

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

Injury No. 10-096313

Employee: Rizo Sadic  
Employer: SEMCO Plastic Company, Inc.  
Insurer: Travelers Indemnity Company of America

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

*Did employee suffer a compensable hernia by accident or occupational disease?*

Employee filed a claim for compensation alleging he sustained a hernia from repeated heavy lifting at work up to September 17, 2010. At the hearing before the administrative law judge, the parties agreed that the appropriate issue for the administrative law judge's determination was whether on or about September 17, 2010, employee sustained an accidental injury and/or occupational disease.

The administrative law judge denied employee's claim for compensation based on findings that (1) employee did not credibly testify that he suffered a specific injury on September 17, 2010, (2) employee failed to satisfy the standard of proof for hernia claims under § 287.195 RSMo, and (3) hernia injuries are not compensable as occupational diseases under a strict construction of the Missouri Workers' Compensation Law. We agree that employee's claim for compensation fails, but for different reasons.

Overall, we find employee's testimony sufficiently credible to support findings that employee suffered work-related traumas in late 2009 and on or about September 17, 2010. We are of the opinion that the confusion and contradictions contained in the medical treatment records regarding these events are attributable both to employee's difficulty in speaking English and the nature of his medical history, rather than any lack of credibility on employee's part.

Having said that, we agree with the administrative law judge that employee failed to prove that he sustained a compensable hernia by accident on or about September 17, 2010, because the overwhelming weight of the evidence indicates (and we so find) that employee's hernia condition predated September 17, 2010. Employee's medical expert, Dr. Musich, opined that employee's hernia condition developed "between" late 2009 and September 17, 2010, and conceded that employee's hernia could have occurred at least one year prior to September 17, 2010. Meanwhile, employee's own description of the onset, continuation, and progression of his symptoms suggests he developed a hernia at work at some point in 2009 which never healed, but returned or worsened on or about September 17, 2010. Accordingly, as found by the administrative law judge, employee fails to satisfy § 287.195(2), which requires "[t]hat the hernia did not exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed."

Employee: Rizo Sadic

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Again, as noted above, employee is claiming herein compensation for an injury by accident or occupational disease occurring or culminating on September 17, 2010.

With regard to the issue of occupational disease, we disagree with the administrative law judge's conclusion that a hernia can never be compensable as an occupational disease under the Missouri Workers' Compensation Law. The administrative law judge reached this conclusion based on an assumption that the legislature intended § 287.195 to govern all claims for hernias. But the plain language of that section makes clear that it only applies to "all claims for compensation for hernia resulting from **injury** arising out of and in the course of the employment" (emphasis added). The definition of "injury" under § 287.020.3(5) RSMo explicitly excludes, except as specifically provided under Chapter 287, occupational diseases. It logically follows (and we so conclude) that § 287.195 does not prevent an employee from claiming (and proving) a compensable hernia resulting from occupational disease under § 287.067 RSMo.

However, two identifiable traumatic events at work do not constitute convincing evidence of a compensable occupational disease in this case. This is because the record does not contain persuasive medical evidence that would support a finding that the day-to-day performance of employee's job duties caused a change in pathology; the medical treatment records contain no references to employee's job duties, and Dr. Musich's non-specific references to employee's work as a machine operator are not enough, in our view, to satisfy employee's burden of proof on the issue of medical causation of an occupational disease.

Ultimately, we believe employee probably sustained a hernia as a result of an accidental injury at work at some uncertain time in late 2009, but given the scope of the issues identified by the parties, as well as the record we have been provided, such an injury is not compensable under this pending claim.

### **Conclusion**

We affirm and adopt the award of the administrative law judge to the extent it is not inconsistent with our supplemental findings, analysis, and conclusions herein.

The award and decision of Administrative Law Judge John K. Ottenad, issued July 14, 2014, is attached and incorporated by this reference

Given at Jefferson City, State of Missouri, this 5<sup>th</sup> day of December 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

# AWARD

Employee: Rizo Sadic

Injury No.: 10-096313

Dependents: N/A

Employer: SEMCO Plastic Company, Inc.

