

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

Injury No.: 03-146219

Employee: Dennis Seifner
Employer: Excel Corporation (Settled)
Insurer: Insurance Company of the State of Pennsylvania/
Specialty Risk Services (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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 3, 2010, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued December 3, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Dennis Seifner

Injury No. 03-146219

Add'l Party: Second Injury Fund

Employer: Excel Corporation (Settled)

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Insurer: Insurance Company of the State of
Pennsylvania /Specialty Risk Services (Settled)

Hearing Date: October 6, 2010

Checked by: RJD/cs

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 to be March 24, 2003.
5. State location where accident occurred or occupational disease was contracted: Alleged to be Marshall, Saline 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? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? No longer applicable.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleges that his work duties were a substantial factor in the cause of a thoracic disc herniation.
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: N/A.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.

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- 17. Value necessary medical aid not furnished by employer/insurer? None.
- 18. Employee's average weekly wages: \$483.15.
- 19. Weekly compensation rate: \$322.25.
- 20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

- 21. Amount of compensation payable from Employer: N/A.
- 22. Second Injury Fund liability: None.

Employee: Dennis Seifner

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Dennis Seifner

Injury No: 03-146219

Add'l Party: Second Injury Fund

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Excel Corporation (Settled)

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Insurer: Insurance Company of the State of
Pennsylvania/Specialty Risk Services (Settled)

Checked by: RJD/cs

ISSUES DECIDED

The evidentiary hearing in this case was held on October 6, 2010 in Marshall. Claimant, Dennis Seifner, appeared personally and by counsel, Jerry Kenter; Employer, the Second Injury Fund appeared by counsel, Assistant Attorney General Jacinda Thudium. The claim against Employer, Excel Corporation, was settled by stipulation approved on April 2, 2009. The parties requested leave to file post-hearing briefs, which leave was granted. The case was submitted on November 18, 2010. The hearing was held to determine the following issues:

1. Whether Claimant sustained an accident or occupational disease arising out of and in the course of his employment with Excel Corporation on or about March 24, 2003;
2. Whether the work-related accident or occupational disease of March 24, 2003 (if found to have been sustained) was the cause of any or all of the injuries and conditions alleged by Claimant;
3. The liability, if any, of the Second Injury Fund for permanent partial disability benefits or permanent total disability benefits; and
4. The effect, if any, on Second Injury Fund benefits of unemployment compensation benefits paid to Claimant.

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over this case;
2. That venue for the evidentiary hearing is proper in Saline County;
3. That the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;

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4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That Claimant's average weekly wage is \$483.15, resulting in compensation rates of \$322.25/\$322.25; and
6. That the notice requirement of Section 287.420 is not a bar to Claimant's Claim for Compensation herein.

EVIDENCE

The evidence consisted of the testimony of Claimant, Dennis Seifner, as well as the deposition testimony of Claimant; the deposition testimony and report of Dr. John A. Pazell; the deposition testimony and report of Dr. James A. Stuckmeyer; the deposition testimony and reports of Terry Cordray, a vocational rehabilitation counselor; certain records from the Missouri Division of Employment Security; correspondence; stipulations for compromise settlement in Injury Nos. 91-142778, 94-134196, 02-114050 and 03-146219. Also in evidence were a significant amount of medical records (Exhibits E and F). An objection was made to the admission of pages 98-101 of Exhibit E. Those pages consisted of a narrative report of Dr. Marvin Ross dated July 17, 2004. As that report was clearly generated for litigation purposes only, was not a "medical record", and was not submitted pursuant to §287.210.7, it is hearsay. The objection to pages 98-101 of Exhibit E was and is sustained, and those pages are not admitted into evidence.

DISCUSSION

Claimant was 47 years of age at the time of the hearing. He was born on June 14, 1963. He was 39 years of age when he last worked. He worked as a welder and in the construction industry initially. On October 2, 1991, Claimant had a fall which resulted in multiple injuries, the most significant of which was a right elbow fracture. Claimant settled his workers' compensation claim for the 10-2-91 accident for 16.5% of the body as a whole "referable to back, neck and right arm". Claimant testified that he was advised by his physicians not to return to construction work. Claimant testified that he took a position as a meat-cutter at the Tyson plant in Marshall in April 1992. (This plant was later purchased and managed by Excel Corporation. Claimant worked in the same plant from April 1992 through March 24, 2003.) He testified that he then bid onto a fork lift operator position.

