

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

Injury No.: 03-142166

Employee: David Trimmer
Employer: Johnson Controls, Inc.
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged September 9, 2003
Place and County of Accident: Alleged Buchanan County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 15, 2005, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Nelson G. Allen, issued September 15, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of June 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: DAVID TRIMMER

Injury No. 03-142166

Employer: JOHNSON CONTROLS, INC.

Additional Party:

Insurer: SELF

Hearing Date: AUGUST 10, 2005

Checked by: NGA

Submitted: AUGUST25, 2005

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? Not proven.
4. Date of accident or onset of occupational disease: Alleged, September 9, 2003.
5. State location where accident occurred or occupational disease was contracted: Alleged, Buchanan 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? Not proven.
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleged he fell while stacking batteries.
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, left shoulder.
14. Nature and extent of any permanent disability: Not proven.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? \$282.55
17. Value necessary medical aid not furnished by employer/insurer? \$2,422.80
18. Employee's average weekly wages:
19. Weekly compensation rate: \$662.55 / \$347.05
20. Method wages computation: By Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)

weeks of permanent partial disability from Employer

weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning _____ for claimant's lifetime.

22. Second Injury Fund liability:

_____ weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:

_____ weekly differential beginning _____ payable by SIF for _____ weeks and, thereafter, for claimant's lifetime. TOTAL:

23. Future requirements awarded:

Said payments to begin _____ 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 ___% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Claimant failed to meet his burden of proof that established he sustained an injury by accident or occupation arising out of his employment. Claimant's Claim for Compensation is denied.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: DAVID TRIMMER Injury No. 03-142166

Employer: JOHNSON CONTROLS, INC.

Additional Party:

Insurer: SELF

Hearing Date: AUGUST 10, 2005 Checked by: NGA

Submitted: AUGUST25, 2005

Prior to presenting evidence, the parties stipulated the issues to be determined by this hearing are:

- 1. Whether the claimant sustained an injury by accident or occupational disease arising out of and in the course of his employment;
- 2. Whether the conditions the claimant is complaining of were medically caused by his alleged accident at work;
- 3. Did the employer have proper notice of claimant's injury;
- 4. Liability of the employer for past medical treatment;
- 5. Liability of the employer for future medical treatment, and
- 6. Liability of the employer for future temporary total disability.

The parties agreed that on September 9, 2003, David Trimmer was an employee of Johnson Controls Battery Division. The employer was operating under the provisions of the Missouri Workers' Compensation Law and was fully self-insured.

The parties further agreed that the claimant had filed a timely Claim for Compensation. The correct rate of compensation is \$662.55 for both temporary total disability and permanent

total disability, and \$347.05 for permanent partial disability. No compensation has been paid. The claimant has not missed any time from work. Medical aid has been provided in the amount of \$282.55. The claimant is asking for past medical aid in the amount of \$2,422.80.

Mr. Trimmer testified in person. He is 51 years old. He has been employed by Johnson Controls for 30 years.

He testified that he was injured on September 9, 2003 while "stacking off" batteries. At the time, he was group leader whose position was running DTI, which is a machine that automatically high rates the batteries. His position also involved stacking batteries and, sometimes, stacking off batteries. At the time he was injured he was involved in the stacking off process, which he described as manually picking up batteries to lift them on a skid, three-to-four layers high. He explained that they put one layer of batteries and then two sheets of wafer board between them and the next layer of batteries, up to four layers. Four layers could be approximately his shoulder level in height.

He described the wafer boards as having little pebbles on them, like granite. When they come in on the skids, they are in-between two layers of skids. He went from the skid to the line to pick up a battery and he did not see the wafer boards and he slipped on the pebbles and fell to his left side. He let the battery go. This happened at about 9:15 a.m.

Mr. Trimmer testified that he first reported the accident to Bill Mitchell, the day-shift supervisor, about a half-hour after the accident. Mr. Mitchell said he wanted to see if it got worse before sending him to the doctor. Mr. Trimmer testified that on that same day at 5:00 p.m., he also told Richelle Reese, the night manager. Ms. Reese had Mr. Trimmer fill out Claimant's Exhibit Number A, the Employee's Statement of Injury on the date of the injury. The document was signed by the claimant and Ms. Reese. On Claimant's Exhibit Number A, Mr. Trimmer indicated that he injured his shoulder at 9:15 a.m. on September 9, 2003. It indicated that he reported this injury to his supervisor that day and that the injury occurred by "stacking off" the batteries.

