

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

Injury No.: 04-055525

Employee: George Gremminger  
Employer: Quality Carriers Incorporated (Settled)  
Insurer: Zurich North America Insurance Co. (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 §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 April 22, 2008.

#### Preliminaries

The issues stipulated in dispute at trial were accident, medical causation, and Second Injury Fund liability.

The administrative law judge determined and concluded that competent and substantial evidence supported a finding of 47% permanent partial disability of the left eye as a result of the February 17, 2004, work-related accident. The administrative law judge found the Second Injury Fund liable for permanent partial enhancement pursuant to §287.220 RSMo as follows: a pre-existing 15% permanent partial disability of the body as a whole referable to the lumbar spine and a pre-existing 15% permanent partial disability of the body as a whole referable to the heart/cardiovascular/coronary artery disease, resulting in a 15% load factor due to the synergistic effect from the combination of employee's primary injury along with employee's pre-existing lumbar and heart conditions.

Employee filed an Application for Review with the Commission alleging the administrative law judge's award was erroneous because competent and substantial evidence supported an award of permanent total disability against the Second Injury Fund in lieu of an award of permanent partial enhancement.

The Second Injury Fund filed an Application for Review with the Commission arguing the award of permanent partial disability against the Second Injury Fund was not supported by competent and substantial evidence and was against the overwhelming weight of the evidence.

For the reasons set forth in this award and decision, the Commission modifies the administrative law judge's award, hereby concluding employee is entitled to permanent total disability against the Second Injury Fund.

#### Summary of Facts

The findings of fact and stipulations of the parties were recounted in the award of the administrative law

judge; therefore, the pertinent facts will merely be summarized below.

Employee worked as a truck driver for employer, beginning January 2004. As a part of employee's duties, he was required to load and unload, as well as climb a ladder to the top of the truck to hook up equipment. Employee testified that it was physically difficult given his size and lung condition for him to climb the ladder and hook up equipment. Employee was physically exhausted after climbing the ladder. Employee testified that he was injured while working for employer on February 17, 2004. On that day, after climbing the ladder, employee felt stinging and fluttering in his left eye. Employee noticed immediate loss of vision, testifying that it looked like an eyelash was lying across his eye. Employee's son was working with him and informed employee that his eye was red. Employee believed that he had broken a blood vessel. Employee called his supervisor and informed him of what happened. Employee testified that his condition continued to get worse and within a week, he experienced almost complete loss of vision in his left eye.

Employee continued to work for employer until June 2004. At that point, employee did not feel it was safe to continue working as a truck driver given his vision problems. Employee testified that his loss of vision was affecting his driving. Employee had difficulty avoiding objects and vehicles and backed into items several times. Employee was sent to Carolina Eye Care for a vision evaluation by employer and the notes indicated a complete loss of vision in employee's left eye. Employee testified that he was told by the doctors that there was nothing they could do for his loss of vision. Employee was diagnosed with near total vision loss of the left eye most likely due to central retinal artery occlusion in May 2004.

Employee testified that he did not have any vision problems prior to February 2004. Employee testified that he had prior health conditions including sleep apnea, COPD, congestive heart failure, arthritis, low back pain, and carpal tunnel syndrome; and had a history of myocardial infarction. Employee underwent a right carpal tunnel release in March of 1997 and left carpal tunnel release in April 1997. Employee was diagnosed with congestive heart failure, chronic obstructive pulmonary disease, history of myocardial infarction and obesity in 1999. Employee was diagnosed with severe obstructive sleep apnea, arthritis, asthma, coronary artery disease treated with stent and hypertension in May of 2002. Employee was treated several times for lower back pain. Employee sought treatment for pain management in December 2001 to treat his lower back complaints. Employee was diagnosed with mechanical low back, morbid obesity, hypertension, COPD and degenerative joint disease. Employee was placed on pain medication and underwent an epidural steroid injection in April of 2002.

Employee testified that up and until February 17, 2004, he could climb stairs, but it was difficult to climb more than twelve at a time; he could stand for 10-15 minutes before back pain would require him to sit down; walk for 10 minutes before his back would give out; and lift between 25-30 lbs., 10 lbs. repetitively. Prior to February 2004, employee needed to change positions frequently to relieve his back pain and missed work on occasion due to his lung, back and other medical conditions. Employee testified that his back would give out on occasion causing him to be out of work for approximately a week or two at a time. Employee also felt constantly tired due to his sleep apnea condition and would fall asleep while driving. Employee testified that he had several accidents as a result. Employee testified that as long as he was able to use his C-pap machine, he was able to control his sleep apnea and get sleep. Employee testified that prior to February 2004, he experienced carpal tunnel symptoms, including numbness. Employee testified that his hands would fall asleep while driving his truck. Employee also noticed decreased strength in his hands following his carpal tunnel releases.

In addition, employee took medication for his COPD, congestive heart failure, low back pain, and sleep apnea. Employee testified that the medications made him drowsy and affected his concentration. Employee found that changes in weather, extreme cold or heat, affected his condition as well.

Employee settled his February 17, 2004, injury claim with employer/insurer for 17.5% permanent partial

disability of the left eye. Employee also had prior workers' compensation claims in which he entered into settlement agreements. With respect to employee's August 9, 2003 injury claim, employee settled with employer/insurer for 15% permanent partial disability to the body as a whole referable to the lumbar spine and with the Second Injury Fund for 15% permanent partial disability of the body as a whole for employee's pre-existing cardiovascular/heart condition. With respect to employee's February 21, 1997 injury claim, employee settled with employer/insurer for 15% permanent partial disability of each wrist; and with the Second Injury Fund for 15% permanent partial disability for the combination of employee's wrists, 15% permanent partial disability of the body as a whole for employee's heart condition and 12½% permanent partial disability for employee's back condition. With respect to employee's 1993 injury claim, employee settled with employer/insurer for 5% permanent partial disability to the body as a whole referable to the left knee.

### *Expert Opinions*

Dr. David Peebles testified on behalf of employer/insurer. Dr. Peebles evaluated employee on May 12, 2006. Dr. Peebles diagnosed employee with left central retinal artery occlusion in a setting of severe left carotid occlusive disease and multiple vascular risk factors. Dr. Peebles stated that employee's extensive risk factors included hypertension, coronary artery disease, hypercholesterolemia, sleep apnea, morbid obesity and cigarette use. Dr. Peebles opined employee was a stroke waiting to happen. Dr. Peebles did not believe employee's central retinal artery occlusion was related to employee's work incident on February 17, 2004. Dr. Peebles admitted that he did not review all of employee's medical records regarding his eye condition prior to rendering his opinion. Dr. Peebles did not review any records from Barnes Retina Institute, Dr. Englebrecht, Clarkson Eye Center, Carolina Eye Center, Dr. Kornfeld, Dr. Ellen Brogan, St. Anthony's Medical Center, Mercy Medical Group, Dr. Saloma, Dr. Chin or Dr. David.

Dr. Raymond Cohen testified on behalf of employee. Dr. Cohen reviewed employee's medical records and examined employee on December 1, 2005. Dr. Cohen noted that employee had pre-existing conditions which included chronic obstructive pulmonary disease and asthma, sleep apnea, coronary artery disease, spinal arthritis along with spinal stenosis with chronic lumbar strain/sprain and myalgia. Dr. Cohen noted that employee continued to have significant ongoing low back pain, and at times, could not get out of bed because of the pain. Employee was unable to bend because of his back condition and could not stand for more than ten minutes. Employee was on multiple medications for his numerous medical conditions.

With respect to employee's primary injury, Dr. Cohen diagnosed employee with an ocular infarction with fixed deficit in the left eye causing horizontal upper visual field loss due to excessive work-related stress. Dr. Cohen offered his opinion as to causation regarding the primary injury. Dr. Cohen opined that employee's ocular infarction was a direct result of his work and that the work was a substantial factor in employee's disability. Dr. Cohen found that the ocular infarction was due in part to employee's pre-existing vascular disease; however, that the substantial factor in his ocular infarction was the severe stress and physical nature of his work including climbing the small ladder to get on top of the trailer.

Dr. Cohen opined that employee suffered a permanent partial disability of 50% of the left eye, 2-3% pre-existing and the remaining 47-48% due to the primary injury. He opined that employee suffered a 20% whole person disability (2-3% pre-existing and the remaining 17-18% as a direct result of the primary injury) due to other problems which were directly affected by his eye disorder in that he had to walk with a cane and has fallen because of both the visual loss in his left eye and loss of depth perception.

Dr. Cohen opined due to his pre-existing conditions that employee suffered 10% whole person disability due to chronic obstructive pulmonary disease, 10% whole person disability due to sleep apnea, 10% whole person disability due to lumbar spine, and 10% whole person disability due to coronary artery disease.

Dr. Cohen concluded that employee's pre-existing conditions or disabilities were an obstacle to his employment or re-employment. Dr. Cohen further opined that employee's pre-existing conditions or disabilities combined with his primary work injury to create a greater overall disability than the simple sum; and that due to this combination of disabilities, that employee was permanently and totally disabled from his prior employment as a professional truck driver and not capable of gainful employment.

Delores Gonzalez, vocational expert, evaluated employee on September 9, 2006. Ms. Gonzalez believed employee had severe limitations of functional capacity secondary to multiple injuries and disabilities and found his current level of functional capacity to be less than sedentary. Ms. Gonzalez noted that employee's impairments produced pain of severe intensity, frequency, and duration and affected his ability to perform basic work-related functions. Ms. Gonzalez stated that employee's impairments remained severe despite surgeries, physical and occupational therapy, pain medications, pain management, and regular medical attention and treatment.