On August 15, 1994, while working as a forklift driver, Claimant sustained an accident, causing injury to his neck, low back and right shoulder. Claimant underwent a discectomy and fusion at C4-5 with instrumentation on December 14, 1994, and a right shoulder surgery

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(subacromial decompression and rotator cuff debridement) on August 18, 1995. Claimant settled his workers' compensation claim for the 8-15-94 accident for "18% of the body as a whole, with reference to the upper extremities and neck".

On February 26, 2003, Claimant filed a claim for compensation in Injury No. 02-114050. That claim alleged injury to: "cervical spine and aggravation of prior symptom free condition in neck and left shoulder". The description as to how the injury occurred was:

While in the scope of his employment, the employee was assigned the repetitive job of scanning (with a hand held gun) inventory, stocking racks with fork lift and making repetitive trips and bouncing and being jarred on concrete floor while doing his job and physically throwing boxes of meat over his head.

The "date of accident/occupational disease" was shown on the claim as "8-5-02". The claim was made against Excel Corporation. On December 17, 2002, Claimant underwent C6-7 discectomy and fusion with instrumentation.

Claimant settled his claim against Excel Corporation in Injury No. 02-114050 by stipulation approved on October 4, 2004. The settlement represented "21% of the body as a whole (back, neck and bilateral upper extremities and shoulders)". The settlement recited that 8 3/7 weeks of temporary total disability("TTD") benefits had been provided to Claimant.

At some point after the December 17, 2002 neck surgery, Claimant returned to work on a light duty basis. In both his hearing testimony and his deposition testimony, Claimant could not remember when he returned to work after the 12/17/02 surgery. On page 21 of Exhibit A (transcript of the deposition of Dr. James Stuckmeyer) Claimant's counsel stated "we believe it (return to work) was early 2003, January or early February." There are some strong indications that Claimant returned to work on February 14, 2003. Exhibit K is Excel Corporation's internal COMMUNICATION SLIP dated 2-13-03 advising that Dr. Vale had released Claimant to light duty. As noted above, the date of surgery was 12/17/02, and Excel paid Claimant 8 3/7 weeks of TTD benefits. The period 12/17/02 through 2/13/03 is 59 days, or 8 3/7 weeks. It is for these reasons that I suspect that Claimant returned to work on 2/14/03. However, as noted below, Claimant advised Dr. Vale on 2/13/03 that he was "in the cafeteria wiping down tables and emptying ash trays". This suggests that Claimant was doing some light duty work *prior* to 2/14/03, but only in the cafeteria. Claimant testified that he was first put on cafeteria duty only, and was later put on the production line, putting stickers on packages and pulling defective packages off the line. He testified that he probably placed as many as 800 stickers per day and pulled 25 to 30 defective packages off the line. Although Claimant's testimony was confusing and often self-contradictory, it appears that Claimant's work day (after February 13, 2003) was split between the cafeteria and the production line.

Claimant also testified that he had no problems or complaints while he was doing the cafeteria duty only. He testified that his problems occurred "while on the line", i.e., the production line. It is difficult to believe that Claimant started working on the production line any earlier than February 14, 2003.

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As noted above, Claimant has not worked since 3/24/03. On March 22, 2005, Claimant filed his claim for compensation in this case. That claim alleged injury to “back and body as a whole”. The “DATE OF ACCIDENT OR OCCUPATIONAL DISEASE” was listed as: “On or about 3-24-03, and over 8 years before. Last day at work 3-24-03.” The description of how the injury occurred was as follows:

Employee, while in the course and scope of his employment performed tasks which were a substantial factor in either causing direct injury or aggravation of pre-existing condition so as to make such become symptomatic and more disabling and thereby in need of treatment. The repetitive tasks of employment were cumulative in nature, incident to employment, peculiar to employment and were a substantial factor in causing a change in medical pathology or worsening of medical pathology, thereby producing additional injury and disability to the afore-described parts of the body. Each and every day that the employee worked through the last day of his employment was a series of repetitive tasks that were collectively a substantial factor in causing the resulting injury and disability. Employee was required to operate a fork lift and bouncing and being jarred on concrete floors while making repetitive trips.

