

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge
With Supplemental Opinion)

Injury No.: 05-105159

Employee: Winfred S. Caldwell, deceased
Dependents: Lynda Caldwell, widow; Samuel Caldwell, minor son
Employer: Delta Express, Inc.
Insurer: American Home Assurance
(TPA: AIG Claims Services, Inc.)
Date of Accident: August 29, 2005
Place and County of Accident: Indianapolis, Indiana

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by §287.480 RSMo. Pursuant to §286.090 RSMo, subsequent to reviewing the evidence and considering the entire record, the Commission modifies the award and decision of the administrative law judge dated March 17, 2008. The award and decision of Administrative Law Judge Carl W. Strange is attached and incorporated by this reference to the extent they are not inconsistent with this Final Award.

The instant case concerns a death benefits claim pursuant to §287.240 RSMo, and the following stipulated issues presented to the administrative law judge:

- (1) average weekly wage/death benefits rate;
- (2) status of dependents;
- (3) distribution of death benefits to dependents;
- (4) attorneys fees and costs;
- (5) mileage and expenses.

At the conclusion of trial, the administrative law judge issued a final death benefits award with appropriate findings of facts and conclusions of law as to all issues.

The applications for review filed with the Commission concerned one issue and one issue only, i.e., the calculation of the deceased employee's average weekly wage and resultant death benefits compensation rate for the dependents. The Commission finds that the award of the administrative law judge as to all remaining issues is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act.

Issue of Average Weekly Wage of Deceased Employee and Corresponding Death Benefits
Compensation Rate for Dependents

The facts were accurately recounted in the award issued by the administrative law judge and will only be referenced as needed in the instant award addressing the issue of average weekly wage.

As to this issue the Commission finds the deposition testimony of witness Theresa Carr, the most enlightening, explanatory, and credible.

Ms. Carr is the driver payroll clerk for employer; employer compensated the deceased employee with payments for services rendered based upon mileage driven, i.e., twenty-eight cents per mile as of the date of his death; also, Ms. Carr testified that the deceased employee received a "per diem" which she explained is a federally set amount that a driver is allowed to earn (emphasis added) and not be taxed; there were no restrictions imposed on the deceased employee concerning the use of the money designated "per diem" and no records were required to be kept by the employee; the amount designated to be "per diem" payment could be used as employee saw fit; the money payments designated to be "per diem" are non-taxable amounts; and the "per diem" amount was included in the gross wages paid the deceased employee in any pay period, reflecting the total gross earnings of the deceased employee based on the mileage driven for that particular pay period.

As explained by Ms. Carr during her testimony, assume the deceased employee earned gross wages of \$1372.00 in a pay period based on miles driven. If for the same pay period the non-taxable "per diem" amount totaled \$328.00, employer would report taxable earnings of \$1044.00 (\$1372.00 minus \$328.00). It is clear from Ms. Carr's testimony that employer paid the non-taxable "per diem" amounts to employee as a portion of the deceased employee's gross wages for services performed for the employer. Ms. Carr conceded that the "per diem" was "simply a part of those gross wages that was not taxable."

Section 287.250.2 RSMo, provides in pertinent part as follows:

For purposes of this section, the term 'gross wages' includes, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging or similar advance received from the employer,...Any wages paid to helpers or any money paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of his employment shall not be included in wages.

In the award issued by the administrative law judge, there was a finding by the administrative law judge that "per diem received by employees is also included when calculating gross wages." Although the administrative law judge made this finding the administrative law judge did not include the "per diem" amounts when calculating the gross wages and average weekly wage.

On appeal the employer contends that the "per diem" amounts are a special expense pursuant to §287.250.2 RSMo, and therefore should not be considered or included in calculating the average weekly wage and cites in support of this contention the case of *Grimes v. GAB Business Services, Inc.*, 988 S.W.2d 636 (Mo. App. 1999).

The Commission has reviewed *Grimes, supra*, and notes that the amounts designated as "per diem" in the *Grimes* case were clearly amounts above and beyond gross wages paid for services rendered and were further determined to be monies paid to the employee to cover expenses incurred because of the nature of the employment. These are not the facts in the instant case.

The Commission notes that the *Grimes* case, *supra*, deals with expenses and gross wages and properly holds that "any wages paid to helpers or any money paid by the employer to the employee to cover any special expense incurred by the employee because of the nature of his employment shall not be included in wages."

Simply stated amounts paid an employee as reimbursements for expenditures necessitated due to the employee's employment are not part of the employee's earnings for the purpose of calculating average weekly wage and corresponding compensation rates. In fact, in the instant case, Ms. Carr further testified that employees are reimbursed expenses upon production of receipts, which is a different accounting entry separate and distinct from the payments designated "per diem."

