

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

Injury No.: 05-027578

Employee: David Callaway  
Employer: Brentwood City Hall  
Insurer: St. Louis Area Insurance Trust  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: March 12, 2005  
Place and County of Accident: St. Louis County, Missouri

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 12, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued December 12, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4<sup>th</sup> day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: David Callaway

Injury No.: 05-027578

Dependents: N/A  
Employer: Brentwood City Hall  
Additional Party: Second Injury Fund  
Insurer: St. Louis Area Insurance Trust  
Hearing Date: September 18, 2006

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

Checked by: JED:tr

### 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: March 12, 2005
5. State location where accident occurred or occupational disease was contracted: N/A
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: N/A
12. Did accident or occupational disease cause death? N/A 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: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: David Callaway Injury No.: 05-027578

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$675.90/\$354.05
20. Method wages computation: Stipulated.

### COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: N/A

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

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

Employee:	David Callaway	Injury No.: 05-027578
Dependents:	N/A	Before the <b>Division of Workers'</b> <b>Compensation</b>
Employer:	Brentwood City Hall	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	St. Louis Area Insurance Trust	Checked by: JED:tr

This case involves a disputed injury resulting to Claimant with the reported accident date of March 12, 2005. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund ("SIF") is a party to this claim. All parties are represented by Counsel. No benefits were paid by Employer.

### Issues for Trial

1. accident;
2. whether injury arose out of and in the course of employment;
3. medical causation;
4. liability for unpaid medical expenses;

5. liability for future medical expenses;
6. nature and extent of temporary total disability;
7. nature and extent of permanent disability;
8. liability of the SIF.

## FINDINGS OF FACT

### **Dispositive Evidence**

#### *Accident*

The incident at issue occurred is alleged to have occurred on March 12, 2005 at a service station on Brentwood Boulevard in the City of Brentwood, Missouri. On that date Claimant went to the station to follow-up on a police complaint.

Kelvin Pittman, the Assistant Manager of the Station, was working at that time. While Claimant was still at the Station, Officer Bernard Shultz arrived. Immediately prior to the incident, both Mr. Pittman and Officer Shultz were behind the service counter in the area reserved for the cashier. Claimant, on the other hand, was standing directly in front of the service counter in the area utilized by customers to pay for their purchases.

Claimant testified that, while standing in front of the counter, he turned to his left and took a step with his left foot. He stated that, when he did so, his foot slipped in a forward direction. He came to an abrupt stop and then fell forward onto the floor. At the time he took the step, Claimant stated he did not hear or feel anything involving his hip. Nonetheless, when he was lying on the ground, he felt pain in his left hip and groin.

According to Mr. Pittman, Claimant poured himself a cup of coffee and then stood opposite of him in front of the counter. (Exhibit A-I (x), 11:13-14.) Mr. Pittman testified that Claimant placed his coffee on the counter and, while talking to Mr. Pittman and Officer Shultz, pivoted to the left to put a napkin into the trash can behind him. (Exhibit A-I (x), 14:13-15, 14:18-19, 16:4-6, 43:10-11.) After pivoting approximately a quarter of a rotation to the left, Mr. Pittman saw Claimant fall to the ground. (Exhibit A-I (x), 14:15-16, 16:4-6, 16:13-14.) Mr. Pittman stated that Claimant fell off to the side, landing on the left side of his body. (Exhibit A-I (x), 17:11-24.)

Mr. Pittman stated that Claimant did not tell him what caused the fall. (Exhibit A-I (x), 19:15-21.) Mr. Pittman testified that, to his knowledge, there was nothing on the floor that would have caused Claimant to fall. (Exhibit A-I (x), 15:17-20.) The floor was in a clean condition and good repair. (Exhibit A-I (x), 22:7-9, 22:15-16.) Mr. Pittman stated that he performed a walk-through of the store at least an hour and a half before the fall and did not notice anything slippery or sticky on the floor. When Mr. Pittman checked the floor after the fall, it was in good condition. (Exhibit A-I (x), 22:10-12.)