Ms. Gonzalez concluded that employee could not perform his past relevant work of 33 years as a truck driver, nor could he perform even sedentary work on a sustained basis. Ms. Gonzalez opined that employee did not have transferable skills to other jobs because he is so severely limited and that her evaluation process did not reveal any job that employee could perform for which there was a reasonably stable job market. Ms. Gonzalez did not feel employee was a candidate for vocational rehabilitation. Ms. Gonzalez opined that employee was unable to engage in any substantial gainful activity and should not be expected to perform in an ongoing work capacity in the future. Ms. Gonzalez opined that it was a combination of employee's injuries and disabilities that would preclude employment currently and in the future.

#### Findings of Fact and Conclusions of Law

Upon careful review of the entire record, including the testimony, as well as the medical records offered and admitted into evidence, the Commission determines and concludes that the more believable evidence supports a finding that the combination of employee's pre-existing disabilities and his work-related injury render employee permanently and totally disabled.

In order to trigger liability of the Second Injury Fund, employee must show the presence of an actual and measurable disability at the time the work injury is sustained and that work-related injury is of such seriousness as to constitute a hindrance or obstacle to employment or re-employment. *E. W. v. Kansas City, Missouri*, School District, 89 S.W.3d 527, 537 (Mo.App. W.D. 2002), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). Employee must establish either that (1) a preexisting partial disability combined with a disability from a subsequent injury to create permanent and total disability or (2) the two disabilities combined to result in a greater disability than that which would have resulted from the last injury by itself. *Gassen v. Lienbengood*, 134 S.W.3d 75, 79 (Mo.App. W.D. 2004), citing *Karoutzos v. Treasurer of State*, 55 S.W.3d 493, 498 (Mo.App. W.D. 2001).

Permanent and total disability is defined by §287.020.7 RSMo (2000) as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident.

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

*Gordon v. Tri-State Motor Transit Company*, 908 S.W.2d 849, 853 (Mo.App. S.D. 1995) (citations omitted).

The evidence supports a finding that employee's pre-existing disabilities combined with his primary injury to render him permanently and totally disabled. The record demonstrates that employee did suffer from actual and measurable disabilities at the time of his February 17, 2004, injury that were a hindrance or obstacle to employment. Employee suffered from pre-existing conditions including COPD, coronary artery disease, sleep apnea, carpal tunnel syndrome as well as a knee and back condition.

Employee testified at length as to his limitations due to his pre-existing disabilities. Employee testified that it was difficult for him to climb stairs, and was unable to navigate more than twelve at a time. Employee needed to change positions frequently to relieve his back pain; could stand for 10-15 minutes before back pain would require him to sit down; walk for 10 minutes before his back would give out; and lift between 25-30 lbs., 10 lbs. repetitively. Employee missed work, sometimes a week or more at a time, as a result of his back condition. Employee testified he also missed work on occasion due to his COPD and other medical conditions. Employee testified that he continued to experience symptoms of carpal tunnel syndrome following his carpal tunnel releases, including numbness. Employee testified that he noticed decreased strength in his hands and that his hands would fall asleep while driving his truck. In addition, employee took medication for his conditions which made him drowsy and affected his concentration. Employee found that changes in weather, extreme cold or heat, affected his condition as well.

Employee's testimony was supported by the credible testimony offered by his vocational and medical experts. Dr. Cohen concluded employee suffered pre-existing measurable permanent partial disabilities. Dr. Cohen rated employee as having 10% permanent partial disability for each of the following: COPD, coronary artery disease, sleep apnea and lumbar spine. Dr. Cohen found those disabilities to be obstacles to his employment at the time of his February 17, 2004, work-related injury. Therefore, we find that employee has proven pre-existing measurable disabilities that were an obstacle to his employment at the time of his primary injury. We further find that these pre-existing disabilities combined with employee's primary injury to render him permanently and totally disabled.

A finding of permanent total disability is supported by both employee's medical expert and vocational experts. Dr. Cohen and Ms. Gonzalez opined that employee was unable to sustain any work activity due to the combination of employee's primary injury and pre-existing disabilities.

Dr. Cohen found employee to be permanently and totally disabled. Dr. Cohen testified that employee was not capable of gainful employment due to the combination of employee's primary injury and pre-existing disabilities. Dr. Cohen opined that employee was not only unable to perform his past work as a truck driver, but was not able to engage in any gainful employment.

Likewise, Ms. Gonzalez found that employee would not be able to sustain any type of regular work activity. Ms. Gonzalez described how employee's severe impairments limited his functional capacity to below sedentary. Ms. Gonzalez opined that employee did not have transferable skills to other jobs because he is so severely limited and that her evaluation process did not reveal any job that employee could perform for which there was a reasonably stable job market. Ms. Gonzalez found that the combination of employee's injuries and disabilities would preclude employment currently and in the future.

Employee has sustained his burden of proof, establishing Second Injury Fund liability, as the evidence, including the opinions of both of employee's medical and vocational experts, supports a finding that employee is permanently and totally disabled as a result of the combination of his pre-existing disabilities and work-related injury.

## Conclusion

The Commission concludes that the competent and substantial evidence supports a finding that employer is

liable for 47% permanent partial disability of the left eye as a result of the February 17, 2004, work-related accident. The Commission further concludes and determines that the combination of employee's pre-existing disabilities and his February 17, 2004, work-related injury render employee permanently and totally disabled.

Employer shall pay employee permanent partial disability benefits in the weekly amount of \$347.05 and the Second Injury Fund shall pay the difference of \$315.50, beginning June 1, 2004 for 65.8 weeks (140 weeks x 47%); and thereafter, employee shall receive permanent total disability benefits from the Second Injury Fund in the weekly amount of \$662.55 for the remainder of his lifetime, or until as modified by law.

All remaining findings of fact and conclusions of law are affirmed.

The award and decision of Chief Administrative Law Judge Leslie E. H. Brown issued April 22, 2008, as modified, is attached and incorporated by this reference.

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 20th day of February 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

AWARD

Employee: George Gremminger

Injury No. 04-055525

Before the  
DIVISION OF WORKERS'  
COMPENSATION

Dependents: ---

Employer: Quality Carriers Incorporated (previously settled)

Additional Party: State Treasurer, as Custodian of the Second Injury Fund

Insurer: Zurich North America Ins. Co. (previously settled)

Hearing Date: 11/9/07 (finally submitted 12/11/07)

Checked by: LEHB/lsn

### FINDINGS OF FACT AND RULINGS OF LAW

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: February 17, 2004
5. State location where accident occurred or occupational disease was contracted: Franklin County, MO
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
  - 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: Truck driver
12. Did accident or occupational disease cause death? No Date of death? ---
13. Part(s) of body injured by accident or occupational disease: left eye
  - Nature and extent of any permanent disability: SIF PPD liability (primary 47% PPD left eye; prior – 15%

BAW re: lumbar spine and 15% BAW re: cardio/heart)

- 15. Compensation paid to-date for temporary disability: N/A
- 16. Value necessary medical aid paid to date by employer/insurer? N/A
- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: ---
- 19. Weekly compensation rate: \$662.55/\$347.05

- Method wages computation: by agreement of the parties

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, or

--- weeks of disfigurement from Employer

--- Permanent total disability benefits from Employer beginning --- , for Claimant's lifetime

22. Second Injury Fund liability: Yes (Primary: 47% PPD left eye; preexisting – 15% BAW re: lumbar spine and 15% BAW re: cardio/heart)

Total: .....

\$9,814.57

23. Future requirements awarded: None

Said payments to begin as of the date of the Award 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Kevin D. Wayman, Attorney for Claimant

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: George Gremminger

Injury No: 04-055525

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

Dependents: ---

Employer: Quality Carriers Incorporated (previously settled)

Additional Party State Treasurer, as Custodian of the Second Injury Fund

Insurer: Zurich North America Ins. Co. (previously settled)

Checked by: LEHB/lsn

This is a hearing in Injury Number 04-055525. The claimant, George Gremminger, appeared in person and by counsel, Attorney Kevin Wayman. The claim against the employer/insurer or that case was previously settled, and the employer/insurer was not present at this hearing. The Second Injury Fund appeared by and through Assistant Attorney General Jennifer Sommers.

The parties entered into certain stipulations, and agreements as to the complex issues and evidence to be presented in this hearing.

### STIPULATIONS:

On or about February 17, 2004: a. the claimant was in the employment of Quality Carriers Incorporated in Franklin County, Missouri; b. the employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation law; c. the employer's liability was insured by Zurich North America Insurance Company; d. the rate was \$662.55/\$347.05. e. The employer had notice of the injury. f. A Claim for Compensation was filed within the time prescribed by law.