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

Additional Party: Second Injury Fund (Dismissed)

Insurer: Travelers Indemnity Company of America

Hearing Date: February 25, 2014  
Record Closed March 27, 2014

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: (Alleged) September 17, 2010
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 machine operator for Employer and allegedly suffered a hernia due to his work activities.
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: (Alleged) Body as a Whole—Hernia
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: Rizo Sadic

Injury No.: 10-096313

- 17. Value necessary medical aid not furnished by employer/insurer? \$16,090.96
- 18. Employee's average weekly wages: \$405.00
- 19. Weekly compensation rate: \$270.00 for TTD/\$270.00 for PPD
- 20. Method wages computation: By agreement (stipulation) of the parties

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Claim denied pursuant to Mo. Rev. Stat. § 287.195 \$0.00

22. Second Injury Fund liability:

Voluntarily dismissed by Claimant on the record at the time of trial

**TOTAL: \$0.00**

23. Future requirements awarded: N/A

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: Mr. Frank J. Niesen

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

Employee:	Rizo Sadic	Injury No.:	10-096313
Dependents:	N/A		
Employer:	SEMCO Plastic Company, Inc.		
Additional Party:	Second Injury Fund (Dismissed)		
Insurer:	Travelers Indemnity Company of America		

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

On February 25, 2014, the employee, Rizo Sadic, appeared in person and by his attorney, Mr. Frank J. Niesen, for a hearing for a final award on his Claim against his employer, SEMCO Plastic Company, Inc., and its insurer, Travelers Indemnity Company of America. The employer, SEMCO Plastic Company, Inc., and its insurer, Travelers Indemnity Company of America, were represented at the hearing by their attorney, Mr. Robert W. Frayne.

To allow the parties time to prepare and file their proposed awards or briefs in this matter, the record did not technically close until March 27, 2014. Although we did not go back on the record or take any further evidence in this matter after February 25, 2014, the record was, then, closed on that date and the briefs were submitted by the parties by March 28, 2014.

At the beginning of the hearing, Claimant voluntarily dismissed his Second Injury Fund Claim on the record, thus, eliminating the need for the Second Injury Fund to participate in these proceedings. The parties also agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

**STIPULATIONS:**

- 1) On or about September 17, 2010, Rizo Sadic (Claimant) allegedly sustained an accidental injury and/or occupational disease.
- 2) Claimant was an employee of SEMCO Plastic Company, 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 \$405.00, resulting in applicable rates of compensation of \$270.00 for total disability benefits and \$270.00 for permanent partial disability benefits.
- 7) Employer has not paid any benefits to date.

**ISSUES:**

- 1) Did Claimant sustain an accidental injury and/or occupational disease?
- 2) Did the alleged accident and/or occupational disease arise out of and in the course of Claimant's employment for Employer?
- 3) Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally related to his alleged accident and/or occupational disease at work for Employer?
- 4) Is Employer responsible for the payment of the past medical expenses in the stipulated amount of \$16,090.96?
- 5) Is Claimant entitled to collect temporary total disability (TTD) benefits for a period of 9 4/7 weeks, from September 18, 2010 through November 23, 2010?
- 6) What is the nature and extent of Claimant's permanent partial disability attributable to this alleged work injury?

**EXHIBITS:**

The following exhibits were admitted into evidence:

***Employee Exhibits:***

- A. Deposition of Dr. Thomas Musich, with attachments, dated June 25, 2013
- B. Certified medical treatment records of Barnes-Jewish Hospital
- C. *Withdrawn by Employee prior to admission*
- D. Certified medical treatment records of Washington University
- E. Certified medical bills of Barnes-Jewish Hospital
- F. Certified medical bills of Washington University

***Employer/Insurer Exhibits:***

1. Deposition of Dr. Christopher Pruett, with attachments, dated May 15, 2013

*Notes: 1) Some of the records submitted at hearing contain handwritten remarks or other marks on the Exhibits. All of these marks were on these records at the time they were admitted into evidence and no other marks have been added since their admission on February 25, 2014.*

*2) The deposition exhibits were admitted into evidence with some objections contained in the transcripts. Unless otherwise specifically noted below, any objections are deemed overruled and the testimony is fully admitted into evidence in this case.*

## **FINDINGS OF FACT:**

Based on a comprehensive review of the evidence, including Claimant's testimony, the medical opinions and testimony, and the medical treatment records and bills, as well as based on my personal observations of Claimant at hearing, I find:

- 1) **Claimant** is a 53-year-old former machine operator, who was working for SEMCO Plastic Company, Inc. (Employer) on or about the date of his alleged injury, September 17, 2010. Claimant denied any problems with his stomach or groin prior to working for Employer.
- 2) Claimant testified that he was born in Bosnia and attended eight years of schooling there, before he had to go to work to support his family. He worked at an oil refinery in Yugoslavia. He is able to speak, read and write in Bosnian, but he has difficulty communicating in English. An interpreter was used during trial to ensure his testimony was accurately conveyed and recorded.
- 3) Claimant came to the United States in July 1998 and worked at various manufacturing jobs for various employers. He said that he tried to get a CDL license so he could work as a truck driver, but he was unable to do that.
- 4) Claimant began working for Employer in January 2002. He worked as a machine operator on the second shift, working from 4:00 p.m. until midnight. Claimant testified that on September 17, 2010, while he was working on machine 14, he hurt his stomach/groin. He explained that on machine 14 it was necessary to open a door and pull out the parts from the machine. He said that it took a lot of strength to open the door to perform this task. At approximately 11:30 p.m., he was attempting to pull out the last part and tried with all of his strength to do it, but he was unable. He said that he felt a strong pain in his groin area and felt something bulging. He called his supervisor and noted that he did not work anymore that night because his supervisor was fixing the machine. Claimant acknowledged that this was the last day that he actually worked for Employer.
- 5) Claimant testified that he went home and went to bed, but he was unable to sleep because of the pain. He said that he went to Barnes-Jewish Hospital the next morning and was told that he had a hernia. He testified that he was originally told he would need surgery right away, but the nurses were then able to push the bulge back in and his pain was reduced, so the doctor told him to wait two weeks before having the surgery. Claimant denied ever having a prior diagnosis of a hernia.

- 6) Despite never previously being diagnosed with a hernia, Claimant admitted that approximately one year prior to this September 17, 2010 event, in 2009, he did have another injury at work for Employer involving his groin. He said that he was working on machine 19, making plastic trash barrels. He explained that the plastic scraps from the barrels would pile up and would need to be removed. He estimated that he would have to move 60-70 pounds of plastic scraps at a time. He said that as he was performing this task on one occasion he felt a sharp pain, but did not notice any bulge in his groin.
- 7) Since that earlier event in approximately 2009, Claimant said that he was hurting a little bit all the time, but he never reported it, because he thought it would go away. Claimant admitted that he received no medical treatment, took no medications and missed no time from work on account of this 2009 incident.
- 8) Claimant testified that the September 17, 2010 incident occurred on a Friday, he went to the hospital on Saturday and he reported it to Employer on the next Monday. He said that he gave Employer paperwork from the hospital indicating that he was unable to work on account of the hernia. Claimant said that he requested medical care from Employer and filled out paperwork for them. He said that he was told to go to his own doctor because they would not provide medical care. He was directed to the union to get help with this situation. Despite Employer's refusal to provide medical care, Claimant said that he continued to take his work slips from the doctor to Employer.
- 9) Claimant testified that he had hernia surgery on October 13, 2010, and, after a couple of follow-ups with the doctor, he was released from care on November 23, 2010. Claimant said that at the time he was released, the doctor placed a 15-pound lifting restriction on him. When Claimant presented that restriction to his manager, he was told that Employer had no jobs that met his restrictions. At Employer's request, Claimant wrote out a statement dated November 23, 2010 (Sub-Exhibit E of Exhibit 1), which indicated that after being injured at work for Employer and having hernia surgery, he was asking for lighter-duty work, which Employer indicated they did not have, so he was leaving Employer "because the work here is very hard and fast." Claimant confirmed that this was not a voluntary resignation and noted that Employer made him write out the statement.
- 10) Medical treatment records from **Barnes-Jewish Hospital** (Exhibit B) confirm that Claimant presented to the emergency department on September 18, 2010. According to the records, a translator/interpreter was called because of Claimant's difficulty communicating in English. Claimant reported an initial triage history of left testicle edema (swelling) on and off for a year, which most recently occurred the day prior to his admission while at work. According to the history summarized by the attending physician, Claimant has a history "of inguinal hernia that has been present for years." He was normally able to "reduce the bulge" when it occurred, but this time the left groin bulge did not go down. He was diagnosed with a nearly incarcerated inguinal hernia and a surgical consult was recommended. On September 23, 2010, **Dr.**

**Kareem Husain** (Exhibit B) took a history of left groin pain and a bulge, which he first noticed a year earlier, and which he was now unable to reduce. He agreed with the diagnosis of a left inguinal hernia and also agreed with the need for surgery. **Dr. Douglas Schuerer** (Exhibit B) took Claimant to surgery on October 13, 2010 at Barnes-Jewish Hospital. He performed an open repair of the left inguinal hernia with mesh.