As stated by the appellate court in the *Grimes* case, *supra*, "It is ultimately the language of section 287.250.2 RSMo,...that controls."

The Commission also notes that the term “per diem” has various and sundry definitions: by the day; for each day; based on or calculated by the day; a monetary daily allowance, usually to cover expenses; or a daily fee. Black’s Law Dictionary 1157 (7th Edition 1999). Thus, by definition, the term can be used to “cover expenses,” but also has different meanings. Each case must be determined on its own set of facts.

Section 287.250.2 RSMo, defines the term “gross wages” as money payments for services rendered. These “per diem” payments were clearly gross wages representing money payments for services rendered based on mileage driven by the deceased employee. The fact that the amounts paid deceased employee designated as “per diem” were non-taxable amounts is not relevant in determining the deceased employee’s gross wages. The method of payment is in fact somewhat analogous to §287.252 RSMo, in cases where employers have established cafeteria plans and the legislature has clearly expressed its intent that a reduction in salary of any employee participating in such cafeteria plan shall not reduce the compensation amount used in calculating an employee’s compensation or wages for the purpose of any workers’ compensation claim in Missouri.

These amounts designated as “per diem,” clearly comprise gross wages as they were payments for services rendered, and there is no evidence whatsoever to support any conclusion or determination that these amounts designated as “per diem” payments represented monies to cover any special expenses incurred by the employee because of the nature of the employment. Ms Carr classified these payment amounts as non-taxable “earnings” allowed drivers. The sum total of the taxable earnings and the non-taxable earnings designated as “per diem” represented the exact amount owed the deceased employee based on mileage driven.

Accordingly, the Commission agrees that the amounts designated as per diem are to be included in calculating the deceased employee’s average weekly wage and, ultimately, the death benefits compensation rate for the dependents.

When these amounts are properly included, the average weekly wage of the deceased employee is \$703.82 which results in a death benefits rate for the dependents of \$469.21.

In conclusion the Commission modifies the award of the administrative law judge by determining that the average weekly wage of the deceased employee was \$703.82 and the corresponding death benefits rate for the dependents is \$469.21. The findings of fact and conclusions of law pertaining to all remaining issues are found to be supported by competent and substantial evidence and made in accordance with the Missouri Workers’ Compensation Act and are affirmed.

The Commission further approves and affirms the administrative law judge’s allowance of attorney’s fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 9th day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Winfred S. Caldwell, Deceased

Injury No. 05-105159

Dependents: Lynda Caldwell and Samuel Caldwell

Employer: Delta Express, Inc.

Additional Party: N/A

Insurer: American Home Assurance
(TPA: AIG Claims Services, Inc.)

Hearing Date: January 22, 2008

Checked by: CS/kh

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease? August 29, 2005
5. State location where accident occurred or occupational disease contracted: Indianapolis, Indiana
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted: Employee was attempting to disconnect the trailer from the cab and was ran over which resulted in his death.
12. Did accident or occupational disease cause death? Yes

13. Parts of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to date for temporary total disability: \$0.00
16. Value necessary medical aid paid to date by employer-insurer: \$0.00
17. Value necessary medical aid not furnished by employer-insurer: None
18. Employee's average weekly wage: \$524.93
19. Weekly compensation rate:
\$349.95 per week for death benefits
20. Method wages computation: Section 287.250 RSMo.
21. Amount of compensation payable: \$ 349.95 per week for death benefits commencing August 30, 2005 (See Findings).
22. Second Injury Fund liability: None
23. Future requirements awarded: \$349.95 per week for death benefits payable to the employee's conclusively presumed total dependents as specified in the findings of fact and rulings of law.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The compensation awarded to each dependent shall be subject to a lien in the amount of 25% of all payments hereunder in favor of their respective attorney for necessary legal services rendered to each dependent: Attorney Chris Weiss for Lynda Caldwell and Attorney Michael Moroni for Samuel Caldwell

FINDINGS OF FACT AND RULINGS OF LAW

On January 22, 2008, Gwen Caldwell, the mother and natural guardian of the employee's disabled minor child, Samuel Caldwell, appeared in person with Samuel Caldwell and by her attorney Michael Moroni on a hearing for a final award. Lynda Caldwell, the employee's spouse, also appeared in person and by her attorney Chris Weiss for the hearing. The employer-insurer was represented at the hearing by its attorney, Carl Kessinger. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about August 29, 2005, Delta Express, Inc. was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was insured by American Home Assurance with a third party administrator of AIG Claims Services, Inc.
2. On or about August 29, 2005, the employee was an employee of Delta Express, Inc. and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. On or about August 29, 2005, the employee sustained an accident during the course of his

employment that resulted in the employee's death.