### ISSUES:

1. Accident
2. Medical causation in regards to the primary case
3. Nature and extent of permanent disability, whether partial or whole
4. Liability of the Second Injury Fund, if any

### EXHIBITS:

The following exhibits were admitted into evidence:

Claimant's Exhibits:

- No. A: Medical records of Mercy Medical Center
- No. B: Medical records of St. Luke's Hospital
- No. C: Medical records of Missouri Baptist Medical Center
- No. D: Medical records of Dr. Henry G. Ollinger, M.D.
- No. E: Medical records of Dr. Elleborgsen
- No. F: Medical records of St. Anthony's Medical Center
- No. G: Medical records of Clarkson Eye Center
- No. H: Medical records of Pain Management Services
- No. I: Medical records of Dr. A. Rashid Qureshi, M.D.
- No. J: Medical records of Pathology Partners
- No. K: Medical records of Sleep Medicine and Research Center
- No. L: Medical records of Dr. Tim Dagenhart, M.D.
- No. M: Medical records of Veterans Hospital
- No. N: Medical records of Cardiac Diagnostic Center
- No. O: Medical records of Carolina Eye Center
- No. P: Medical records of Dr. Max H. David, M.D.
- No. Q: Medical records Dr. Michael S. Korenfeld, M.D.
- No. R: Medical records of the Barnes Retina Institute
- No. S: Past Workers' Compensation files concerning George Gremminger
- No. T: Deposition transcript of Dr. Raymond Cohen, D.O. taken on August 3, 2006 on behalf of the claimant (Admitted subject to the objections therein)
- No. U: Deposition of Delores Gonzalez, taken on November 14, 2006 on behalf of the claimant (Admitted subject to the objections therein) (NOTE: Deposition transcript also offered in computer micro disc form)
- No. V: Primary stipulation for Injury Number 04-055525

Second Injury Fund Exhibits:

Roman Numeral I: Deposition transcript of George Gremminger, taken on February 15, 2005 [RULING: Claimant's objections at the hearing to the admission of this exhibit on grounds of - putting the claimant's deposition into evidence violates procedural law, that it's cumulative in nature, and violates the evidentiary rules as well as procedural rules - is overruled. See, Civil rule 57.07 (a)]

Roman Numeral II: Deposition transcript of Dr. David Peeples, M.D. taken on November 29, 2006 on behalf of the employer/insurer, with attachments of Dr. Peeples' Curriculum Vitae and May 12, 2006 report (Deposition admitted subject to the objections therein)

FINDINGS OF FACTS AND RULING OF LAW

ISSUES: Accident: Medical causation in regards to the primary case

George Edward Gremminger, the claimant, testified that he was born on 07/2/1948. I started working doing some factory work for probably two years at the most, Gremminger stated, and then I started driving a truck. He agreed that he has driven trucks since about 1970 or 1971. The claimant was asked - Other than driving a truck and the two years of factory work, have you done any other type of job? No, not really, Gremminger answered.

I last worked for Quality Carriers, the claimant testified. It was an easy job to get, Gremminger said, I

didn't have to lift much or do a lot of walking. I started with Quality Carriers, I think it was January of 2004, the claimant said. He agreed that to get this job he was required to take a physical. The first one I flunked because of my breathing, he said, you have to wear a face mask, and the doctor didn't think I could do it because I got bad lungs. So they sent me to another doctor, and he understood you didn't wear the face mask all the time, you just put it on just in case there was an accidental spill, so he gave me my certificate to go, Gremminger stated. He agreed that during those physicals he had an eye exam, and stated that he passed those eye exams.

Gremminger testified about the duties he performed with Quality Carriers. Loading and unloading, he said. I had to climb up a ladder and open the vent if they used a pump so it wouldn't suck the container in a V shape, and drag hoses up to the wall and hook them up to the wall, hook them up to the back of the trailer, he said. I had to drive the truck too, Gremminger stated, and pick it up and take it and deliver it. He agreed that he was required to get on top of the truck. I did this two to three times a week, Gremminger stated, if I was at the delivery. It depended on what kind of trailer it was, he said, if it was a rear load, I had to get up there a lot because it wouldn't suck it all out, and if there was a, what we called a belly load, you had to get up once or twice. The claimant was asked to describe how it was for him to get on top of the truck; was it difficult or was it easy for him to get on top of the truck. It was hard to get up there I guess mainly because of my size, my lungs, Gremminger answered, I would be up there panting. Explaining how he got up on top of that truck, Gremminger testified that it was by a ladder. We had ladders, he said, some of them was all the way down to the ground. It wasn't too hard to get up on them, but a lot of them was busted off and they never did fix them, so sometimes I would have to get a bucket and stand on a bucket to get to the first rung of the ladder, Gremminger stated.

Gremminger agreed that he was injured while working for Quality Carriers. I got injured on February 17, 2004, he said. It was in the early morning, Gremminger said, my boy had picked me up and he drives a truck too for another company, and he had taken me up there to my truck so my wife didn't have to get up early. I climbed up on the top to close the dome and my eyes started fluttering and it stung, and I said man, something happened to my eye, and I waited for a few minutes and got the top closed and went down, Gremminger stated, and my boy said let me look at it and he said boy, dad, that thing is blood red. I said well, I've got to go get a load and I said I guess it will be all right, Gremminger said. I thought I just broke a blood vein there, you know, a blood vessel or something, he stated. I called my boss that morning and told him what had happened, and he said well, call me tomorrow and let me know how it's going, the claimant stated. So every day after that I was a call in, he said. I ended up telling him it was getting worse instead of better, Gremminger testified, and finally he got me an appointment with an eye doctor down there in Carolina.

The claimant was asked how was he feeling physically when he got up on top of the truck on February 17, 2004. Exhausted, Gremminger answered. He was asked if this feeling of exhaustion while he was on top of the truck, was that normal, did he normally feel that way. Well, when I had to climb the ladder, I'd be like that, yes, Gremminger responded. He was asked if that feeling had ever happened any other time that he was working for Quality Carriers other than when he had to climb on top of that truck. That was about the hardest part of the whole job was climbing up on top of that thing, opening and closing that dome, Gremminger responded. The claimant was queried if there was any other time away from work that he had felt that form of being tired or panting. No, I didn't do anything to aggravate it, he answered. You know I didn't do any kind of grass cutting or anything hard or climbing or moving stuff, Gremminger stated.

Gremminger was asked if he had known on February 17, 2004 if he had any loss of vision in his left eye. Yeah, the claimant answered, as soon as that had happened it looked like there was a -- started with it looked like an eyelash laying on my eye. That's how come I told my kid, Gremminger said, I thought I broke a blood vein. As time went on, it got worse to where I didn't have hardly any sight in the left eye, he stated. He was asked to explain the time frame for the development of the loss of vision that he had with his left eye,

was it a week or --. It was pretty quick; about a week, Gremminger answered. I didn't have any insurance, Gremminger testified, my boss kept telling me he was going to get me down and get my eye checked, and he never could get me down there, and finally he got me down there and I went to an eye doctor. That's when he said did you go to the hospital; you had a stroke, the claimant stated. I said - I didn't know I had one, Gremminger testified. I had never had any vision problems with my left eye before February 17, 2004, Gremminger said.

After February 17, 2004, I worked for Quality Carriers till June, Gremminger stated. They wanted me to continue working, he said, and I told them it was too dangerous, I was too scared to do it anymore, so I had to quit.

Gremminger agreed that he had gone to Carolina Eye Center for treatment. They just checked my eyes, the claimant said. As soon as he looked, he said there's nothing he could do, Gremminger stated. I did not see any other doctors after Carolina Eye Center, Gremminger said, I come back here and went to John Cochran Hospital, and I went to Jefferson Barracks Hospital, and I had a nurse practitioner who sent me down to an eye doctor that they have there. The eye doctor told me that I should go then right away down to John Cochran because they could do nothing then either. Gremminger agreed that this was the last treatment that he got at John Cochran for his left eye. He was asked if any of the physicians did anything to restore any or all of his vision in his left eye. No, there's nothing they could do, Gremminger answered, they said it was too late.

The claimant was queried - Other than the physical stress that you indicated of getting up on top of the truck, was there any other stress involved with the job at Quality Carriers? Oh, yeah, Gremminger answered. You had to be on time; they would send you sometimes to get your tractor or your trailer cleaned out and the place they'd send you to wouldn't take the product so then you'd have to probably go to another state, and you'd lose time, the claimant stated. If you didn't have product on it, you didn't make any money, he said, so there was a lot of problems there. He agreed that it affected him psychiatrically.

Gremminger was asked if he had had any other health issues just before the February 17, 2004 injury. Yeah, he answered, I had a lot of health issues. Sleep apnea, bad heart, lungs, lower back, legs, poor circulation in the legs, Gremminger stated. Agreeing that he has some problems with his wrists, Gremminger stated - arthritis. My wrists and elbows and shoulders, he added. He agreed that over the years since the early 1990's to the present he has received treatment concerning these problems, and added I went to Dr. Elleborgen for five years and went to Pain Management. Dr. George Risen; I've been to a bunch of them, the claimant said.

Just before February 17, 2004 I was able to exercise, Gremminger stated. I would try walking, he said, nothing fancy or anything, just walking. Just before February of 2004 I could not walk very far before I had to stop, Gremminger stated, probably about ten, fifteen minutes, ten minutes probably at the maximum. I don't think I could run just before February 17, 2004, Gremminger said, and explained I wouldn't have enough breath, and I was too scared to try running because I had a heart attack prior to that. The reason why I could only walk ten minutes at a time was because my back gives out, Gremminger said. He was asked how many stairs did he think he could climb just before February 17, 2004. We had twelve; we had a river house, and it was hard to get to the top of that, Gremminger answered. I just couldn't get myself up, between my knees and my back, he explained, pretty hard. I could stand probably ten or fifteen minutes before I'd have to sit just before February 17, 2004, Gremminger stated. My weak back would force me to sit down, he said. Just before February 17, 2004 I think I could comfortably lift probably 25, 30 pounds, Gremminger stated, not much more than that. I think I could repetitively lift ten pounds maybe just before February 17, 2004, Gremminger stated. Agreeing that the weather affects his conditions, Gremminger testified that the cold and hot bothers my lungs real bad, and cold bothers my hands. He stated that this has changed since February 17, 2004 in his lungs.