- 11) Claimant continued to follow up with Dr. Husain at Barnes-Jewish Hospital (Exhibit B) after surgery. By October 28, 2010, Claimant was “healing well” from his hernia surgery, with no recurrence of hernia, increasing activity and only some pain with walking and difficulty with bowel movements. An off-work slip dated October 28, 2010 indicates that Claimant is completely off work from September 23, 2010 through present with a 10-pound lifting restriction for two more weeks, and, then, a return to light duty on November 11, 2010. On November 4, 2010, Claimant complained of pain in the right groin similar to what he had on the left side prior to his hernia surgery, but no hernia was found and his left-sided hernia repair was described as “well healed.” He also complained of symptoms consistent with PTSD at that visit. As Claimant continued to see doctors at **Washington University** (Exhibits B and D) for various conditions through April 18, 2011, there were no appreciable continued complaints related to the groin or hernia, but treatment for other conditions such as PTSD, dry cough, dermatological issues and flank (kidney) pain.
- 12) Claimant testified that he was out of work for seven months after his hernia surgery. He eventually returned to work in August 2011, working part-time cleaning a school.
- 13) Medical bills from **Barnes-Jewish Hospital** (Exhibit E) and **Washington University** (Exhibit F) document the charges for the treatment Claimant received from these providers related to the hernia. The parties stipulated at the time of trial that the total charges in dispute related to the hernia treatment were \$16,090.96.
- 14) In terms of his current complaints, Claimant testified that he continued to have pain in his groin on the left where he had the surgery. He admitted to taking some medication for this pain and some unrelated shoulder pain. He said that he cannot run, has pain with bending and is more limited now in what he is physically able to do. Claimant said that he cannot lift more than 15 pounds and he has to take care of himself and be careful of what he does so a hernia does not develop on the right side of his groin.
- 15) The deposition of **Dr. Christopher Pruett** (Exhibit 1) was taken by Employer on May 15, 2013 to make his opinions in this case admissible at hearing. Dr. Pruett is a board certified surgeon, with an emphasis in his practice of hernia repairs. He examined Claimant one time, January 23, 2013, at the request of Employer/Insurer, and provided no medical treatment. He issued his report in this case on that same date, after performing a physical examination of Claimant and reviewing the medical treatment records. With the aid of an interpreter, Claimant provided a history of performing heavy lifting at work for Employer and pulling on heavy doors, but he was unsure of the date of his injury. Claimant reported that he saw a bulge in his left groin one year prior to his hernia surgery, but he did not report it to his supervisor. On

physical examination, Dr. Pruett found no evidence of hernia in the standing, straining or supine position on the left or right sides. Dr. Pruett diagnosed Claimant as having a left-sided inguinal hernia, status post surgical repair. He opined that based on Claimant's inability to identify a specific date of injury and his history of having the hernia for at least a year prior to his emergency room visit, "This left inguinal hernia therefore does not fit the definition of a work related injury." Since he did not believe this to be a work-related injury, he did not believe Claimant had any permanent partial disability related to the hernia, but if it were considered to be a work-related injury, he opined that Claimant would have 5% permanent partial disability of the body as a whole on account of the hernia, surgical repair and subsequent complaints. He agreed that Claimant had reached maximum medical improvement and was able to work without restriction as of the time of his examination.