While the claim for compensation in this case would suggest an occupational disease occurring over *eight years* through 3/24/03, the fact that Claimant settled a similar claim for occupational disease through 8/5/02, the claim must be limited to the period 8/6/02 through 3/24/03; indeed, Claimant’s medical evidence and post-trial brief clearly limit the claimed occupational disease to the post-surgery period of light duty in 2003. As Claimant testified that the cafeteria duty caused him no problems, the claimed occupational disease is limited to the work Claimant performed on the production line from February 14, 2003 (at the earliest) through March 24, 2003, a period of a mere 39 calendar days, or 27 working days.¹ Claimant testified in his deposition that he missed three or four days of work during that period (Exhibit 2, Seifner deposition, pp. 62-63). While the claim for compensation in this case also might suggest an injury to Claimant’s entire spine, Claimant’s medical evidence and post-trial brief appear to limit the claimed occupational disease to Claimant’s thoracic spine.

Dr. James Stuckmeyer evaluated Claimant on March 24, 2009 at the request of Claimant’s counsel. Dr. Stuckmeyer issued a report dated June 2, 2009; that report and his deposition testimony of September 30, 2009 were in evidence. On the issue of the claimed occupational disease occurring between 2/14/03 and 3/24/03, Dr. Stuckmeyer testified:

Q. Did he indicate to you he had problems when he returned to work in early 2003? Looking at your conclusion, on the third paragraph under conclusion on page 10.

A. Yes, sir. I spoke at length with Mr. Seifner because he was a pretty complicated orthopedic evaluation. He stated that even on return to work on light duty status, which was cleaning the tables, that he began to develop these symptoms of pain in the thoracic spine which was ultimately confirmed that he was legitimate in that he was noted to have the thoracic disc herniation. (Exhibit A, Stuckmeyer deposition, p. 16).

¹ February 14, 2003 was a Friday; March 24, 2003 was a Monday.

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.....

Q. Do you have an opinion as to whether or not the duties he performed when he returned to work in early 2003 were a substantial factor in contributing to either his chronic pain problem, his thoracic spine problem, or his myofascial syndrome?

A. Yes, sir.

Q. What is your opinion?

A. It's my opinion that the occupational duties upon return to work led to the development of a significant thoracic problem, the disc herniation. And also exacerbated this longstanding history of neck and lower back symptoms and myofascial type symptoms.

Q. Do you have an opinion based on a reasonable degree of medical certainty as to a percentage of disability from that last series of accidents?

A. Yes, sir.

Q. What is your opinion?

A. I assessed a 12.5 percent disability to the body as a whole for the thoracic problem. (Exhibit A, Stuckmeyer deposition, pp.17-18).

On cross-examination by counsel for the Second Injury Fund, Dr. Stuckmeyer testified as follows:

Q. Are you of the opinion that Mr. Seifner had a repetitive motion injury or an acute injury?

A. A repetitive motion or an acute injury?

Q. Yes.

A. I opined on page 2 of my commentary that it was a repetitive overuse type issue. It kind of gradually developed with his return-to-work status.

Q. That was to the thoracic spine?

A. Yes, ma'am.

Q. When did Mr. Seifner return to work?

A. I believe it was 2003.

MR. KENTER: We believe it was early 2003, January or early February.

Q. (By Ms. Thudium) Did he tell you how many hours per week that he worked?

A. I don't recall asking.

Q. He was still on light duty as of March 24th, 2003; is that right?

A. Yes, ma'am. As far as I know, he was on a light duty status. He had been placed on --

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- Q. You state there on page 10 under your conclusion that he was light duty status cleaning tables and placing labels; is that right?
- A. Yes, ma'am.
- Q. Do you know how many hours per day that he worked in this light duty status?
- A. I don't recall asking, ma'am.
- Q. What tables was he cleaning?
- A. What tables was he cleaning?
- Q. Yes. He said he was cleaning tables.
- A. It was my impression that he was cleaning cafeteria type tables.
- Q. Do you know how many tables he was responsible for cleaning?
- A. No.
- Q. Do you know what the breakdown was in his daily shift, how many hours he spent cleaning tables and how much time he spent placing labels?
- A. No, ma'am.
- Q. Do you know how many breaks he was allowed to take?
- A. No, ma'am.
- Q. How long his lunch period was?
- A. No.
- Q. So he did not return to work until January or early February 2003 and that was a light duty status cleaning tables and placing labels. And then when was his last day of work?