4. The employer had notice of employee's accident and resulting death.
5. The employee's claim was filed within the time allowed by law.
6. The employee's injury and resulting death was medically causally related to his accident.
7. The employer-insurer paid \$5,000.00 in burial or funeral expenses.
8. The employer-insurer has death benefits in the amount of \$10,680.12 to the employee's spouse at the rate of \$242.73 per week from the day after the employee's death (August 30, 2005) through July 3, 2006; and the employer-insurer is entitled to a credit for all death benefits paid prior to the date of the award.

ISSUES:

1. Average Weekly Wage
2. Status of Dependents
3. Distribution of Death Benefits
4. Attorney Fees & Costs
5. Mileage & Expenses

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Spouse's Exhibits

- LCA. Payroll records of Winfred Caldwell
- LCB. Employer's Compilation of Winfred Caldwell's 2005 Payroll
- LCB1. Employer's Compilation of Winfred Caldwell's 2005 Payroll Including Per Diem
- LCD. Employer's Payroll Records for a Minimal Full-Time Truck Driver (Driver 1)
- LCE. Employer's Payroll Records for Truck Driver (Driver 2) working full time and making east coast runs only
- LCF. Employer's Compilation for Driver 2 Without Per Diem
- LCH. Employer's Payroll Records for a Part-Time Truck Driver (Driver 3)
- LCI. Payroll Records of Jerry Pittman for 2005
- LCJ. Compilation of Jerry Pittman's 2005 Income at Delta Express for 2005 Including Per Diem
- LCK. Death Certificate Dated August 29, 2005
- LCL. Accident Report Dated August 29, 2005
- LCM. Marriage Certificate Dated January 8, 2000
- LCN. Job Description
- LCO. Jerry Pittman's Peoplease Wage Statement dated 8/28/2004
- LCP. Jerry Pittman's Stipulation for September 28, 2006 injury

Son's Exhibits

- SCA. Deposition of Dr. James E. Palen
- SCB. Deposition of Ben Lanpher
- SCC. Deposition of Susan Shea
- SCD. Medical Records of Samuel Caldwell
- SCE. Certified Copy of Decree of Dissolution of Marriage of Winfred Caldwell and Gwen Caldwell
- SCF. Attorney Fee and Expense Statement
- SCG. Birth Certificate of Samuel Caldwell
- SCH. Summary of Expenses

SCI. Child Support printout

Employer-Insurer's Exhibits

- EI1. Certified Copy of Decree of Dissolution of Marriage of Winfred Caldwell and Gwen Caldwell
- EI2. Winfred Caldwell's Wage Statement with Summary
- EI3. Driver 1's Wage Statement With Summary
- EI4. Driver 2's Wage Statement With Summary
- EI5. Deposition of Dr. Richard Wetzel
- EI6. Deposition of Timothy Lalk
- EI7. Chaffee Schools Evaluation Report
- EI8. Deposition of Theresa Carr
- EI9. Child Support Lien and Release

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. Average Weekly Wage

In order to calculate the employee's correct average weekly wage, section 287.250 RSMo. must be applied. First, section 287.250.3 RSMo. requires that "If an employee is hired by the employer for less than the number of hours per week needed to be classified as a full-time or regular employee, benefits computed for purposes of this chapter for permanent partial disability, permanent total disability and death benefits shall be based upon the average weekly wage of a full-time or regular employee engaged by the employer to perform work of the same or similar nature and at the number of hours per week required by the employer to classify the employee as a full-time or regular employee, but such computation shall not be based on less than thirty hours per week." Additionally, section 287.250.2 RSMo. states that the term "gross wages" includes, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging or similar advance received from the employer."

Based on a thorough review of the evidence, it is clear that Winfred Caldwell ("employee") was not a full-time or regular employee. Thus, the death benefits that his dependents are entitled to should not be based on his actual wages, but "shall be based upon the average weekly wage of a full-time or regular employee". At the time of the hearing, the employee's spouse offered the testimony and payroll records of Jerry Pittman, a full-time employee, who worked for Delta Express, Inc. ("employer") at the time of the employee's death on August 29, 2005. The employer-insurer offered the payroll records of a minimum full-time employee as Employer-Insurer Exhibit 3. Based on the evidence and Exhibit LCA, the employee performed similar work to the employee identified in Employer-Insurer Exhibit 3. Thus, the employee's average weekly wage can be appropriately calculated based on the wages identified in Employer-Insurer Exhibit 3. As required by section 287.250.2 RSMo., per diem received by employees is also included when calculating gross wages.