- 16) On cross-examination, Dr. Pruett agreed that the treatment Claimant received for his hernia was all completely appropriate. He testified that hernias do get larger with time and tend to get more complicated with time. He agreed that lifting can cause a hernia and can cause a hernia to grow. When asked about whether Claimant's continued work activities for Employer aggravated or worsened his hernia, Dr. Pruett testified that Claimant had had the hernia for over a year and "it's like being pregnant, you either have one or you don't have one. And so the hernia preexisted the event at work." However, he acknowledged that it can get bigger with time or with physical activity.
- 17) The deposition of **Dr. Thomas Musich** (Exhibit A) was taken by Claimant on June 25, 2013 to make his opinions in this case admissible at hearing. Dr. Musich is board certified in family practice. He examined Claimant one time, April 25, 2011, at the request of Claimant's attorney, and provided no medical treatment. He issued his report in this case on that same date, after performing a physical examination of Claimant and reviewing the medical treatment records. Claimant provided a history, through an interpreter, of first suffering an acute stabbing pain in the left groin, accompanied by a bulge, in late 2009. Admittedly, Claimant did not report the bulge to his supervisor at that time. Claimant reported that he continued to work for Employer until mid September 2010, when he "was unable to continue to perform his job duties as a machine operator because of severe, persistent left groin pain." There was no history in the report of another lifting or straining injury at work in September 2010. However, it should be noted that when Claimant's attorney offered his hypothetical facts to Dr. Musich, as he was testifying and offering his causation opinion in this case, Claimant's attorney did include a specific lifting incident on September 17, 2010 as one of the hypothetical facts upon which Dr. Musich based his opinion. Claimant told Dr. Musich that he was released in January 2011 following the hernia repair and he "was not given permanent restrictions." Claimant complained of continued left inguinal pain, aggravated by prolonged standing and walking. On physical examination, Dr. Musich found no recurrent hernia, but pain to deep palpation and paresthesia over the scarred surface where the hernia repair was performed. Dr. Musich opined that Claimant "developed a left inguinal hernia while operating machinery at Semco Plastics between late 2009 and September 17, 2010." He opined that Claimant's "employment by Semco Plastics is the prevailing factor in

the development of a symptomatic left inguinal hernia which necessitated...surgical evaluation and treatment between mid September 2010 and the present.” He opined that Claimant had reached maximum medical improvement for his left inguinal hernia condition and rated him as having 20% permanent partial disability of the body as a whole referable to his symptomatic, surgically treated left inguinal hernia.

- 18) On cross-examination, Dr. Musich agreed that he did not find anything in the medical treatment records from Barnes Hospital that correlated Claimant’s job duties for Employer to his hernia. He admitted that he apparently did not receive and review the emergency room records from September 18, 2010. Dr. Musich admitted that testicular pain and edema could be symptoms consistent with a hernia. He agreed that a bulge in the groin area would also be a common indication of a hernia. Dr. Musich acknowledged that if the history of left testicle edema and pain on and off for a year prior to September 2010 was accurate, then the hernia certainly could have occurred a year prior to his visit to the emergency room in 2010. He admitted that hernias can be temporarily reduced (pushed back in), but rarely does that resolve the problem permanently and surgery is needed. Finally, Dr. Musich acknowledged that he did not have a specific date as to when this accident occurred at work, it was just sometime between late 2009 and September 17, 2010.
- 19) On cross-examination, Claimant denied that he told Barnes that this was not a work-related condition. He said that he told them he had pain for a year and that the swelling had started the night before his hospital visit. He said that he did have an interpreter for part of this visit at Barnes, but the interpreter did not get there until he was admitted into a room. He admitted that he did not get authorization from Employer before going to Barnes. Interestingly, despite his prior testimony on direct that he had no bulge associated with the 2009 incident, on cross-examination, he also admitted telling the hospital that he had small bulges in the past that went away when he reduced them (pushed them back in) himself.
- 20) On re-direct examination, Claimant confirmed that prior to September 17, 2010, he had a very small bulge, but it was big after that event. He was also in unbearable pain on September 17, 2010 immediately after he got home.

## **RULINGS OF LAW:**

Based on a comprehensive review of the evidence, including Claimant’s testimony, the medical opinions and testimony, and the medical treatment records and bills, as well as based on my personal observations of Claimant at hearing, and based on the applicable laws of the State of Missouri, I find the following:

I find that there is really no dispute in this case that Claimant was diagnosed with, and surgically treated for, a left-sided inguinal hernia. I further find that the medical testimony in the record of evidence confirms that Claimant’s treatment for the left-sided inguinal hernia was reasonable and necessary to treat his condition. The parties stipulated to a date for the alleged injury of September 17, 2010, that Claimant was employed by Employer on or about that date,

and also stipulated that Employer received proper notice of the alleged hernia injury from Claimant. The predominant threshold issue that must be addressed prior to determining Claimant's entitlement to the payment of any benefits for this alleged injury is whether Claimant's left-sided inguinal hernia is properly considered a compensable injury under the Workers' Compensation Act.