MR. KENTER: I believe it was the date of the accident, 3/24/03, or the date that we pled.

- Q. (By Ms. Thudium) So he would have only worked 30 to 60 days on this light duty status cleaning tables and placing labels until his last day of work on March 24, 2003?
- A. Yes, ma'am.
- Q. Do you know how he went about cleaning these tables, whether he just wiped them with a rag or exactly the procedure?
- A. No.
- Q. The placing labels, how did he perform that duty?
- A. I am unaware.
- Q. Do you know if he had any particular requirement for so many labels per hour, anything of that sort?
- A. I do not.

Considering Dr. Stuckmeyer's testimony in light of the other evidence in this case, Dr. Stuckmeyer's opinion would be that Claimant sustained a herniated thoracic disc as a result of working on the production line, placing stickers on packages and pulling defective packages off the line, for no more than 24 working days, even though Dr. Stuckmeyer was unaware as to how Claimant performed those duties or how many hours a day he performed those duties.

Dr. Vale saw Claimant on February 13, 2003. Dr. Vale's note of that date states (in part):

The patient presents indicating that he does feel that surgery was beneficial. He indicates that he no longer has tingling in his left hand. He feels as though his left shoulder is now

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“fine.” He also reports good mobility and good strength in the left upper extremity. He, however, indicates now that he has mid thoracic pain radiating into the cervical spine. He indicates that this is associated with headaches, muscle spasms in the cervical and thoracic back, and significant fatigue. He indicates that basically he “aches.” He indicates that he has soreness and points to the T7-T8 level and indicates that he feels as though he has to maintain a stooped posture. He also notes knots in the cervical soft tissues. He indicates that the trigger point injections helped though then areas of point tenderness seemed to spread throughout his back. He indicates that his thoracic and cervical back pain is a 5-7 a majority of the time. He indicates that when the therapists uses electrical stim. that it does provide him with temporary relief of symptoms.

The patient indicates at work that he is basically in the cafeteria wiping down tables and emptying ash trays. He indicates that he can sit any time that he wants to. He does feel that if he has “lots of rest” that he feels better. He indicates with even minimal amount of activity that he “fatigues fast.”

It is obvious that Claimant had developed significant thoracic pain prior to February 13, 2003. This was *prior to* Claimant’s work on the production line, i.e., *prior to* the claimed period of occupational disease exposure.

This is a very unusual occupational disease claim, and the evidence is confusing at best. With all due respect to Dr. Stuckmeyer, it appears that the *factual basis* for his causation opinion has been significantly impeached. Dr. Stuckmeyer conceded that he was unaware as to how Claimant performed his production line duties or how many hours a day he performed those duties. It is clear that he was unaware as to the number of days Claimant actually worked on the production line, or what date the production line work would have started. Thus, it is also clear that Dr. Stuckmeyer was unaware that Claimant had developed significant thoracic pain before he even started on the production line.

Claimant’s post-trial brief cites *Angus v. Second Injury Fund*, 2010 WL 3955449 (Mo. App. W.D. , 10/12/2010) for the proposition that “the Administrative Law Judge” cannot “rule that (the) sole medical evidence lacks credibility when the (Second Injury) Fund introduces no contrary evidence”.² I note that, as of December 2, 2010, *Angus* is not a final opinion. However, I believe that the actual language of the *Angus* opinion is not as rigid as counsel believes. The *Angus* court states (at page 4 of the Westlaw opinion):

“[W]e defer to the Commission on issues involving the credibility of witnesses and the weight to be given testimony, and we acknowledge that the Commission may decide a case ‘upon its disbelief of uncontradicted and unimpeached testimony.’ ” *Alexander v.*

² It is arguable that, technically, Dr. Stuckmeyer’s testimony is not the *sole* medical evidence on the issue of occupational disease and causation. Claimant also offered into evidence the deposition testimony of Dr. John A. Pazell. Dr. Pazell evaluated Claimant on behalf of Excel Corporation. Dr. Pazell testified to his belief that Claimant worked as a forklift driver (and *only* as a forklift driver) during the time period in question (February and March 2003), and that his forklift driving duties caused no injury. As the evidence is clear that Claimant did not drive a forklift at all during the time period in question, and as Dr. Pazell’s testimony was not introduced by the Second Injury Fund, nor relied upon by the Second Injury Fund in its post-trial brief, I have treated Dr. Pazell’s testimony as wholly irrelevant.