The claimant agreed that leading up to February 17, 2004 his back would go out occasionally. I could be doing "prettiner" anything and my back would go out, Gremminger testified, driving, getting in and out of the truck, bending over wrong to tie my shoe laces. When it would go out I would miss on an average three to four days work, Gremminger stated. If I was at home, I had a bed to get into, he said, but if I was out on the road, I had to sleep in the truck. I would be out of work for a week or two, Gremminger stated, sometimes longer. I probably missed some time from work leading up to February 17, 2004 because of my lung condition, Gremminger said, colds, and I get colds easy compared to a lot of people. Right now I'm on three inhalers and a nebulizer and oxygen, Gremminger stated. I was not on the same regiment with inhalers leading up to February 17, 2004, the claimant said, I only had two of them then.

Gremminger testified about his physical problems that existed before February 17, 2004 which he is still taking prescribed medication for; he agreed it was with the doctors he had listed before, they were the ones that prescribe the medication. Gremminger agreed that the medication he is talking about is for his COPD, congestive heart, low-back pain, and sleep apnea. I also take blood thinners, Gremminger said, and have been for four or five years, and also aspirin. He agreed that the medication affects him by making him tired or drowsy, and also affects his memory and concentration.

Gremminger testified I probably had missed a few days because of my back problems while performing my job duties at Quality Carriers. But I done my job and I got my job done, Gremminger stated. I missed some work at Consolidated and at Martin, Gremminger testified, I missed it at all of them. He agreed that he had missed some work with Consolidated with regard to his carpal tunnel condition. Gremminger stated that he had missed some work because of his low back condition while with Consolidated, and when he had the sleep apnea. I didn't know what I had, Gremminger stated, I had to go to three or four different doctors to get tested; I missed worked because of that. Explaining how the sleep apnea affected him at work, Gremminger stated I quit breathing when I'm sleeping, and I was always tired and I would fall asleep just sitting here talking to you. He was asked if he had ever fallen asleep at the wheel. Well, sure, that's how I had several accidents on the road, Gremminger answered. These accidents were prior to February 17, 2004, he said.

On cross examination by the Second Injury Fund, Gremminger was asked to testify as to the average number of hours he was working for Quality. Well, you couldn't run over 70, he answered, I guess it's about 65 to 70 hours every week. Of that 65 to 70 hours I spent, ten hours a day would be spent driving, Gremminger stated. He was asked how many days a week on average was he working. Well, usually you would end up working almost every day, Gremminger answered. Once in a while you would have a couple days off at tank washes where you go; I'd probably say five and a half days a week, six days for sure of actually working, he stated. Of those ten hours a day, when I say actually working, those ten hours a day were spent driving, Gremminger agreed. He agreed that he would take occasional breaks during the day while he was driving those ten hours. When asked if he had to load or unload while working for Quality, Gremminger answered – Sometimes; I'd have to be there if they was loading and open the dome up, and then usually I'd have to unload. Immediately before Quality I worked for Martin Transport, Gremminger stated. Agreeing that his job duties at Martin were different than his job duties at Quality, Gremminger explained -- a tanker was at Quality, and the other was a van. And they had done all the loading and unloading at Martin, he said, I never had to unload at Martin. Explaining why he had left Martin, Gremminger said it wasn't enough money. He agreed that Quality was more money. Queried if Quality paid more per mile, Gremminger responded - Well, supposed to have.

During cross examination, Gremminger agreed that he is on a C-Pap machine for his sleep apnea, and agreed that he had started using this machine before his injury in February of 2004. He was asked - Once you started using that machine, did your sleep apnea cause you any problems? No, Gremminger answered. He agreed that as long as he uses that machine, he gets sleep, and he is okay during the day

from the sleep apnea; he agreed that therefore, leading up to February of 2004 his problems with his sleep apnea were pretty much under control. Gremminger stated that he had a stent placed in his heart because of heart problems, and since he has had the stent placed he has not actually had any other problems with his heart including no chest pain since then. He agreed that he got treatment for carpal tunnel with Dr. Ollinger. He was asked if he was having any problems with his carpal tunnel at the time the doctor had released him from his care. Not then, but later as time went on I was starting to get the same thing where my hands go numb and my arms are getting numb again, Gremminger answered. This started probably about six or eight months after I had had my surgery, he said. Gremminger stated that he remembered having his deposition taken on February 15, 2005. His testimony on page 48 of his deposition transcript, lines 12 through 22 was noted: Q. "Do you have any problems with your hands going to sleep now or anything like that? A. No.; Q. Do they ever wake you up at night? A. No, ma'am.; Q. Do they ever go numb while you're driving? A. No, ma'am." Gremminger was asked if his deposition testimony had been correct. I had physical disabilities prior to working for Quality, and I did get my job done at Quality, he responded. The way that you had put the question, yeah, that was answered correct, Gremminger further answered. He was queried - So at the time of the deposition, your hands were not waking you up at night; correct? At that particular time, no, Gremminger answered. He was queried - Wasn't it correct that he didn't have any problems with his hands going numb while he was driving? Yeah, they went numb while I was driving, Gremminger answered. I probably didn't understand your question right at that time; I told you no I guess, and I guess I gotta stick by that, Gremminger admitted. He was asked if he had been taking any other types of medication other than Tylenol while he was driving at the time of his injury in February of 2004. Yeah, at nighttime when I'd go to bed, I'd take pain medicine, Gremminger answered. He stated that he was not taking any other types of pain medication while he was physically driving the truck during those ten-hour days, and agreed that that would be something he would take after he was off. Gremminger agreed that he had left Martin Transportation pretty much immediately before Quality. He agreed that he had testified at his deposition that he had not had any physical problems performing any of his job duties at Martin Transportation, and this was correct

He was asked, during cross examination - during the course of an average day at Quality when you were driving for ten hours, what were the number of breaks you would need to take during a day. Well, every two hours I would try to stop, Gremminger responded. I would stop for ten, fifteen minutes, he said, and then continue on. I would always take an hour for lunch, Gremminger added. He agreed that he has paperwork to do in his job. Besides keeping the logs, the other paperwork I have is just the shipping orders, the manifest, Gremminger stated.

In regards to my CDL, Gremminger stated, I had to take a physical every year. The one I took with Quality was at the end of December 2003, he said. He was asked what all do they check out in those physicals. Everything you get on a normal physical, Gremminger responded.

On redirect examination, Gremminger agreed that, as he had said during cross examination that with the stent in his heart he has had no heart or no chest pain. Agreeing that as a result of having the stent put in his heart, he has altered his exertion level, Gremminger stated I don't do anything that I can upset anything; I don't exert myself in no way. Gremminger agreed that he had said he has no hand numbness any more, but further stated that he does not feel he has the same strength in his hands that he did before the surgery and before he had the onset of carpal tunnel symptoms. When they cut something in there, I lost some strength, Gremminger said. I don't know what it was that Dr. Ollinger cut, but, (for example), you'd have to couple these hoses together, and they're pretty good size - three inch, sometimes four inch hoses - and it was hard to get them coupled and to get them uncoupled. Stating that he was sure he had lost a percentage of the strength, Gremminger further said he did not know how much. I could open up a jelly jar, and now I can't, he said, now I've got to bang it on a table if that has any reference. I'm always thinking of food, Gremminger said.

The definition and parameters for a compensable "accident" under Missouri Workers' Compensation law at

the time of the alleged February 17, 2004 accident herein was set forth in the following subsections of 287.020 RSMo 2004 :

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all 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; and

(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;

(3) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

It has been determined in case law that the 2005 amendment to section 287.020 -- the change in the standard of causation from "the substantial factor" to "the prevailing factor" -- is a substantive change rather than a procedural change and thus shall not be applied retroactively; in pre-amendment claims, to be compensable, work must be a substantial factor in causing the resulting medical condition. *See, generally, Lawson v. Ford Motor Company*, 217 S.W.3d 345, 348-350 (Mo.App.E.D. 2007). When the evidence reveals, as in the case herein, that the physical injury or condition is a sophisticated injury requiring highly scientific techniques for diagnosis, the proof of causation is not within the realm of the lay understanding and expert opinion is essential. *See, generally, Knipp v. Nordyne, Inc.*, 969 S.W.2d 236, 240 (Mo.App. 1998)

In this case, the claimant, Gremminger, was found to, at times, exaggerate and/or expand facts (i.e. - a. the claimant testified at his deposition that he had earned a GED, but admitted at the hearing that this was not true; b. the claimant testified at the hearing that he was honorably discharged from the military when his medical records from Veterans Hospital (No. M) includes a Vocational Rehabilitation JB Consult assessment, performed on 06/28/04 by a John Berkenwald which noted the following:

Military: According to VBA computer record, Pt served in the Army less than one year, from 8/4/66 to 7/19/67. Pt stated he was in military for two years. Pt stated he "got into trouble" and was given a General Discharge.]