Officer Shultz confirmed the position of himself, Mr. Pittman, and Claimant at the time of the incident. (Exhibit A-I (u), 11:2-7, 11:11-20, 70:19-24, 71:1-4.) He estimated that he was seven to eight feet from Claimant. (Exhibit A-I (u), 10:21-23.) Although Officer Schultz had a clear view of Claimant, he could only see him from the waist up. (Exhibit A-I (u), 12:8-15.) Officer Shultz testified that, when the incident occurred, Officer Schultz was looking to his left. (Exhibit A-I (u), 12:16-20.) However, Claimant was in his peripheral vision. (Exhibit A-I (u), 12:21-22.) Officer Schultz testified that saw Claimant turn to his left and then fall to the ground. (Exhibit A-I (u), 14:1-6.) After Claimant fell, he told Officer Shultz that his hip went out. (Exhibit A-I (u), 18:3-6, 48:5-9, 48:15.)

Officer Schultz testified that, prior to the incident, he had been in the area where Claimant was standing. (Exhibit A-I (u), 20:12-16, 63:6-18.) He neither recalled seeing anything on the floor nor the floor being slippery or slick in that area. (Exhibit A-I (u), 20:17-22.)

The Emergency Medical Technicians from the Richmond Heights Fire Department responded to the incident and recorded the following version of events:

"P[atien]t stated his leg gave out causing him to fall the floor, no [loss of consciousness]. Patient found conscious/alert, lying on the floor. [Complained of] dislocation pain to left hip. States was standing, sudden onset of pain, falling to floor. (Exhibit A-I (c).)

#### HISTORY OF PRESENT ILLNESS:

This is a 50-year-old white male who states he was standing, pivoted with his left foot to turn left and he felt a popping, his left hip gave out and he fell down to the ground with excruciating 10/10 pain.

The patient had a left hip replacement in September 2004 on that side.

No pain anywhere else. He did not hurt himself when he fell. Patient is still having excruciating pain. He received 4 of Morphine and 10 of Reglan IV by EMS en route which has not helped him at all." (Exhibit A-I (s), Emergency Department Note, pg. 1.)

#### Treatment Records

The contemporaneous medical records in this matter reflect:

- (1) Claimant told the Emergency Medical Technicians that he was standing, had a sudden onset of pain, and then his leg gave out and he fell to the floor. (Exhibit A-I (c).)
- (2) Claimant stated to Dr. Scott Soerries, in the Emergency Room, that he was standing, pivoted with his left foot to turn left, felt a popping, and then his left hip gave out and he fell to the ground. (Exhibit A-I (s), Emergency Department Note, pg. 1.)
- (3) The Emergency Department Record documented Claimant's statement that his left hip suddenly gave out, he fell to the ground, and was unable to get up. (Exhibit A-I (s), Emergency Department Record.)
- (4) The Interdisciplinary History & Progress Notes stated Claimant twisted left hip, felt a pop, and then experienced pain. (Exhibit A-I (s), Interdisciplinary History & Progress Notes.)
- (5) The Pre-Sedation Physician Assessment showed Claimant, Awhile pivoting, felt pain[,] popping[,] and fell in pain. (Exhibit A-I (s), Pre-Sedation Position Assessment.)
- (6) Another record from St. Mary's Health Center recorded that Claimant was standing gas station, pivot on left foot and left hip dislocated. (Exhibit A-I (s).)
- (7) Dr. Gregory Galakatos, in the Operative Report, documented that Claimant was standing, twisted his leg, felt a pop, was unable to bear weight, and had pain in his left hip. (Exhibit A-I (s), Operative Report, pg. 1.)

Claimant filed a Motion in Limine to exclude the foregoing documentary evidence containing patient histories that are inconsistent with the allegation of a work related injury. The Motion is denied. First, like expert testimony that is poorly qualified or founded, the correct evidentiary treatment here is to allow the fact finder to assign more or less weight to its probative value rather than exclude the testimony altogether. Second, contemporaneous records are an extremely reliable convention of proof in medical cases; no authentication issues or provider negligence were raised. Third, nothing else in the record is offered as corroborative of the argument that Claimant was incoherent or incompetent in other respects; none of the independent providers above (seven) noted same. Fourth, the request for exclusion of "any and all statements" is over broad. The Motion also bears consideration as to the foundation laid for acceptable levels of on-the-job medication and its consequence on accident causation.

#### Non-Duty Disability Pension Request

On July 5, 2005, Claimant submitted a request to the Brentwood Police and Fire Pension Board (board for

pension benefits). (Er. Exhibit 2, Correspondence of David Callaway dated July 5, 2005.) In his correspondence requesting pension benefits, he asked to be granted a *non-service related* total disability retirement. (*Id.*) (emphasis added).

