant had a 55% whole person disability at the level of the lumbar spine, of which 25% is due to the 2005 injury and 30% is due to the 2007 injury. He recommended a number of restrictions for the claimant, including prolonged sitting, standing, bending, stooping, squatting, climbing, and lifting more than 5-10 pounds and other similar activities. Dr. Cohen opined that the claimant had pre-existing disabilities of 25% of the lumbar spine (2005 injury) and 25% of the whole person at the abdomen. He testified that these pre-existing disabilities combine with the primary work related injury to create a greater overall disability than their simple sum and that due to this combination, the claimant is permanently and totally disabled and not capable of gainful employment in today's open labor market. Dr. Cohen opined that all these prior disabilities were a hindrance to employment or reemployment and combined synergistically. Dr. Cohen specifically testified that the 2005 injury alone did not render the claimant permanently and totally disabled.

Dr. Mirkin

Dr. Mirkin examined the claimant on December 7, 2007, and testified that the 2005 work injury was a substantial factor causing the claimant's condition and the need for surgery. He also testified that the prevailing factor in the need for surgery in April 2007 was the degenerative changes, the foraminal stenosis, and the persistent disc bulging in the claimant's spine. Dr. Mirkin opined that the need for the 2007 surgery was "in a roundabout way" somewhat related to the 2005 surgery. He opined that if the claimant has a fusion, the claimant will have further disability. Dr. Mirkin acknowledged that with or without a fusion, he would not recommend the claimant return to heavy labor. He opined that the claimant would have to find a position that is not as physically taxing as a construction laborer.

J. Stephan Dolan

Mr. Dolan, a vocational expert, testified that the claimant had no transferrable work skills and was not capable of retraining or education to re-enter the labor market. He testified that the claimant was unemployable on the open labor market and that no employer in the ordinary course of business would hire the claimant based upon a combination of the claimant's limitations resulting from his three permanent partial disabilities that independently eroded his ability to perform work and the claimant's education, work experience, academic skills, work skills, and Dr. Cohen's restrictions.

### **COMPENSABILITY**

"The claimant in a workers' compensation case has the burden to prove all essential elements of her claim, including a causal connection between the injury and the job." Royal v. Advantica Rest. Group, Inc., 194 S.W.3d 371, 376 (Mo.App.W.D.2006) (citations and quotations

omitted). The claimant bears the burden of proving that not only did an accident occur, but it resulted in injury to him. Thorsen v. Sachs Electric Co., 52 S.W.3d 611, 621 (Mo.App. W.D. 2001) “Determinations with regard to causation and work relatedness are questions of fact to be ruled upon by the Commission.” Id. (citing Bloss v. Plastic Enters., 32 S.W.3d 666, 671 (Mo.App.W.D.2000)). Under the statute, “[a]n injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability.

“The prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. § 287.020.2. On the other hand, “[a]n injury is not compensable because work was a triggering or precipitating factor.” Id. Awards for injuries ‘triggered’ or ‘precipitated’ by work are nonetheless proper *if* the employee shows the work is the prevailing factor in the cause of the injury. Thus, in determining whether a given injury is compensable, a work related accident can be both a triggering event and the prevailing factor.”

“[T]he question of causation is one for medical testimony, without which a finding for claimant would be based upon mere conjecture and speculation and not on substantial evidence.” Elliot v. Kansas City, Mo., Sch. Dist., 71 S.W.3d 652, 658 (Mo.App. W.D. 2002). Accordingly, where expert medical testimony is presented, “logic and common sense,” or an ALJ’s personal views of what is “unnatural,” cannot provide a sufficient basis to decide the causation question, at least where the ALJ fails to account for the relevant medical testimony. Cf. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. banc 1994) (“The commission may not substitute an administrative law judge’s opinion on the question of medical causation of a herniated disc for the uncontradicted testimony of a qualified medical expert.”). Van Winkle v. Lewellens Professional Cleaning, Inc., 358 S.W.3d 889, 897, 898 (Mo.App. W.D. 2008).

In this case, the claimant testified at the hearing and reported to the two forensic experts that he suffered an accidental injury on March 1, 2007, when he experienced a sudden manifestation of severe pain in his low back while shoveling wet mud out of a retention pond. The defense contends that the claimant’s history of the incident appears in none of the medical histories in the medical records. Dr. Mirkin reviewed the medical records and concluded that the medical records made no reference to an accident in March 2007. He opined that the claimant’s condition resulted from the 2005 accident. However, the medical records from the 2005 accident do not describe any accident either. See Exhibit B. Apparently, the medical providers that rendered medical care did not pursue or inquire about the mechanism of injury for whatever reason. The defense did not produce evidence one way or the other on this point.

However, the medical histories in the medical records are not inconsistent with the claimant’s testimony. They are consistent, but lack the information about the alleged accident. In addition, the defense points out that the claimant’s claim states that the injury resulted from repetitive motion. However, the defense did not offer the claim into evidence. The defense has not made a strong case for impeachment for three reasons. First, the comparison between the claimant’s testimony and his medical histories in the medical records are reasonably consistent. Second, the evidence does not demonstrate that the medical providers inquired into the claimant’s accident or other etiology. Third, the defense did not produce evidence that the medical providers found the summaries they made insufficient for their purposes. Thus, the defense did not impeach the claimant’s testimony on this point.