Considering the date of the injury, it is important to note the statutory provisions that are in effect, including **Mo. Rev. Stat. § 287.800 (2005)**, which mandates that the Court "shall construe the provisions of this chapter strictly" and that "the division of workers' compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts." Additionally, **Mo. Rev. Stat. § 287.808 (2005)** establishes the burden of proof that must be met to maintain a claim under this chapter. That section states, "In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true."

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). The fact finder is charged with passing on the credibility of all witnesses and may disbelieve testimony absent contradictory evidence. *Id.* at 199.

Given that the first three issues are so inter-related in this case, I will address all three issues in the same section of the Award.

***Issue 1: Did Claimant sustain an accidental injury and/or occupational disease?***

***Issue 2: Did the alleged accident and/or occupational disease arise out of and in the course of Claimant's employment for Employer?***

***Issue 3: Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally related to his alleged accident and/or occupational disease at work for Employer?***

Claimant pleads in the alternative that his inguinal hernia was the result of either an accidental injury or an occupational disease on or about September 17, 2010. The starting point for determining if this is a compensable hernia claim under the Workers' Compensation Act is the specific section of the Act that deals with the proof required for hernia claims. Pursuant to **Mo. Rev. Stat. § 287.195 (2005)**:

In all claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission: (1) That there was an accident or unusual strain resulting in hernia; (2) That the hernia did not

exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed.

Based on the clear, unambiguous language of this section, I find that in order to have a valid claim for a hernia under the Workers' Compensation Act, Claimant must prove two things: First, that he sustained an accident (unusual strain) resulting in the hernia; and second, that he did not have a hernia prior to the accidental (unusual strain) injury for which compensation is claimed.

By the express wording of this section, I find that occupational disease hernia claims are not allowed as compensable injuries under the Workers' Compensation Act in Missouri. The statute for hernias specifically requires that either there was an "accident," which according to **Mo. Rev. Stat. § 287.020.2 (2005)** is defined as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift" or an "unusual strain" that resulted in the hernia. I find that the fact that the Legislature expressly included "accident," but chose not to expressly include "occupational disease" is telling of their intent to not allow occupational disease hernia claims under the law. It is clear from the definition of "accident" under the law that the Legislature was contemplating a singular event with a specific time and place of occurrence, when they reference "accident" in the hernia statute. It is equally clear that although they use the conjunction "or" between "accident" and "unusual strain," that they were also contemplating a singular event for the "unusual strain" because they did not make "strain" plural, nor did they add in words to allow for a series of strains or the repetitive nature of the employment to cause a hernia. I find that the Legislature made no provision under the law for occupational disease hernia claims, and, thus, strictly construing the law, no such occupational disease hernia claims can be compensable under the Workers' Compensation Act. Claimant's occupational disease hernia Claim in this case is, therefore, denied.

Having denied the occupational disease portion of Claimant's Claim in this case, I am left with his theory of the accidental onset of his hernia on or about September 17, 2010. There are additional provisions in the statute that deal with the issues of accident, arising out of and in the course of employment and medical causation. Under **Mo. Rev. Stat. § 287.120.1 (2005)**, every employer subject to the Workers' Compensation Act shall furnish compensation for the personal injury of the employee by accident arising out of and in the course of employee's employment. According to **Mo. Rev. Stat. § 287.020.2 (2005)**, accident is defined as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift." Further, under **Mo. Rev. Stat. § 287.020.3 (1) (2005)**, "An 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." Finally, under **Mo. Rev. Stat. § 287.020.3 (2) (2005)**, an injury is deemed to arise out of and in the course of the employment only if the accident is the prevailing factor in causing the injury and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment.

In order to meet his burden of proof in this matter under these sections and the hernia section noted above, Claimant needed to present credible evidence that supports his contention

that he sustained an acute, accidental injury (unusual strain) on September 17, 2010, while working for Employer, that resulted in a hernia, necessitating the treatment he ultimately received. Additionally, he needed to present competent, credible and reliable evidence to show that the hernia did not exist prior to September 17, 2010 and that it was medically causally connected to his September 17, 2010 accident or unusual strain. Having thoroughly reviewed and considered all of the evidence in this matter, for the reasons described in more detail below, I find that Claimant has failed to meet his burden of proof in this regard, and his Claim must be denied.