First, section 287.250.1(4) RSMo. requires dividing by the wages earned for the thirteen calendar weeks prior to the injury in order to calculate the employee's average weekly wage. After reviewing the evidence, the full-time employee's earned wages for the thirteen prior calendar weeks prior to employee's death are as follows:

Week 1 (week of August 22, 2005):	\$542.01
Week 2 (week of August 15, 2005):	\$516.59
Week 3 (week of August 8, 2005):	\$ 0.00
Week 4 (week of August 1, 2005):	\$595.92
Week 5 (week of July 25, 2005):	\$698.68
Week 6 (week of July 18, 2005):	\$499.46
Week 7 (week of July 11, 2005):	\$367.00
Week 8 (week of July 4, 2005):	\$514.57

Week 9 (week of June 27, 2005):	\$ 0.00
Week 10 (week of June 20, 2005):	\$ 0.00
Week 11 (week of June 13, 2005):	\$504.06
Week 12 (week of June 6, 2005):	\$486.08
Week 13 (week of May 30, 2005):	<u>\$ 0.00</u>
Total:	\$4,724.37

Next, section 287.250.1(7) RSMo. requires that only the weeks where labor was performed and wages were paid are included in the calculation of the employee's average weekly wage. Based on the evidence, the week of May 30, 2005 (week 13) shall not be included in the calculation because the employee did not perform any labor since it was a vacation week and shall initially reduce the number of dividing weeks to twelve. Then, section 287.250.1(4) RSMo. provides that absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. After reviewing the evidence for the remaining prior twelve weeks, it should be noted that the employee did not perform any labor or earn any wages for weeks 3, 9 & 10. Thus, three additional weeks will not be included in the employee's average weekly wage calculation and shall reduce the number of dividing weeks to nine.

The employee's average weekly wage is therefore computed as follows: $\$4,724.37 \div 9 = \524.93 . Based on the employee's testimony, evidence and previously mentioned exhibits, I find that the employee's average weekly wage was \$524.93. Even if the parties argue that the formulas in section 287.240.1 do not correctly calculate employee's average weekly wage or that they have been not applied properly, I find that pursuant to section 287.240.4 the employee's fair and just average weekly wage was \$524.93. Therefore, the employee's rate of compensation for temporary total disability and permanent total disability is equal to \$349.95.

Issue 2. Status of Dependents

Based on the evidence submitted, I find that Winfred Caldwell and Gwen Caldwell were previously married, but their marriage was subsequently dissolved by a decree of dissolution on May 14, 1998. During their marriage, the Winfred Caldwell and Gwen Caldwell had two children, namely Steven Michael Caldwell born February 20, 1980 and Samuel Caldwell born October 29, 1985. After his divorce from Gwen Caldwell, the employee, Winfred Caldwell married Lynda Lorenz on January 4, 2000 and remained married living as husband and wife at the time of the employee's death on August 29, 2005. Further, the employee did not have any other dependents at the time of his death. As of the date of the hearing, Lynda Lorenz had not remarried and therefore, is a conclusively presumed total dependent under the provisions of Section 287.240 (4) RSMo.

Under Section 287.240 (4), (b), RSMo., the phrase "conclusively presumed total dependents" is also defined to include "a natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of 18 years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for their support or with whom he, she, or they are living at the time of the death of the parent." After reviewing all of the evidence, it is clear that Samuel Caldwell is physically and/or mentally incapacitated from earning a wage in the open labor market and was dependent upon the employee for support on August 29, 2005. At the time of the hearing, the employer-insurer argued that Samuel Caldwell was not physically or mentally incapacitated from wage earning because he could earn a wage at a Sheltered Workshop. Although it is a creative argument, a Sheltered Workshop is a controlled environment where disabled individual's compensation is typically limited to under \$1.00 per hour. I am not convinced that any compensation received from a Sheltered Workshop qualifies as wage earning for Chapter 287 RSMo. purposes. Further, application of this provision would lead to an absurd result. Consequently, I further find that Samuel Caldwell is a conclusively presumed total dependent of Winfred Caldwell as provided under Section 287.240 (4) RSMo.

With regard to Steven Caldwell, he was emancipated and no longer a dependent of the employee at the time of his death. I therefore find that Steven Caldwell does not now qualify as a dependent of the employee under Section 287.240 (4) RSMo., and therefore is not eligible to receive any death benefits.

Other than Lynda Lorenz and Samuel Caldwell, I further find that Winfred Caldwell was not survived by any

other dependents, either total or partial.