The next question is whether the alleged accident was the prevailing factor causing the claimant's medical condition and his disability. Two forensic medical experts, a neurologist, and an orthopedic surgeon, who testified that they conduct many forensic evaluations, disagreed about the cause of the claimant's acute medical condition in March 2007. Dr. Cohen reported:

It is my medical and neurological opinion that within a reasonable degree of medical certainty that the above diagnoses are as a direct result of injuries Mr. Polkinghorne sustained at work on or about 4-7-05 and on or about 3-1-07 to his lumbar spine and that a prevailing factor was from his work referable to the 4-7-05 injury and that the treatment that he had was medically necessary and reasonable. Due to the work-related injury to his lumbar spine on or about 3-1-07, it is my medical and neurological opinion that within a reasonable degree of medical certainty, the prevailing factor is the work-related injury on or about that date and that the prevailing factor is his work-related injury and that his treatment was medically necessary and reasonable. See Dr. Cohen medical report in Exhibit G.

In summary, Dr. Cohen testified that the injury was the prevailing factor causing his injury. Dr. Cohen's wording is very confusing and imprecise. However, earlier in the report, Dr. Cohen described the claimant's account of the accident. The inference is that the accident described in the report was the prevailing factor causing the medical condition. Dr. Cohen opined that the accident caused substantial permanent partial disability. See Exhibit B in Dr. Cohen deposition.

On the other hand, Dr. Mirkin opined that the 2007 occurrence was not the prevailing factor causing the need for surgery. See Dr. Mirkin deposition, page 16.

The prevailing factor is the degenerative changes, the foraminal stenosis, and the persistent disc bulging. ... Well, it is not related to the 2007. He does have degenerative changes from prior surgeries, so in a roundabout way, it is somewhat related to the original surgery Dr. Sheehan performed [in 2005]. ... I think you get degenerative changes, number one, because you get older and, number two, because it is accelerated because of the surgery. See Dr. Mirkin deposition, pages 16, 17, 22.

Dr. Mirkin did not opine that the claimant's body mass index was the prevailing factor causing the need for surgery. In essence, Dr. Mirkin opined that the prevailing factor was the claimant's degenerative disease resulting in foraminal narrowing and stenosis and persistent disc bulging, all causing irritation of the nerves. See Dr. Mirkin deposition, pages 15, 16.

Both forensic experts have appropriate credentials and qualifications to render forensic medical opinions on the subject. Each theory has basis in fact, because the claimant had a degenerative condition that was made much worse from the 2007 occurrence. Certainly, the 2007 occurrence would not be compensable if the occurrence were a mere triggering factor. It would be very interesting to know the view of the operating surgeon; however that luxury is not available.

Looking at the reasons stated by the two experts for their conclusions, Dr. Mirkin testified that his conclusions were based on Dr. Sheehan's records from 2005 finding osteoarthritis. See Dr. Mirkin deposition, page 15, Exhibit 2. In 2001, Dr. Marchosky found a recurrent L4-L5 disc herniation, lumbar canal stenosis, and severe degenerative disc disease. See Exhibit E. The medical records support Dr. Mirkin's conclusions.

Dr. Cohen testified that it was possible that the claimant had "degeneration and recurrent lumbar disk herniation ... without a precipitating event" but that that was not very likely based on the claimant's verbal medical history to Dr. Cohen. See Dr. Cohen deposition, pages 13, 14. He testified that he did not base his opinion on any records that he reviewed. He testified, "Any time that there was a disc trauma or abnormality or anything that has torn the disc itself, that disc would be more susceptible to another injury, if it was significant enough, or that the disc is no longer as strong as it was if there was no prior herniation or damage to the disc." See Dr. Cohen deposition, page 13. In addition, Dr. Cohen never clearly testified why he concluded that the accident was the prevailing factor causing the claimant's medical condition and not merely a precipitating or triggering factor.

Given that the medical records support Dr. Mirkin's conclusions and that Dr. Cohen conceded that those conclusions were possible, Dr. Mirkin's conclusions appear to better explain why the claimant's accident was not the prevailing factor causing the claimant's medical condition although it may have been a precipitating or triggering factor. Based on the weight of the credible evidence, the claimant's injury is not compensable and the claim is denied.

### **OTHER ISSUES**

Based on the weight of the evidence, including the claimant's testimony, the medical and vocational testimony, and medical records, the claimant is not employable in the open labor market, given his age, education, relevant vocation history, and a combination of his limitations and restrictions from this occurrence and his pre-existing permanent partial disabilities relating to his low back and his hernia. The claimant's lack of physical stability and pain syndrome from his low back and hernia is rather overwhelming given his past vocation history. However, no benefits are awarded, because this occurrence is not compensable.

Made by: /s/ EDWIN J. KOHNER  
EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*