First, I find that Claimant failed to provide clear and convincing testimony on his own behalf to substantiate his burden of proof in this matter. Although, at hearing, Claimant testified that he sustained a specific accidental (unusual strain) injury at work for Employer on September 17, 2010, the contemporaneous medical treatment records from Barnes-Jewish Hospital contain no such corroborating history of accident on September 17, 2010, even though that was the day prior to his first visit to the emergency department. Additionally, as Claimant continued to treat with various doctors at Barnes and Washington University over the following months, none of their records contain a history of an accident or unusual strain at work for Employer on September 17, 2010. Interestingly, even Claimant's own rating physician, Dr. Musich, had no history from Claimant of an accidental injury or unusual strain on September 17, 2010, nor did Employer's rating physician, Dr. Pruett. Essentially, then, I find that none of the medical treatment records or reports in evidence in this case support Claimant's contention that he sustained an accidental injury (unusual strain) at work for Employer on September 17, 2010.

Admittedly, I was somewhat concerned, given Claimant's difficulties with communicating in English, that perhaps the lack of such a history was a factor of the various providers not understanding Claimant or Claimant being unable to fully communicate with them when he provided his history of injury. However, upon close inspection of the records and reports, I found that Claimant often was aided by an interpreter to help him communicate clearly with the doctors. Claimant even admitted that he had an interpreter at Barnes by the time he was admitted into a room for treatment. I also know from the records and reports that interpreters were present with at least some of the visits to the doctors at Barnes (Washington University) and to his examinations by Drs. Pruett and Musich. In that respect, I do not believe the absence of a specific history of an accidental injury at work on September 17, 2010 was the result of any of Claimant's difficulties with communicating in English.

Further, given that all of the providers/examiners did not record any such history of a specific injury on September 17, 2010, I also do not believe the absence of the history in the records is the result of an oversight or omission by the providers/examiners. If such a history was present in some records, but absent in others, I could accept that an oversight or omission occurred, but when it is missing from all of the records and reports from a number of different providers/examiners, I do not think an omission or oversight by all of the providers/examiners is likely.

The competency and credibility of Claimant's testimony in this case was further negatively impacted by the inconsistent and conflicting testimony he provided on his prior problems/issues with his abdomen/groin prior to September 17, 2010. On direct examination at hearing, Claimant testified that he had sharp pain in his groin prior to September 17, 2010 from

an incident that occurred in 2009, but he did not have a bulge in his groin. He said that he developed the bulge after the September 17, 2010 incident. However, on cross-examination he admitted that prior to September 17, 2010, he had both pain and small bulges in his groin that he was able to reduce (push back in) himself. He explained that the bulge was bigger after September 17, 2010 and he was unable to reduce it himself anymore. While the presence or absence of a bulge in the groin may seem like a rather minor discrepancy in the testimony to focus on, I find that it goes right to the heart of one of the main issues in this case of whether there was a hernia in that same area of the groin prior to September 17, 2010. In that respect, I find that Claimant's conflicted testimony on this topic undercuts his overall credibility in this case.

In addition to Claimant's inability to provide clear and convincing testimony on his own behalf, I also find that he failed to offer competent, credible or reliable medical testimony in evidence to substantiate his burden of proof that an accidental injury (unusual strain) on September 17, 2010 caused his hernia. Claimant offered the report and testimony of Dr. Musich to attempt to meet his burden of proof in this matter. However, Dr. Musich bases his medical causation opinion on an occupational disease theory of recovery by opining that Claimant "developed a left inguinal hernia while operating machinery at Semco Plastics between late 2009 and September 17, 2010," and further opining that Claimant's "**employment** by Semco Plastics is the prevailing factor in the development of a symptomatic left inguinal hernia [emphasis added]." Dr. Musich does not causally connect the hernia to a specific date, specific event, or a specific unusual strain, but rather just generally to Claimant's "employment" or to events "between late 2009 and September 17, 2010." Given my prior finding that the law does not allow for an occupational disease cause for a compensable hernia claim, these occupational disease causation opinions from Dr. Musich are of no value to Claimant in trying to support an accidental injury theory of his case. In fact, I find no medical opinions or testimony in the record of evidence that supports Claimant's contention that his hernia was medically causally related to an accidental injury (unusual strain) on September 17, 2010. In the absence of any such medical opinion evidence to support his claim, I find that Claimant's Claim in this case fails for that lack of proof.