Such tendencies puts the claimant's credibility into question, and thus his testimony will be given less weight. Notwithstanding, it is found that the claimant did give some consistent and some undisputed testimony, which lends more weight to this testimony. It is found that Gremminger gave consistent testimony at the hearing and in his deposition about performing unusual and stressful duties for the employer herein,

Quality Carriers, Inc., at the time of the eye injury on February 17, 2004 that he did not regularly perform for this employer and did not perform for his previous employers. Gremminger testified consistently that he transported hazardous material, taking them and delivering them, for Quality Carriers, Inc beginning in January 2004 and for prior employers. He consistently testified that part of his duties with Quality Carriers, Inc. was that he was required to get on top of the truck to strain the hose out, and that it was difficult for him to get on top of the truck. It was hard to get up there I guess mainly because of my size, my lungs, Gremminger stated, I would be up there panting. At his deposition, Gremminger gave the following testimony about straining the hoses out at his Quality Carriers, Inc. job:

“We have hoses. You’ve have to take the hoses out, hook them up either to the center of the trailer or to the rear of the trailer.”

“And if you had a pump, which we didn’t have a pump, we had to air ours off, so we just had to hook up an air line up on top. And then after it was empty, we had to bleed the air of the tank and climb up. Open the dome up, make sure it was empty, and then you close it and roll your stuff up and get your paper work signed and go to a tank to get it washed out.” (Gremminger 02/15/05 Dp. pg. 8, Exh. Roman Numeral II)

At the hearing, Gremminger consistently testified that at the time of the injury on February 17, 2004 he had climbed up on top of the truck to secure the dome when his eye started fluttering and stung. It was later determined that the claimant had had a “stroke” in his left eye at that time. In his deposition Gremminger gave the following consistent testimony about the event on February 17, 2004:

“I got up to go get a load about three o’clock in the morning, my boy picked me up, and we threw my stuff in his pickup because he drives a truck, too.”

“And he took me down to the truck and unloaded my stuff, put it up in the cab, and then I had to climb up on top of the truck and secure the dome. After you get the tank washed, a lot of times they will stink, and if you go to a company, they won’t take them if they stink, you have to take it back and get it re-washed. So I left it up so it would air out.”

“And when I got to the top of the dome, my eyes started fluttering and it stung. So I secured the dome, got back down off the ladder, went under the trailer, and we have a discharge valve with a big cap, and I couldn’t get it on the valve so I told my kid to put it on the valve.” (Gremminger 02/15/05 Dp. pp. 10-11)

Gremminger was asked if there was a reason why he couldn’t get the cap on the valve, and Gremminger answered:

“I couldn’t see good enough to get it on the valve. And so my boy said, Let me look at your eye. And he looked and said, Boy, Dad, that thing is blood red. And I said, I guess I must have popped a blood vein...” (Gremminger 02/15/05 Dp. pg. 11)

Gremminger was asked if there was anything unusual that he did or that happened when he went up to the top of the truck to secure the dome, and he answered: “No. It was always hard getting up there.” (Gremminger 02/15/05 Dp. pg. 11) Gremminger then agreed that what made it difficult to get up there was just the fact that he had to climb the ladder to the top of the truck.

Gremminger consistently testified that for the majority of his life he has been a tractor trailer driver, stating that he first got his hazardous permit years earlier when he was driving for Consolidate Freightways. Delores Elvera Gonzalez, CRC, a Vocational Rehabilitation Counselor who evaluated Gremminger at the claimant’s request on September 9, 2006, prepared an evaluation report, dated September 22, 2006 [Gonzalez’ September 22, 2006 report was marked at her deposition as Employee’s Exhibit 2; it was agreed and

stipulated to by the parties that the report would be typed into the record. (See, Gonzalez Dp. pg. 5)], which included the following about Gremminger's vocational history: most jobs were Union – Teamsters jobs, and were - a) Quality Carriers, Charleston, North Carolina, 12-03 to 6-04, Job Title - Tractor Trailer and Tank Truck Driver; b) Martin Transport, Mandovi, Wisconsin, 2003 to 2004, Job Title - Tractor Trailer and Tank Truck Driver; c) Climate Express, Washington, Missouri, length of employment was 2002, Job Title - Tractor Trailer and Tank Truck Driver; d) Consolidated Freightways Corporation, St. Louis, Missouri (Portland, Oregon), 1988 to 2002, Job Title - Tractor Trailer Truck Driver. During cross examination at his deposition, Gremminger was questioned if he had had any physical problems performing his job duties at Quality Carriers, Inc. before the February 17, 2004 injury, and the following testimony then occurred:

- A. Well, it's hard climbing up and down the ladder and I had my hoses on the top of the truck, I had to climb up on the truck to get my hoses and drag them around.
- Q. What was hard about climbing up and down the ladder? What part of your body gave you problems doing that?
- A. I would be exhausted when I got to the top, because I didn't have to do it all the time.
- Q. Did you --
1. Usually if you go to load, they do it. And if you go to empty, they do it, too. A lot of places won't let you out of the truck. They make you sit in the truck or go in the break room. So the only time I had to do it, a lot of times, is when I had it washed or a lot of places where they would have a pump, and then I would have to go out and open the dome, because the pump would suck the tank in. (Gremminger 02/15/05 Dp. pp. 41-42)

Gremminger stated at his deposition, during cross examination, that his prior employer before Quality Carriers, Inc. was Martin Transportation, and that he had not had any physical problems performing any of his duties at Martin transportation. The following testimony then occurred:

1. And essentially the same type of job duties as with Quality?

A. Pretty much. Martin always paid for what we call uppers, people unloading your truck. So what I would do is open the back door and back up to the door and then Martin would take care of the bill. (Gremminger 02/15/05 Dp. pg. 43)

When next queried if Climate was the name of the other company at which he had worked, Gremminger responded: "Uh-huh. That was the same way." (Gremminger 02/15/05 Dp. pg. 43) Gremminger was asked where he had worked immediately before Climate, and he answered: "Consolidated Freightways". (Gremminger 02/15/05 Dp. pg. 43) The following testimony then occurred:

- Q. And what kind of job duties did you do for Consolidated?
- A. I pulled doubles, two trailers, and ran coast-to-coast pretty well.
- Q. Any physical problems doing those job duties?
- A. No, because there again, you pull in on the yard, they fill our truck, wash your windows. Break the trailers apart. Rarely do you do any kind of work except drive. (Gremminger 02/15/05 Dp. pp. 43-44)

Gremminger testified that he had never had a left eye injury prior to the February 17, 2004 injury, which was supported by the medical treatment records. A copy of the Stipulation of Compromise Settlement for the primary case involving the claimant and the employer, Quality Carriers, Inc., was in evidence (No. V), and indicated a date of injury of 02/17/04, and a settlement of 17.5% permanent partial disability of the left eye; the named disputes between the parties were: "nature and extent of permanent partial disability, temporary

total disability, liability of past and/or future medical expenses, and all other issues”.

Two medical expert opinions about the cause of Gremminger's left eye injury were in evidence, and there was a difference of opinions between the doctors. Dr. Raymond Cohen, D.O. testified by deposition on behalf of the claimant. (No. T) Board certified in neurology, Dr. Cohen stated that he evaluated Gremminger at the claimant's request on December 1, 2005. Dr. Cohen's evaluation report was read into the deposition; the history of injury was as follows:

“Mr. Gremminger is a 57-year-old right handed man who worked as an over-the-road tractor trailer driver for approximately 6 ½ months for Quality Carriers. He is currently unemployed and on Social Security.

While at work for this employer on or about 2-17-04, he was up on top of the truck. He was closing the top lid. As he did this, his left eye suddenly started fluttering and he had burning in the eye.

The top cap on the tanker was difficult to open and it did cause him to have a significant amount of force in order to open it. He states that immediately after this is when he noted the loss of vision in the left eye.

Those symptoms did not resolve.

.....He states that he had severe stress while working there. He would have to climb up on a tractor trailer in order to fill the trailer.

He weighs approximately 300 pounds. He would have to grab onto a small ladder, and climb up to the top of the trailer. This was extremely difficult for him to do.

The ladder would be from 3-4 feet off of the ground and he would have to stretch his legs in order to start the climb up. This would be approximately 10 steps to get to the top.

He would have a hose in one hand or he would have to throw a hose up to the top of the trailer. It was difficult for him to have to climb up the steps with the hose in the one hand. He would have to do this work whether it rained or snowed. It was extremely slippery.

He states that while working for this employer, when it was windy he had occasions when he was nearly blown off of the tanker but he was never actually blown off.

There was a time when he was in Michigan when it was raining and snowing and it was extremely difficult for him to stay on top of the trailer. He states that he would work for six weeks and then come back.

There was a period when he was gone for three months doing this work and then he came back and did social work. He states that he was under severe stress as the dispatcher on a daily basis would tell him that he was late. He states that this would make him upset and depressed as well as increasing his stress in an attempt to do these deliveries.

When he had to deliver latex, this would take longer than the other deliveries. He states that because the latex was so thick, he would have to climb up on top of the trailer to let air out and open the dome.

He would have to crank the dolly up which raised the back end. This would slow him down. If there was any latex left in, he would have to repeat the whole process to drain the latex.

He states that his time depended on how much was in the trailer and if the truck valve was working properly. He also drove with other products in the tank including not only the latex but bleach, peroxide, and caustic acid. He would have to be extremely careful when around those products.

As noted above in the history, he states that he had severe stress from this employment with Quality Carriers. He did have stressful situations previously with other tractor trailer driving.