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D.L. Sitton Motor Lines, 851 S.W.2d 525, 527 (Mo. banc 1993) (quoting *Ricks v. H.K. Porter, Inc.*, 439 S.W.2d 164, 167 (Mo.1969)). However, “[t]he commission may not substitute an administrative law judge's personal opinion on the question of medical causation of [an injury] for the uncontradicted testimony of a qualified medical expert.” *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994). “[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.” *Elliott v. Kansas City, Mo., Sch. Dist.*, 71 S.W.3d 652, 658 (Mo.App. W.D.2002). When “expert medical testimony is presented,” “an ALJ's personal views of [the evidence] cannot provide a sufficient basis to decide the causation question, *at least where the ALJ fails to account for the relevant medical testimony.*” *Van Winkle*, 258 S.W.3d at 898. (*Italics mine.*)

I believe I have “accounted” for Dr. Stuckmeyer’s testimony. I believe that Dr. Stuckmeyer was not apprised of all relevant facts in arriving at his medical conclusion. He did not consider the fact that Claimant worked on the production line for 24 days or less, and partial days at that. He did not consider *how* Claimant performed his production line duties, as he was unaware as to how those duties were performed. He did not consider *how long* Claimant performed those production line duties, as he was unaware of that as well. He did not consider the fact that Claimant was complaining of significant thoracic pain *before* starting his work on the production line, as he was unaware of that fact as well.

Again, with all due respect to Dr. Stuckmeyer, I must find that his opinion, i.e., that Claimant’s 24 partial days of work on a production line was a substantial factor in causing Claimant’s herniated thoracic disc, is not credible, when Dr. Stuckmeyer did not account for the number of days Claimant worked in that capacity, did not account for the amount of time each day Claimant worked in that capacity, did not account for how Claimant performed those duties, and did not account for the fact that Claimant had complaints of significant thoracic pain even before those duties commenced.

I must find, therefore, that Claimant did not sustain a compensable occupational disease on or about March 24, 2003. There being no compensable injury, there is no Second Injury Fund liability, and the remaining issues are moot.

FINDINGS OF FACT

In addition to those facts to which the parties stipulated, I find the following facts:

1. Claimant began work for Tyson Foods at a pork processing facility in Marshall, Missouri in April 1992, and worked at that plant until March 24, 2003;
2. At some time after August 1994, the plant was sold by Tyson Foods to Excel Corporation and Excel Corporation operated that plant through March 2003;

