

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

LARRY DALY

Appellant

v.

POWELL DISTRIBUTING, INC.; TREASURER OF THE  
STATE OF MISSOURI-CUSTODIAN OF THE SECOND INJURY FUND

Respondents

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**DOCKET NUMBER WD71575 and WD71576**

DATE: September 28, 2010

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Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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Appellate Judges:

Division Three: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

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Attorneys:

Richard L. Montgomery, Jr., Columbia, MO

Counsel for Appellant

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Attorneys:

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Counsel for Respondent, Powell

Jacinda A. Thudium, Jefferson, MO

Counsel for Respondent, Treasurer of State

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

LARRY DALY, Appellant, v. POWELL DISTRIBUTING, INC.;  
TREASURER OF THE STATE OF MISSOURI-CUSTODIAN OF  
THE SECOND INJURY FUND, Respondents

WD71575 and WD71576

Labor and Industrial Relations Commission

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Mr. Larry Daly experienced back pain while working for Powell Distributing, Inc. (Powell) as a route driver. He sought medical treatment in 1999. His back pain increased and conservative treatments did not alleviate the pain, so he had back surgery in May 2000. Afterwards, he was no longer able to work for Powell. He filed for workers' compensation benefits in October 2000; the administrative law judge (ALJ) granted him a temporary award after a hearing in May 2001. During the hearing, Mr. Daly complained of pain in his right upper extremity for which he had sought medical treatment in December 2000. Mr. Daly participated in physical therapy to strengthen his back muscles from September 2001 until November 2001. During that time, Mr. Daly continued to experience pain in his upper right extremity and in October 2001 he also developed a hernia. Mr. Daly had surgery to remove the hernia and continued to seek medical treatment for the upper extremity. It was determined that the pain experienced in his extremity was attributed to his neck. He filed a claim for worker's compensation for those latter injuries; and another hearing was held. The ALJ denied compensation for those injuries, finding that they were not work related. It also made its award for the back injury final and found against permanent total disability. The Labor and Industrial Relations Commission(Commission) adopted and affirmed the decision. Mr. Daly appeals the Commission's decision to deny compensation for his neck, shoulder, and abdominal injuries and permanent total disability benefits.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

**Division Three holds:**

In his first point, Mr. Daly argues that the Commission erred in finding that his neck, shoulder, and abdominal injuries were not work related because medical expert testimony was adduced and not contradicted. At the time of Mr. Daly's injury, medical expert testimony that work was a substantial contributing factor in causing an injury supported a finding of compensability. The Commission may disregard expert testimony if the facts or another expert contradicts the testimony. Here, medical expert testimony was adduced that Mr. Daly's labor for Powell or his participation in the physical therapy program was a substantial contributing factor in causing Daly's injuries. No other expert testimony contradicted this opinion. The Commission, however, found that the injuries were not work related because the medical records did not report the work hardening program or work as the source of the injury. It also found that the neck injury was not work related because the onset was too remote from his employment. Because medical records are not required to report employment as the source of injury and the medical records did not report a source of injury, the Commission's finding against causation is not supported by the record. Additionally, because no competent evidence was adduced that the

onset of symptoms months after employment ended were too remote for employment to be a substantial and contributing factor, the Commission's finding against causation as to the neck injury (implicitly shoulder injury) is not supported by the record. Accordingly, the Commission erred in finding these injuries were not work related.

In his second and third points, Mr. Daly argues that the Commission erred in denying him disability benefits for these injuries and medical expenses. In his fourth point, Mr. Daly argues that the Commission erred in finding he was not permanently and totally disabled from his combined injuries. Because we have determined that the injuries to his neck (implicitly shoulder) and abdomen were compensable, we remand these issues to the Commission.

Therefore, we reverse the Commission's decision that the injuries to Mr. Daly's neck, shoulder, and abdominal injuries were not work related; and the combined injuries did not result in permanent total disability and remand for further proceedings. In all other respects, we affirm.

**Opinion by: Thomas H. Newton, Judge**

September 28, 2010

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