He stated that with this new employer, i.e., Quality Carrier, he had increased stress as he was not paid for any unloading with the empty trips. He states that prior to that, he was paid for driving both with and without a load. (Cohen Dp. pp. 7-11)

Gremminger's pre-existing conditions or disabilities were discussed by Dr. Cohen, and were noted to be: history of COPD and asthma, history of cigarette consumption, a 14-15 year history of sleep apnea for which he uses a CPAP machine with oxygen (it was noted that prior to the diagnosis of sleep apnea on one occasion Gremminger had fallen asleep and ran off the road), history of coronary artery disease (approximately 6-7 years earlier Gremminger had had stent placement), history of spinal arthritis (with CT scan of his low back and a discussion by a Dr. Achary about surgery; and he was unable to have an MRI due

to his size). Dr. Cohen listed the medical records he had reviewed. Dr. Cohen discussed his examination findings.

Dr. Cohen stated the following as his diagnosis regarding the primary work related injury of 02/17/04: 1. Ocular infarction with fixed deficit in the left eye causing horizontal upper visual field loss due to excessive work-related stress. Pre-existing conditions or disabilities were: 1. Multiple pre-existing conditions or disabilities including chronic obstructive pulmonary disease, sleep apnea, coronary artery disease; and 2. History of spinal stenosis with chronic lumbar strain/sprain with myalgia. The doctor stated the following as to his opinion on causation in regards to the primary work related injury:

“It is my medical and neurological opinion that within a reasonable degree of medical certainty that the above noted diagnosis listed under the primary work-related injury is as a direct result of his work and that the work is a substantial factor in disability.

By history he did have a medical history of vascular disease and in part some of the cause of the ocular infarction was due to the pre-existing vascular disease but in my medical opinion, a substantial factor in his ocular infarction was the severe stress that he described above in the history as well as the difficult physical parts of the job such as climbing the small ladder and getting on top of the trailer, especially with his large body habitus.” (Cohen Dp. pg. 16)

Dr. Cohen stated that in his review of the medical records he did not see any history of any past ocular infarction. The doctor was his opinion of whether or not with regard to Gremminger, intense physical exertion and stress could have caused him to have an ocular infarction, and Dr. Cohen answered – “Yes”. (Cohen Dp. pg. 19) Dr. Cohen explained what an ocular infarction is:

“That means like a stroke, if you will, of the eye. Ocular for eye and infarction means loss of blood flow. So ocular infarction would mean that the patient lost some or possibly all of their vision from the involved eye.” (Cohen Dp. pg. 20)

Dr. Cohen agreed that the loss of the vision was because of an occlusion or a blockage. The doctor was asked – In your opinion if Gremminger had not had the intense physical exertion as you had listed or the stress such as you had described with regard to his work at Quality Carriers, would that fact reduce his risk for ocular infarction. It would, yes”, Dr. Cohen answered. (Cohen Dp. pg. 20) The doctor was asked to describe how the stress at Gremminger’s job had affected Gremminger’s physical condition, and Dr. Cohen responded:

“Everyone generally has some form of stress or another, and it’s usually over a period of time, then stops. Occasionally, people will have a lot of stress and their body deals with it in more benign ways.

But generally speaking, long-term periods or periods of severe stress cause the body’s hormones to be elevated and stay elevated and they’re the sympathetic nervous system hormones or substances, if you will, the so-called fight or flight chemicals.

And in an acute situation, a fight or flight means that these sympathetic chemicals cause the body to be able to sustain any severe stress, such as if someone was trying to hurt you and you had to run, that’s the fight or flight. But when you have a stress on a daily basis or, again, severe periods of stress, the sympathetic chemicals, hormones, transmitters, if you will, stay elevated and damage the blood vessels over a period of time.” (Cohen Dp. pp. 20-21)

On cross examination by the employer/insurer, Dr. Cohen was asked his understanding of what Gremminger was specifically doing at the time the incident occurred. Dr. Cohen answered:

“Yes, he stated that when this occurred, he was up on the top of the truck and was closing the top lid. As he did this, his left eye suddenly started fluttering and he had a burning sensation. Those were his symptoms.

What he had told me was the top cap on the tanker was difficult to open, and he stated it did cause him to have to use a significant amount of force in order to open it. And, basically, that's what he was describing that he was doing at that time." (Cohen Dp. pg. 23)

The following testimony then occurred:

1. Doctor, I think in your report you also go into other descriptions of stress that Mr. Gremminger reported to you. But, basically, didn't the activities and his job functions that he had at Quality Carriers, wouldn't those -- didn't he even tell you that those were similar to most of the truck driving jobs that he had in the past?
1. They were similar in some sense. What he had described to me was what he did for this employer, but back to your question, he said they were similar at -- somewhat similar.
1. Okay. Looking at the second paragraph at the bottom of page 2, wouldn't you agree that Mr. Gremminger noted that the primary change from his prior jobs to what he described at Quality Carriers was the fact that he was not paid for empty trips?
1. My recollection from my history was that that was part of the problem. Plus the other parts of the stress from working with this employer that he had described to me were more severe than he had before, although, as I said a minute ago, he did have some stress with the type of work that he did, that is, the stressful situations working as a tractor trailer driver. But what he had described to me, and I quoted, was what he said was more difficult or more unusual or more stressful plus the fact that he wasn't getting paid for the other part of the trip. (RULING: Claimant's objections on grounds of - question is vague and calling for doctor to speculative – are overruled. Cohen Dp. pg. 24)
1. Okay. So you noted his history that he had been a truck driver for about thirty years, is that correct, or is that your understanding?
1. That's my understanding.
1. He was basically under the same stresses as far as driving, working long hours, deadlines to meet, wouldn't that be your understanding as well?
1. Yes.
1. Doctor, on the day that this incident occurred, Mr. Gremminger didn't indicate to you that he was doing anything more physically demanding than he would normally do on his job, did he? He didn't note anything unusual that day as opposed to any other time that he was doing his job.
1. As far as what he did for the Quality Carriers, he described the work that he was doing on top of the trailer as physically difficult for him to do. As far as if he did that with the other employers prior to that, I'm not exactly sure whether that when his eye became involved that it was more difficult than before.
1. Okay. That didn't exactly answer my question. I guess what I'm asking is on that date on February 17th of '04, what he described to you he was doing to you at the time he experienced the fluttering in his eye, he didn't tell you that that was any different than the work he had been doing or the activities he would have to do at any other time while on his job with Quality Carriers, did he?
1. That's correct.
1. And you had a description of some of his other job activities, which included, I believe you said,

carrying hoses up onto the top of the truck. Now, he wasn't carrying any hoses with him at the time that this happened, to your knowledge, was he?

A. As far as that specific day and time, I'm not positive right this second if he did have to use those hoses to load or unload the substance in that trailer. (Cohen Dp. pp. 24-26)

During cross examination, Dr. Cohen stated that he would admit Gremminger had some pre-existing medical conditions that would be considered vascular risk factors. Dr. Cohen agreed that Gremminger had told him he had a history of cigarette smoking, and the doctor agreed that he had noticed in the Veteran's Administration records that Gremminger had noted his cigarette smoking habit was two packs of cigarettes per day; the doctor agreed that this was prior to the incident in February 2004; Dr. Cohen further agreed that this would be considered a vascular risk factor and would be at least a part of the cause of Gremminger's ocular infarction. Dr. Cohen agreed that Gremminger had also been diagnosed as being obese and this was a condition that was pre-existing February 2004; the doctor stated that this would also be considered a vascular risk factor "(i)f the person was significantly...obese....", and further agreed that he considered 300 or 350 pound to be significantly obese and a risk factor; Dr. Cohen agreed that this would at least be a part of the cause of Gremminger's ocular infarction. (Cohen Dp. pg. 28) Agreeing that Gremminger was diagnosed with hypertension prior to February 2004, Dr. Cohen stated that this would be considered a vascular risk factor "...if the pressure was high enough and did not respond to medications.."; the doctor agreed that this could also be at least a part of Gremminger's ocular infarction. (Cohen Dp. pg. 28) Dr. Cohen agreed that it was his understanding that Gremminger had been diagnosed with coronary artery disease prior to February 2004 and that the records indicated Gremminger had had two myocardial infarctions, or two heart attacks; the doctor agreed that Gremminger had had some type of surgery or angioplasty with placement of stents due to his heart condition; Dr. Cohen agreed that Gremminger's coronary artery disease and the history he has would be considered a vascular risk factor and could certainly be a part of the cause for Gremminger's ocular infarction. The doctor agreed that Gremminger had obstructive pulmonary disease prior to 2004; when queried if this would be considered a vascular risk factor, Dr. Cohen responded – "I'm not sure that that condition itself would other than if the person had enough of a breathing problem that they weren't getting enough oxygen to the vessels, then it might be." (Cohen Dp. pg. 30) The doctor was queried - So it's possible that this could also be a part of the cause of Gremminger's ocular infarction, and Dr. Cohen answered: "It's primarily the cigarette that lead to that, but in part, it's possible that the lungs could, depending on how bad the COPD is." (Cohen Dp. pg. 30) Dr. Cohen agreed that Gremminger also suffered from hypercholesterolemia prior to February 2004; when asked if this could be considered a vascular risk factor, Dr. Cohen responded – "In some people it is. It's not a hundred percent certain that it is, but it seems to be a factor that needs to strongly be considered." (Cohen Dp. pg. 30) The doctor agreed that the hypercholesterolemia could also be considered a cause of Gremminger's ocular infarction.