Dr. Sheridan advised the Board, in a correspondence dated June 23, 2005, that Claimant was not able, in his opinion, to safely and effectively participate in the duties described as necessary for a police officer. (Exhibit A-I (s), Correspondence of Dr. John Sheridan dated June 23, 2005.) Dr. Sheridan further opined that Claimant was at risk for dislocating his hip during certain physical activities and was not able to effectively participate in all of the physical activities due to his several disabilities. (*Id.*)

In determining whether Claimant's request should be granted, the Board had him evaluated by Dr. Paul Lux and Dr. Joseph Ritchie. Dr. Lux concluded Claimant was permanently disabled from his ability to perform his duties as a police officer. (Exhibit A-I (l).) Dr. Ritchie, on the other hand, found as follows:

Opinion: Claimant has been a police officer for a very long period of time. The duties of a police officer are well outlined in the accompanying documents and there is no question that there are restrictions of all of the duties required by a police officer. In other words, there is a significant amount of police activity that he could do and that would consist of investigation and certainly any of the administrative components of his job. The part of the job that I would be reluctant to have him go back to would be patrol work and chasing after individuals. Those activities and items would be barred from a reasonable activity level in fear of concerns for his total hip. Therefore, I do feel he could go back to many of the job duties of a police officer if there were restrictions that were available for him.

(Exhibit A-I (o).) Upon consideration, the Board granted Claimant's request for a *non-service disability* pension on January 5, 2006. (Er. Exhibit 2, Correspondence of David Callaway dated January 5, 2006.)

### **Prior Left Hip Replacement**

Claimant has a serious prior condition with regard to his left hip. The medical records show that Claimant has had a long history of left hip pain. On November 26, 2003, Dr. John Sheridan noted Claimant had degenerative changes in his left hip. (Exhibit A-I (s), November 26, 2003.) Claimant was ultimately diagnosed with osteoarthritis and a component of avascular necrosis. (Exhibit A-I (s), December 1, 2003.) Claimant presented to Dr. John Clohisy for an evaluation of his mild anterior groin pain on January 12, 2004. (Exhibit A-I (s), Records of Dr. John Clohisy dated January 12, 2004.) X-rays revealed early osteoarthritis in the left hip. (*Id.*) Claimant also demonstrated a profound reactive acetabular rim and a head-neck offset abnormality. (*Id.*) Dr. Clohisy's diagnosis of Claimant's condition was left hip impingement with early osteoarthritis. (*Id.*) Claimant was given left hip joint injections in June of 2004 and August of 2004. (Exhibit A-I (s), Records of Dr. John Clohisy dated June 16, 2004, August 17, 2004.)

When conservative treatment failed, Claimant decided to have surgery. (Exhibit A-I (s), September 9, 2004.) Dr. Sheridan performed a left total hip arthroplasty on September 28, 2004. (Exhibit A-I (s), Operative Report dated September 28, 2004.) After undergoing surgery, Claimant began therapy. (Exhibit A-I (s).) On December 30, 2004, Claimant's hip was totally asymptomatic and he was released to return to normal activities. (Exhibit A-I (s), December 30, 2004.) Claimant returned to full duty at work in January of 2005. He testified that, after returning to work, he did not have any on-going symptoms or limitations involving his left hip. He was able to perform all of his job.

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OPINION EVIDENCE

Dr. Paul Lux

Dr. Paul Lux, an orthopaedic surgeon specializing in hip and knee replacements, saw Claimant for an Independent Medical Examination on October 11, 2005. (Exhibit A-I (m), 7:5-10, 11:3-6.) Dr. Lux performed the Independent Medical Examination on behalf of the Board in connection to Claimant's request for pension benefits. (Exhibit A-I (m), 10:5-20.)

According to Dr. Lux, under five percent of total hip replacement patients experience a post operative dislocation of the replaced hip. (Exhibit A-I (m), 15:24-25,16:1-2, 32:18-22.) Further, only one of the four or five individuals who experience a post operative dislocation will suffer an anterior dislocation. (Exhibit A-I (m), 16:3-8, 36:2-7.) Dr. Lux opined that the individuals who experience an anterior dislocation usually do so due to a catastrophic event. (Exhibit A-I (m), 16:16-21.) Dr. Lux also explained that an individual is at risk of dislocating his or her hip by planting a leg and rotating his or her body. (Exhibit A-I (m), 26:13-20, 27:14-24.)