Clearly, actual notice of an injury was given to the employer. It was not required that the claimant give notice of every detail of his injury on the document that he filled out.

The claimant testified that his employer sent him to see Dr. Fretz with Occupational Health Services a couple of days after this incident. Dr. Fretz took x-rays and told the claimant it was tendonitis or arthritis. He testified that he went back the next week and told Dr. Fretz he was not getting any better. Dr. Fretz told the Claimant that he was going to have to live with it.

He next saw his personal physician, Dr. Bronson, who initially sent him for physical therapy and gave him some cortisone shots telling him he thought he had a frozen shoulder. When that did not alleviate the problem, Dr. Bronson ordered an MRI, which showed the claimant to have a torn rotator cuff. Dr. Bronson referred the claimant to an orthopedic surgeon, Dr. Bruce Smith.

Dr. Bruce Smith wanted to schedule the claimant for surgery but did not do so because the claimant's employer would not authorize the surgery. The claimant testified that Dr. Smith indicated that his tear would continue to get worse over time and that without surgery, he would end up with a complete tear.

Claimant's Exhibit Number B, a copy of Dr. Bruce Smith's Narrative Report and records, was admitted without objection. Dr. Smith indicated in his September 3, 2004 letter that the claimant had indicated "that he fell at work eight months prior to seeing me." Dr. Smith found this to be consistent with the MRI showing a possible rotator cuff tear. The treatment recommended by Dr. Smith was "to arthroscope his shoulder, identify the cuff tear if, indeed, it is there, do a decompression of the subacromial space, and repair the tear, if necessary." In short, he recommended surgery.

Dr. Smith placed the claimant on restricted duty. He recommended that he have a 25-pound weight restriction and that he should not "be doing heavy lifting, particularly about the shoulder level, with this arm." He anticipated it would take the claimant twelve weeks to recover from this surgery.

William E. Mitchell testified for the employer. He has been a supervisor for Johnson

Controls for four years. He said that he did not remember if he had worked the shift of September 9, 2003. He also did not have any recollection of the claimant having a fall or complaining of any shoulder injury.

Mr. Mitchell also reiterated the employer's policy concerning the reporting of accidents and suggested that there was no circumstance in which he would have received a report of a fall or injury by an employee in which he would not have filled out an incident report.

The employer is relying on three separate documents. The first is Exhibit A, which is "Employee's Statement of Injury". This is dated September 9, 2003. On line 19: "How did injury/illness occur?" He wrote: "Stacking off." Line 20: "Object, force, action or substance causing injury/illness." He answered: "Batteries." There is no mention of a fall.

The employer also relies on Exhibit 1, which is an investigative report by Richelle Reece, the claimant's 2nd shift supervisor. Note that Ms. Reece did not testify.

The document states: "David Trimmer came to me at 09:20 a.m. and reported that his shoulder was hurting, and when he was stacking off he heard a popping (sic)..." Again, there is no mention of a fall.

These two documents could be easily explained except for Exhibit 2, which is the typed notes of W. David Fretz, M.D. The claimant was sent to Dr. Fretz on October 27, 2003.

Dr. Fretz wrote: "There was no episode at work that clearly caused any injury. He does work in a heavy labor job stacking batteries. He does however specifically deny any injury or trauma to the left shoulder nor has he had any specific event that he could relate to the beginning of his shoulder pain."

I do not believe that even an employer-oriented doctor, such as Dr. Fretz, would fabricate such a story without some factual basis.

This is a troublesome case because I suspect that the claimant's injury to his left shoulder was the result of 30 years of hard physical labor performed for the employer. This should have been compensable. However, the claimant has pled an alleged injury from a fall.

Because of the contradiction of the notes of Dr. Fretz, the claimant has failed to meet his burden of establishing that he sustained an accidental injury on September 9, 2003, arising out of his employment. Claimant's Claim for Compensation is denied.

Date: 9/15/05

Made by: /s/ Nelson G. Allen
Nelson Allen
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret
Patricia "Pat" Secret
Director
Division of Workers' Compensation