Dr. David Peeples, M.D. testified by deposition on behalf of the employer/insurer (Roman Numeral II) Dr. Peeples stated that he is a board certified neurologist, and that he evaluated Gremminger on one occasion, May 12, 2006, on behalf of the employer/insurer. The doctor discussed the history relayed by Gremminger:

"He told me he was 57 years old, right-handed, and had been an on-the-road truck driver for 35 years. He had been employed for roughly six months by Quality Carriers when the incident of 2/17/04 occurred. By way of background, his job involved driving a tractor trailer/tanker with caustic chemicals over the road. Part of his normal work activities would involve climbing the dome after it had been washed out. The ladder was estimated to be 8-10 steps.

He would also have to hookup the hoses underneath the belly of the tanker to bleed out air from the container. He had done this a number of times during his 6 month employment without incident. He does not recall the actual day, but indicates that on February of 2004 he awoke early to begin a trip. He climbed up the ladder to secure the dome and felt a 'fluttering' in his left eye and associated stinging

sensation. He indicates his eye turned red and he thought he 'ruptured a blood vein'. He subsequently drove to pick up his load in Sauget and drove to Detroit. He states he (sic) was able to drive, but he had difficulty with depth perception and blurriness of vision of the left eye. While relating this to me, he indicated that at the time he felt he had been under a significant amount of physical and emotional stress due to various time constraints and lack of remuneration by his employer. He emphasized this several times but did not describe any episodes of what I would consider unusual work stress, given that he has been a truck driver his entire life.

At any rate, he continued to drive with difficulties of vision in his left eye, and states he ultimately was evaluated by an eye doctor at the VA and was told he had a 'stroke'.

At no point did he have symptoms of left cerebral hemispheric ischemia, such as speech or language problems or right-handed sensory motor symptoms. His deficits were restricted to loss of vision in the left eye.

He last worked in or around June of 2004 and presently is on Social Security Disability for multiple medical problems.

He states presently he drives very little and that he stays home and is basically sedentary. He uses a magnifying glass to read due to poor vision in both eyes, particularly on the left.

Mr. Gremminger reports additional problems with daily activities due to left leg pain which he injured in a fall in December of 2004. This not to work related to the incident." (Peeples Dp. pp. 6-9)

Concerning Gremminger's past medical history, Dr. Peeples testified: "He has multiple vascular risk factors including hypertension, coronary artery disease status post stenting, hypercholesterolemia, sleep apnea, obesity and cigarette use." (Peeples Dp. pg. 9)

Dr. Peeples listed the medical and other records concerning Gremminger he had reviewed. The doctor discussed his physical exam findings. Dr. Peeples explained what visual field deficit in the left eye meant: "The pathologic problem was restricted to the retina or the left eye alone as opposed to the brain itself.....He had, basically he had difficulty seeing things above the horizon with his left eye." (Peeples Dp. pp. 11-12) Dr. Peeples testified as to his diagnosis as a result of his evaluation of Gremminger: "He sustained a left central retinal artery occlusion in a setting of severe left carotid occlusive disease and multiple vascular risk factors." (Peeples Dp. pg. 12) The doctor testified as to his opinion on causation for his diagnosis: "He has extensive vascular risk factors which include, aside from his age and gender, hypertension, coronary artery disease, documented carotid atherosclerotic occlusive disease, sleep apnea, morbid obesity and cigarette use.....He was a stroke waiting to happen." (Peeples Dp. pg. 13) The doctor was asked to explain what central retinal artery occlusion was: "That is an occlusion that is restricted specifically to the central artery that supplies the retina. It is not an infarction of the brain, per se. But again, it is restricted to the left eye." (Peeples Dp. pg. 13)

On cross examination by the claimant, Dr. Peeples stated that he had not reviewed medical records from Barnes Retina Institute, Dr. Engelbrecht, Clarkson Eye Center, Carolina Eye Center, Dr. Kornfeld, Dr. Ellen Brogan, St Anthony's Medical Center, Mercy Medical Group, Dr. Saloma, Dr. Chin, or from Dr. David. Dr. Peeples surmised the cause of Gremminger's central retinal artery occlusion during cross examination:

"The most probable path, physiologic mechanism is either a small, little embolus traveled downstream and lodged in the central artery or there is what is called an inciteful thrombosis. It came to the point where eventually it closes off due to platelets." (Peeples Dp. pg. 17)

The doctor was asked if he believed increasing arterial pressure can cause a central retinal artery occlusion, and Dr. Peeples answered: "That is a theory. It has never been actually proven. It is assumed it may be." (Peeples Dp. pp. 17-18) The doctor was further queried – Increasing arterial pressure can cause a central retinal artery occlusion? Dr. Peeples responded:

“Not without, not in the absence of, no risk factors. If you have a stroke that’s based on atherosclerosis, chronic hypertension and all the vascular risk factors, more often than not. It just doesn’t happen on its own.” (Peeples Dp. pg. 18)

Dr. Peeples was queried - Gremminger didn’t have a stroke? The doctor answered: “Yes, he did. He had a stroke of the central retinal artery.” (Peeples Dp. pg. 18) The following testimony then occurred:

1. Do you believe that physical exertion can increase arterial pressure?
1. Physical exertion does increase arterial pressure.
1. Can exercise increase the blood flow to the carotid artery?
1. Yes.
1. Do you believe a patient such as Mr. Gremminger has a decreased ability to regulate his blood pressure with exertion due to his risk factors?
1. He may. That’s not to say that he does, but he may, based on risk factors. (Peeples Dp. pp. 18-19)

Dr. Peeples was asked if he knew how much effort was required by Gremminger to do his job, and the doctor responded:

“Well, he was an over-the-road truck driver. And what he described to me, or what he indicates that he was doing at the time his symptoms started was he was climbing an eight- to ten-rung ladder on to the top of the truck.” (Peeples Dp. pg. 19)

The doctor agreed that Gremminger is 350 pounds, and noted that Gremminger has hypertension and diabetes. Dr. Peeples said it would be a fair statement to say that it would take more exertion to do what Gremminger described than somebody of a more modest body weight, such as a five-foot-nine person weighing about 180 pounds.

Considering the medical expert opinions, it is found that the substantial weight of the evidence supports Dr. Cohen’s opinion that a substantial factor in causing the claimant’s injury of an ocular infarction with fixed deficit in the left eye causing horizontal upper visual field loss was the work-related stressful and difficult physical parts of the claimant’s work activities on February 17, 2004, especially with the claimant’s large body habitus, though his pre-existing vascular disease was in part some of the cause. Dr. Cohen did incorrectly note the activity Gremminger was doing at the time of the eye fluttering, or eye injury event, as when the claimant was “...closing the top lid. As he did this, his left eye suddenly started fluttering and he had burning in the eye”. Dr. Cohen did acknowledge, though, that Gremminger’s actual work activities at the time of the injury were stressful and extremely difficult: “.....He states that he had severe stress while working there. He would have to climb up on a tractor trailer in order to fill the trailer. He weighs approximately 300 pounds. He would have to grab onto a small ladder, and climb up to the top of the trailer. This was extremely difficult for him to do.” Dr. Cohen explained why the stress at Gremminger’s job affected his physical condition, stating that periods of severe stress damage the blood vessels. Even Dr. Peeples, who testified on behalf of the employer/insurer, stated that physical exertion does increase arterial pressure and increases the blood flow to the carotid artery, and stated that a patient such as Gremminger may have had a decreased ability to regulate his blood pressure with exertion due to his risk factors.

It is found that Gremminger's consistent, undisputed and corroborated testimony supports a finding that Gremminger's work activities of climbing to the top of his truck on February 17, 2004 at the time of the left eye injury of an ocular infarction was not an activity he commonly performed with this employer, and was not an activity he performed with his prior employer. It is found that with Gremminger's physical conditions, the work related activity of climbing to the top of his truck resulted in an unusual and abnormal strain on Gremminger. See, generally, *Snuggs v. Steel haulers, Inc.*, 501 S.W.2d 481, (en Banc 1973), in which it was held that the truck driver sustained a compensable "accident" where he was subjected to unusual and abnormal physical strain. It is found that there is sufficient competent and substantial evidence, including medical evidence and opinion, establishing that the claimant's activities occurring on February 17, 2004 of climbing to the top of his truck was an unusual or abnormal strain arising out of and in the course of his employment with Quality Carriers, Inc. and was a substantial cause in the claimant's left eye injury of an ocular infarction. Thus this is found to be a compensable accident.