In examining Claimant, Dr. Lux discussed the history of Claimant's hip dislocation. Claimant told Dr. Lux that he believed his foot had slipped twelve inches before he fell. (Exhibit A-I (m), 20:20 5, 21:1-9.) Dr. Lux felt that, if Claimant slipped and fell, the occurrence would have been a catastrophic event that could have resulted in an anterior dislocation. (Exhibit A-I (m), 21:5-9.) However, he also testified that an anterior dislocation could have occurred if Claimant planted his foot and externally rotated his body. (Exhibit A-I (m), 26:13-20, 27:14-20.) He admitted the St. Mary's Health Center records, which described Claimant twisting or pivoting on his left foot, was consistent with the type of external rotation required to cause an anterior dislocation. (Exhibit A-I (m), 29:5-25, 30:1.5.)

Dr. Lux testified that Claimant, due to his postoperative hip dislocation on March 12, 2005, was more likely to have another dislocation than he would have been had the hip dislocation never occurred. (Exhibit A-I (m), 17:13-17.) Dr. Lux opined that Claimant now has a fifty percent chance of re-dislocating his hip. (Exhibit A-I (m), 32:18-22, 36:8-13.)

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Dr. Joseph Ritchie

Dr. Joseph Ritchie, an orthopedic surgeon, saw Claimant for an Independent Medical Examination on behalf of the Board on December 16, 2005. (Exhibit A-I (n), 4:8-10, 5:4-16, 6:2-4.) During the examination, Claimant told Dr. Ritchie that he had undergone a hip replacement in 2004, had been doing well post-operatively, and had suffered a hip dislocation after he slipped and fell while working. (Exhibit A-I (n), 7:11-16.)

Dr. Ritchie diagnosed Claimant with a total hip replacement and subsequent dislocation of the hip. (Exhibit A-I (n), 9:13-15.) Dr. Ritchie did not observe a significant amount of continued problems at the time of the exam. (Exhibit A-I (n), 9:17-18.) Dr. Ritchie opined that of the individuals who have received a total hip replacement, between five and ten percent of them will experience a dislocation. (Exhibit A-I (n), 30:13-24, 31:1-8.) One to two percent of the dislocations will be anterior dislocations. (Exhibit A-I (n), 31:18-24, 32:1-2.) He explained that a hip could dislocate due to malposition, trauma, injury, or putting the body into the wrong position. (Exhibit A-I (n), 13:5-24.) Extremes of motion, including extremes of flexion or rotation, could also result in a dislocation. (Exhibit A-I (n), 14:7-8.) Dr. Ritchie testified that the biggest culprit of hip dislocations were trauma, bad position, and certain movements. (Exhibit A-I (n), 14:16-18.)

Recognizing that Claimant's version of the accident differs from the histories given in the medical records, Dr. Ritchie was unable to determine the exact mechanism of the hip dislocation. (Exhibit A-I (n), 14:21-24, 15:1-23.) Dr. Ritchie agreed that Claimant's hip could have dislocated if he planted his foot, caught himself, and rotated his body. (Exhibit A-I (n), 27:10-14.) He further testified that internal and external rotation are the motions that pose the greatest risk of hip dislocation. (Exhibit A-I (n), 16:13-15.) Dr. Ritchie stated that, when patients rotate their hips, they have to be very careful about turning their feet with them. (Exhibit A-I (n), 17:21-24.) This is a precaution that must be taken regardless of the number of years that have passed since the surgery. (Exhibit A-I

(n), 18:1-8.) Total hip replacement patients can no longer make a complete turn and rotate at the hip. (Exhibit A-I (n), 17:24, 18:1.)

Dr. Ritchie testified that there is a twenty to twenty-five percent chance that Claimant will re-dislocate his hip. (Exhibit A-I (n), 24:16, 24:18-19.) He was also of the opinion that there is a thirty to forty percent chance of a dislocation after a previous dislocation. (Exhibit A-I (n), 26:1-15.)

Dr. Raymond Cohen

Dr. Cohen, a neurologist, saw Claimant on May 9, 2006. With regard to the incident on March 12, 2005, Claimant told Dr. Cohen that he injured himself when his left foot slipped on something and fell forward to the floor. (Exhibit A-I (j).) However, Dr. Cohen acknowledged Claimant's version of events differed from the history he provided to the medical personnel at St. Mary's Health Center. (Exhibit A-I (k), 56:8-24, 57:1-25, 59:3-6.) Dr. Cohen further admitted the separate histories provided to the medical personnel at St. Mary's Health Center were consistent and the mechanism of injury described in the histories could result in the anterior dislocation of Claimant's hip. Exhibit A-I (k), 59:7-14.)