Issue 3. Nature and Extent of Disability

Under Section 287.240 (4), RSMo, any death benefits are payable to conclusively presumed total dependents “to the exclusion of other total dependents.” As previously stipulated, the employee's average weekly wage qualifies his dependents for a rate of compensation for death benefits equal to \$349.95 per week. Pursuant to Section 287.240 RSMo., the employer-insurer is therefore directed to pay the sum of \$349.95 per week to the conclusively presumed total dependents of the deceased employee commencing on August 30, 2005, and continuing until all of the conclusively presumed total dependents have lost their status as dependents as provided below. At the time of the hearing on January 22, 2008, the employer-insurer owed accrued death benefits to the conclusively presumed total dependents in the total amount of 125 weeks at a rate of 349.95 per week. Consequently, the employer-insured owes each conclusively presumed total dependent a total of \$21,871.88 ($\$43,743.75 / 2 = \$21,871.88$) up through the date of the hearing of January 22, 2008. After applying the credit of the amount paid to the employee's spouse and since these amounts have already accrued, the employer-insurer is directed to pay to Samuel Caldwell the amount of \$21,871.88 and to Lynda Lorenz the amount of \$11,191.76 for death benefits due through January 22, 2008.

The payment of weekly death benefits, either prior to or subsequent to the date of this award, shall be construed to be payments in equal shares to each of the conclusively presumed total dependents so qualified at the time each payment accrues; provided, however, that pursuant to Section 287.240 (5) RSMo., the share of Samuel Caldwell shall be paid to Gwen Caldwell, as his mother and natural guardian, to be used for his support, maintenance and education. This portion of the award regarding the payment of Samuel's share of death benefits to his mother and natural guardian, Gwen Caldwell, shall be subject to review and modification by the Commission as provided in Section 287.240 (5).

The ongoing status of Samuel Caldwell, as a conclusively presumed total dependent, shall be determined under the provision of Section 287.240 (4) (b) RSMo., which provides as follows:

The payment of death benefits to a child or other dependents as provided in this paragraph shall cease when the dependent dies, attains the age of 18 years, or becomes physically and mentally capable of wage earning over that age, or until 22 years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution or if at age 18 years of age, the dependent child is a member of the armed forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full time attendance at a fully accredited educational institution to commence prior to 23 years of age, and immediately upon cessation of his active duty in the armed forces, unless there are other total dependents entitled to the death benefit under this chapter.

Lynda Lorenz's ongoing status as a conclusively presumed total dependent shall be determined in accordance with the provisions of Section 287.240 (4) (a). This section provides that the death payment to Lynda Lorenz, as widow, shall cease upon her death or remarriage. In addition to weekly death benefits, Section 287.240 also provides that “in the event of remarriage a lump sum payment equal in amount to the benefits due for a period of two years shall be paid to the widow or widower.” Pursuant to this provision, in the event Lynda Lorenz shall remarry, the employer shall also make a remarriage lump sum payment to Lynda Lorenz equal to 104 times the weekly death benefit of \$349.95, for a total payment of \$36,394.80.

As provided under Section 287.240, the payment of compensation by the employer-insurer in accordance with this order shall discharge the employer-insurer from all further obligations as to compensation payable under this chapter. All death benefits shall be paid in installments in the same manner as provided for disability compensation. Dependents receiving death benefits under the terms of this award shall annually report to the Division as to the marital status of the widow and the age and physical or mental condition of the dependent child.

Issue 4. Attorney's Fees & Costs.

Section 287.560 RSMo. states that “if the division or the commission determines that any proceedings have

been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them. Applying these standards, I find that the widow, dependent child and the employer-insurer had reasonable grounds for prosecuting and defending each claim on the disputed issues, and therefore no party is entitled to an award of costs or attorney's fees under section 287.560 RSMo. All requests for attorney's fees and costs must therefore be denied.

Issue 5. Mileage and Expenses

Section 287.140 RSMo. requires that "when an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses". Section 287.020.1 RSMo states that "any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable". Exhibit SCH outlines the requested reimbursement of expenses and mileage. After reviewing the evidence, I find that Samuel Caldwell is entitled to recover the cost of his mileage and parking fees. Consequently, the employer-insurer is directed to pay Samuel Caldwell the amount of \$301.66 (641 miles X .455 + 10.00 = \$301.66). All other requests for reimbursement of expenses are hereby denied.

ATTORNEY'S FEE:

Attorney Chris Weiss for Lynda Caldwell and Attorney Michael Moroni for Samuel Caldwell are allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to their respective client. The amount of each attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Mr. Jeff Buker
Director
Division of Workers' Compensation