While I have already found that Claimant's hernia Claim in this case fails for his inability to meet his burden of proof on the first prong of Mo. Rev. Stat. § 287.195 (his failure to prove that there was an accident or unusual strain on September 17, 2010 that resulted in a hernia), I also find that it additionally fails for his inability to meet his burden of proof on the second prong of the statute (his failure to prove that the hernia did not exist prior to September 17, 2010). Based on the histories Claimant consistently provided to the various providers/examiners, as well as based on his own admissions at hearing, I find that Claimant, in fact, had a hernia prior to September 17, 2010. There are numerous references in the record to Claimant having groin pain, swelling and a groin bulge prior to September 17, 2010, which he was often able to reduce (push back in) on his own. While, admittedly, there was no prior diagnosis of a hernia prior to September 17, 2010 because Claimant never went to a doctor or sought treatment, I find that the medical treating physicians who saw Claimant after September 17, 2010 were clearly working under the assumption, based on this history from Claimant, that he had been dealing with a hernia for at least a year prior to September 17, 2010. I further find that Dr. Musich agreed Claimant's complaints prior to September 17, 2010 were consistent with a hernia and Dr. Pruett outright opined that Claimant had a hernia that pre-existed September 17, 2010.

In that respect, I should note that I find Dr. Pruett's medical opinions and testimony, more competent, credible and reliable than the contrary opinions of Dr. Musich in this case. In terms of qualifications and expertise, I find that Dr. Pruett is a hernia specialist who has routinely surgically treated numerous patients for hernias, while Dr. Musich is a general family physician, with no particular special knowledge of hernias. I also find Dr. Pruett's opinions were soundly based on the applicable statutes and more consistent with the rest of the medical treatment evidence in the record. Consequently, I find that Dr. Pruett's medical opinions and testimony provide a sound basis to support my findings in this case that Claimant did not sustain a compensable hernia injury under the Workers' Compensation Act in Missouri.

Based on all of this evidence in the record, I find that Claimant had a hernia prior to his alleged date of injury of September 17, 2010, and, thus, failed to meet the second prong of the hernia statute, thus, resulting in a separate and distinct basis for the denial of his Claim for Compensation in this matter.

Accordingly, based on Claimant's failure to provide clear and convincing testimony on his own behalf; his failure to offer competent, credible or reliable medical testimony in evidence to substantiate his burden of proof that an accidental injury (unusual strain) on September 17, 2010 caused his hernia; and his failure to prove that the hernia did not exist prior to September 17, 2010; I find that Claimant has failed to meet his burden of proof under Mo. Rev. Stat. § 287.195. Claimant has failed to prove that an accident, arising out of and in the course of his employment for Employer resulted in a hernia that is medically causally related to that employment. Claimant's Claim is, therefore, denied for his failure to meet that burden of proof.

Since my findings on these first three issues are dispositive of this case, the remaining issues are moot and will not be ruled on in this Award.

**CONCLUSION:**

Claimant was diagnosed with, and surgically treated for, a left-sided inguinal hernia. The medical testimony in the record of evidence confirms that Claimant's treatment for the left-sided inguinal hernia was reasonable and necessary to treat his condition. The parties stipulated to a date for the alleged injury of September 17, 2010, that Claimant was employed by Employer on or about that date, and also stipulated that Employer received proper notice of the alleged hernia injury from Claimant.

Although Claimant pleads in the alternative that his inguinal hernia was the result of either an accidental injury or an occupational disease on or about September 17, 2010, based on the express wording of Mo. Rev. Stat. § 287.195, I find that occupational disease hernia claims are not allowed as compensable injuries under the Workers' Compensation Act in Missouri. Claimant's occupational disease hernia Claim in this case is, therefore, denied.

Based on Claimant's failure to provide clear and convincing testimony on his own behalf; his failure to offer competent, credible or reliable medical testimony in evidence to substantiate his burden of proof that an accidental injury (unusual strain) on September 17, 2010 caused his hernia; and his failure to prove that the hernia did not exist prior to September 17, 2010; I find that Claimant has failed to meet his burden of proof under Mo. Rev. Stat. § 287.195. Claimant has failed to prove that an accident, arising out of and in the course of his employment for Employer resulted in a hernia that is medically causally related to that employment. Claimant's Claim is, therefore, denied for his failure to meet that burden of proof. Since my findings on these first three issues are dispositive of this case, the remaining issues are moot and will not be ruled on in this Award.

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

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