Dr. Cohen diagnosed Claimant with traumatic left hip dislocation with surgery for closed reduction, aggravation of lumbar degenerative spine disease, and aggravation of left knee osteoarthritis. (Exhibit A-I (k), 32:18-24.) These diagnoses were each related to the reported accident. Dr. Cohen opined that Claimant had an eighty percent permanent partial disability at the left hip, forty-five percent of which pre-existed the incident on March 12, 2005. (Exhibit A-I (k), 33:7-13.) Dr. Cohen testified that individuals having undergone total hip replacements had a five percent chance of dislocating their replaced hip. (Exhibit A-I (k), 50:15-19.) He stated that only one percent of these individuals will experience an anterior hip dislocation. (Exhibit A-I (k), 50:23-25, 51:1-5.) Dr. Cohen estimated that, since Claimant had experienced a hip dislocation, he now has a forty to fifty percent chance of re-dislocating his left hip. (Exhibit A-I (k), 11:20-25, 12:1-13, 52:8-14.)

## RULINGS OF LAW

### Applicable Law

Under the Missouri workers' compensation law, the employee has the burden of proving, by a preponderance of the evidence, that the injury arose out of and in the course of his or her employment. *Gardner v. Contract Freighters, Inc.*, 165 S.W.3d 242, 245 (Mo. App. S.D. 2005). An injury is deemed to have arisen out of and in the course of the employment only if:

- (a) It is reasonably apparent, upon consideration of all of the circumstances, that the employment is a substantial factor in causing the injury; and
- (b) It can be seen to have followed as a natural incident of the work;
- (c) It can be fairly traced to the employment as a proximate cause; and
- (d) 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 normal nonemployment life[.]

Section 287.020.3 RSMo (2000).

The workers' compensation law does not cover accidents caused by conditions entirely idiopathic in nature. *DeVille v. Hiland Dairy Co.*, 157 S.W.3d 284, 288 (Mo. App. S.D. 2005). Thus, injuries on the job, resulting from an idiopathic condition peculiar to the employee, are not covered. *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852, 854 (Mo. banc 1999). This follows because Section 278.020.3(2)(d) states that to be compensable, the injury cannot come from a hazard or risk unrelated to the employment. *DeVille*, 157 S.W.3d at 288. Idiopathic conditions are "peculiar to the individual" or innate. *Kasl*, 984 S.W.2d at 854.

Here, Claimant alleges the dislocation occurred when he slipped on something and fell. Employer maintains Claimant did not slip and fall, but, instead, dislocated his hip when he planted his left foot, pivoted, and, thereby, externally rotated his hip. The weight of the evidence suggests Claimant's preexisting left hip condition, and pre-disposition for dislocations, the injury was idiopathic in nature. The only evidence that Claimant may have slipped and fell came from his testimony and the history he provided to medical professionals after his initial treatment.

**Accident**

1. Claimant's account at trial of the reported injury lacked an accident mechanism; his patient histories to multiple providers do not suggest an accident. Insufficient scientific evidence and no discernible observations in the treatment record, or accident reports, were offered to support the theory that a Claimant under the influence of strong medication that prevented him from accurately reporting an accident mechanism.
2. Neither of two witnesses observed a defect of the floor surface or other event that may be characterized as the basis for an accident mechanism.
3. No emergency records, or treatment records, were offered in evidence that tend to prove the occurrence of accident or corroborate Claimant's account of a slip and fall accident.

**Medical Causation**

4. Claimant had the burden of showing that his condition was caused by a hazard or risk related to his employment as a police officer. Here, the evidence demonstrated the anterior hip dislocation was the result of an idiopathic condition and, consequently, was unrelated to his employment. Due to his total hip replacement, Claimant was at risk for dislocating his hip. Moreover, external rotation is one of the motions that poses the greatest risk of hip dislocation.
5. All experts testified that a probability existed for the hip dislocation to occur as the result of a plant and twist of the hip, status post-complete hip replacement. Dr. Lux and Dr. Ritchie's opinions that the anterior dislocation could also happen from a traumatic slip and fall is uncorroborated by independent facts of the alleged accident scene or the contemporaneous treatment record.

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6. Claimant's admissions to providers and application for a non-duty disability pension from Employer are inconsistent with an allegation of a work related injury.

**Conclusion**

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain his burden of proof. Claim denied. The other issues are moot.

Date: \_\_\_\_\_

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

Joseph E. Denigan  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

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Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*

Employee: David Callaway

Injury No.:

05-027578