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3. On October 2, 1991, while working in the construction industry, Claimant had a fall which resulted in multiple injuries, the most significant of which was a right elbow fracture;
4. Claimant settled his workers' compensation claim for the 10-2-91 accident for 16.5% of the body as a whole "referable to back, neck and right arm".
5. On August 15, 1994, while working as a forklift driver, Claimant sustained an accident, causing injury to his neck, low back and right shoulder. Claimant underwent a discectomy and fusion at C4-5 with instrumentation on December 14, 1994, and a right shoulder surgery (subacromial decompression and rotator cuff debridement) on August 18, 1995;
6. Claimant settled his workers' compensation claim for the 8-15-94 accident for "18% of the body as a whole, with reference to the upper extremities and neck";
7. On February 26, 2003, Claimant filed a claim for compensation against Excel Corporation in Injury No. 02-114050. That claim alleged injury to: "cervical spine and aggravation of prior symptom free condition in neck and left shoulder". The description as to how the injury occurred was: "While in the scope of his employment, the employee was assigned the repetitive job of scanning (with a hand held gun) inventory, stocking racks with fork lift and making repetitive trips and bouncing and being jarred on concrete floor while doing his job and physically throwing boxes of meat over his head." The "date of accident/occupational disease" was shown on the claim as "8-5-02";
8. On December 17, 2002, Claimant underwent C6-7 discectomy and fusion with instrumentation;
9. Claimant settled his claim against Excel Corporation in Injury No. 02-114050 by stipulation approved on October 4, 2004. The settlement represented "21% of the body as a whole (back, neck and bilateral upper extremities and shoulders)". The settlement recited that 8 3/7 weeks of temporary total disability("TTD") benefits had been provided to Claimant;
10. After his December 17, 2002 neck surgery, sometime in January or February 2003, Claimant returned to work for Excel Corporation on a light duty basis, cleaning cafeteria tables and emptying ashtrays;
11. On February 13, 2003, Claimant was seen by Dr. Janie Vale. Claimant advised Dr. Vale that he had been working in the cafeteria basically wiping down tables and emptying ash trays. Claimant also advised Dr. Vale that he had mid thoracic pain radiating into the cervical spine, muscle spasms in the cervical and thoracic spine, soreness at the T7-8 level, with thoracic and cervical pain at a level of five to seven a majority of the time;
12. At some point after February 13, 2003, Claimant's work duties were changed to include work on a production line, placing stickers on packages of meat (up to 800 stickers per day) and removing defective packages of meat from the line (25 to 30 per day);
13. Claimant testified that his cafeteria duties did not cause him any neck or back problems, but his production line duties did cause him neck and back problems;
14. Claimant worked on the production line for no more than 24 working days after February 13, 2003 through March 24, 2003;

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15. Claimant was terminated from Excel Corporation in March 2003; Claimant's last day of work was March 24, 2003;
16. Claimant has not worked since March 24, 2003;
17. On March 22, 2005, Claimant filed his claim for compensation in this case. That claim alleged injury to "back and body as a whole". The "DATE OF ACCIDENT OR OCCUPATIONAL DISEASE" was listed as: "On or about 3-24-03, and over 8 years before. Last day at work 3-24-03.";
18. Dr. James Stuckmeyer testified that Claimant's work duties, after returning from surgery in early 2003, were a substantial factor in the cause of a thoracic disc herniation;
19. Dr. Stuckmeyer was not apprised of all relevant facts in arriving at his medical conclusions;
20. Dr. Stuckmeyer did not consider the fact that Claimant worked on the production line for 24 days or less in arriving at his medical conclusions;
21. Dr. Stuckmeyer was unaware as to how Claimant performed his production line duties;
22. Dr. Stuckmeyer was unaware as to how long Claimant performed those production line duties;
23. Dr. Stuckmeyer was unaware that Claimant was complaining of significant thoracic pain before starting his work on the production line,
24. Dr. Stuckmeyer's medical conclusions are not credible as he was unaware of many relevant facts in this case and did not consider those facts in arriving at those medical conclusions.

RULINGS OF LAW

In addition to those legal conclusions to which the parties stipulated, I make the following rulings of law:

1. Claimant is making a claim in this case for exposure to occupational disease for a portion of calendar year 2003, ending with the last date of employment, which was March 24, 2003;
2. Claimant alleges that this occupational disease exposure was a substantial factor in the cause of his thoracic disc herniation;
3. As Claimant testified that his cafeteria duties did not cause him any neck or back problems, but his production line duties did cause him neck and back problems, the period of alleged occupational disease exposure is 24 working days or less;
4. The testimony of Dr. James Stuckmeyer is crucial to Claimant's claim for alleged occupational disease;
5. Dr. Stuckmeyer was not apprised of all relevant facts in arriving at his medical conclusions;
6. Dr. Stuckmeyer's medical conclusions are not credible as he was unaware of many relevant facts in this case and did not consider those facts in arriving at those medical conclusions;

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7. Due to the lack of credible medical evidence on the issues of occupational disease and medical causation of the thoracic disc herniation, there can be no finding of a compensable occupational disease;
8. As there is no compensable occupational disease, there is no legal basis for Second Injury Fund liability.

ORDER

The claim against the Second Injury Fund is denied in full.

Date: December 3, 2010

Made by: /s/Robert J. Dierkes

ROBERT J. DIERKES
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/Naomi Pearson
Naomi Pearson
Division of Workers' Compensation