ISSUES: Liability of the Second Injury Fund, if any; Nature and extent of permanent disability, whether partial or whole

In this case, the claimant, Gremminger, is seeking benefits from the Second Injury Fund for permanent partial disability or for permanent total disability. The claimant is alleging that he is permanently and totally disabled as a result of his February 17, 2004 work related injury to the left eye while working for Quality Carriers, Inc. combined with his pre-existing disabilities. Procedurally, the claimant's claim against the employer/insurer for the February 17, 2004 primary injury was previously settled prior to this hearing which involved the Second Injury Fund. Offered into evidence by the claimant at the hearing, without objection, was a copy of the Stipulation of Compromise Settlement for the primary case herein involving the claimant and the employer, Quality Carriers, Inc. (No. V) which reflected that for the work related injury occurring on 02/17/04, a settlement of 17.5% permanent partial disability of the left eye was reached; the Second Injury Fund was specifically left open on the Stipulation. Considering this evidence as well as the claimant's testimony, expert medical opinion of disability for the 02/17/04 work related injury, and medical records in evidence of treating/examining or diagnosis the left eye condition (i.e. Dr. David, M.D. in 08/11/04 notes, Exh. No. I; Dr. Qureshi, M.D. in 08/31/04 notes, Exh. No. I; Dr. Kornfeld, M.D. in 02/12/05 notes, Exh. No. Q; and Veterans hospital entry of 07/01/04 noting a 06/29/04 carotid test, Exh. No. M), it is found that there is sufficient and competent evidence of permanent partial disability as a result of the February 17, 2004 work related left eye injury. See, generally, *Conley v. Treasurer of Missouri*, 999 S.w.2d 269 (Mo.App. E.D. 1999). The claimant also offered into evidence information about prior injuries and conditions that resulted in hindrances or obstacles in the performance of his work duties and/or resulted in findings of permanent partial disability.

George Edward Gremminger, the claimant, testified that he was born on 07/2/1948. He testified that the extent of his education is ninth grade. I never received a GED, he said. The claimant stated that he was in the Army for two years, 1967 to 1969, and never was in combat. I was honorably discharged, he said. After the Army I started working doing some factory work for probably two years at the most, Gremminger stated, and then I started driving a truck. He agreed that he has therefore driven trucks since about 1970 or 1971. The claimant was asked - Other than driving a truck and the two years of factory work, have you done any other type of job? No, not really, Gremminger answered.

I started with Quality Carriers, I think it was January of 2004, the claimant said. It was an easy job to get, Gremminger said, I didn't have to lift much or do a lot of walking. He agreed that to get this job he was required to take a physical. The first one I flunked because of my breathing, he said, you have to wear a face mask, and the doctor didn't think I could do it because I got bad lungs. So they sent me to another doctor, and he understood you didn't wear the face mask all the time, you just put it on just in case there was an accidental spill, so he gave me my certificate to go, Gremminger stated. He agreed that during those physicals he had an eye exam, and stated that he passed those eye exams. I am not currently working,

Gremminger testified. I last worked for Quality Carriers, the claimant testified.

Gremminger testified that the loss of vision in his left eye as a result of his February 17, 2004 work related accident affected his work at Quality Carriers. I lost my livelihood, the claimant stated. I can't see to drive at night, Gremminger testified, I would hit barrels and I lost my peripheral vision. When I back up, I don't know when to stop, I just keep on backing up because I can't tell the distance in it, Gremminger stated. He agreed that he was crashing into things. After February 17, 2004, I worked for Quality Carriers till June, Gremminger stated. They wanted me to continue working, he testified, and I told them it was too dangerous, I was too scared to do it anymore, so I had to quit.

Gremminger testified about health issues just before the February 17, 2004 injury. I had a lot of health issues, he stated. Sleep apnea, bad heart, lungs, lower back, legs, poor circulation in the legs, Gremminger stated. Agreeing that he has some problems with his wrists, Gremminger stated - arthritis. My wrists and elbows and shoulders, he added. He agreed that over the years since the early 1990's to the present he has received treatment concerning these problems, and added - I went to Dr. Elleborgen for five years and went to Pain Management. Dr. George Risen; I've been to a bunch of them, the claimant said.

Just before February 17, 2004 I was able to exercise, Gremminger stated. I would try walking, he said, nothing fancy or anything, just walking. Just before February of 2004 I could not walk very far before I had to stop, Gremminger stated, probably about ten, fifteen minutes, ten minutes probably at the maximum. I don't think I could run just before February 17, 2004, Gremminger said, and explained I wouldn't have enough breath, and I was too scared to try running because I had a heart attack prior to that. The reason why I could only walk ten minutes at a time was because my back gives out, Gremminger said. He was asked how many stairs did he think he could climb just before February 17, 2004. We had twelve; we had a river house, and it was hard to get to the top of that, Gremminger answered. I just couldn't get myself up, between my knees and my back, he explained, pretty hard. I could stand probably ten or fifteen minutes before I'd have to sit just before February 17, 2004, Gremminger stated. My weak back would force me to sit down, he said. Just before February 17, 2004 I think I could comfortably lift probably 25, 30 pounds, Gremminger stated, not much more than that. I think I could repetitively lift ten pounds maybe just before February 17, 2004, Gremminger stated. Agreeing that the weather affects his conditions, Gremminger testified that the cold and hot bothers my lungs real bad, and cold bothers my hands.

The claimant agreed that leading up to February 17, 2004 his back would go out occasionally. I could be doing "prettiner" anything and my back would go out, Gremminger testified, driving, getting in and out of the truck, bending over wrong to tie my shoe laces. When it would go out I would miss on an average three to four days work, Gremminger stated. If I was at home, I had a bed to get into, he said, but if I was out on the road, I had to sleep in the truck. I would be out of work for a week or two, Gremminger stated, sometimes longer. It depended on how long it took for that to heal down there, he said, I would have to get muscle relaxers over there at Dr. Richardson. I probably missed some time from work leading up to February 17, 2004 because of my lung condition, Gremminger said, colds, and I get colds easy compared to a lot of people. Right now I'm on three inhalers and a nebulizer and oxygen, Gremminger stated. I was not on the same regiment with inhalers leading up to February 17, 2004, the claimant said, I only had two of them then.

Gremminger testified about his physical problems that existed before February 17, 2004 which he is still taking prescribed medication for; he agreed it was with the doctors he had listed before, they were the ones that prescribe the medication. Gremminger agreed that the medication he is talking about is for his COPD, congestive heart, low-back pain, and sleep apnea. I also take blood thinners, Gremminger said, and have been for four or five years, and also aspirin. He agreed that the medication affects him by making him tired or drowsy, and also affects his memory and concentration.

Gremminger agreed that before February 17, 2004 he had had at least two other Workman's

Compensation injuries. August 9, 1993 was an injury to my back, Gremminger agreed and at that time I was working for Consolidated Freightways. He agreed that he had brought a primary claim against Consolidated and resolved that claim through a compromise settlement, and he had also settled a claim against the Second Injury Fund. I had another Consolidated Freightways claim dated February 21, 1997 and that was a bilateral carpal tunnel condition, Gremminger agreed. He agreed that he had resolved that by compromise settlement against Consolidated, and that he had additionally brought a claim that he had settled against the Second Injury Fund concerning his heart and back.

Gremminger testified I probably had missed a few days because of my back problems while performing my job duties at Quality Carriers. But I done my job and I got my job done, Gremminger stated. I missed some work at Consolidated and at Martin, Gremminger testified, I missed it at all of them. He agreed that he had missed some work with Consolidated with regard to his carpal tunnel condition. Gremminger stated that he had missed some work because of his low back condition while with Consolidated, and when he had the sleep apnea. I didn't know what I had, Gremminger stated, I had to go to three or four different doctors to get tested; I missed worked because of that. Explaining how the sleep apnea affected him at work, Gremminger stated I quit breathing when I'm sleeping, and I was always tired and I would fall asleep just sitting here talking to you. He was asked if he had ever fallen asleep at the wheel. Well, sure, that's how I had several accidents on the road, Gremminger answered. These accidents were prior to February 17, 2004, he said.

On cross examination by the Second Injury Fund, Gremminger was asked to testify as to the average number of hours he was working for Quality. Well, you couldn't run over 70, he answered, I guess it's about 65 to 70 hours every week. Of that 65 to 70 hours I spent, ten hours a day would be spent driving, Gremminger stated. He was asked how many days a week on average was he working. Well, usually you would end up working almost every day, Gremminger answered. Once in a while you would have a couple days off at tank washes where you go; I'd probably say five and a half days a week, six days for sure of actually working, he stated. Of those ten hours a day, when I say actually working, those ten hours a day were spent driving, Gremminger agreed. He agreed that he would take occasional breaks during the day while he was driving those ten hours. When asked if he had to load or unload while working for Quality, Gremminger answered – Sometimes; I'd have to be there if they was loading and open the dome up, and then usually I'd have to unload. Immediately before Quality I worked for Martin Transport, Gremminger stated. Agreeing that his job duties at Martin were different than his job duties at Quality, Gremminger explained -- a tanker was at Quality, and the other was a van. And they had done all the loading and unloading at Martin, he said, I never had to unload at Martin. Explaining why he had left Martin, Gremminger said it wasn't enough money. He agreed that Quality was more money. Queried if Quality paid more per mile, Gremminger responded - Well, supposed to have.

During cross examination, Gremminger agreed that he is on a C-Pap machine for his sleep apnea, and agreed that he had started using this machine before his injury in February of 2004. He was asked - Once you started using that machine, did your sleep apnea cause you any problems? No, Gremminger answered. He agreed that as long as he uses that machine, he gets sleep, and he is okay during the day from the sleep apnea; he agreed that therefore, leading up to February of 2004 his problems with his sleep apnea were pretty much under control. Gremminger stated that he had a stent placed in his heart because of heart problems, and since he has had the stent placed he has not actually had any other problems with his heart including no chest pain since then. He agreed that he got treatment for carpal tunnel with Dr. Ollinger. He was asked if he was having any problems with his carpal tunnel at the time the doctor had released him from his care. Not then, but later as time went on I was starting to get the same thing where my hands go numb and my arms are getting numb again, Gremminger answered. This started probably about six or eight months after I had had my surgery, he said. Gremminger stated that he remembered having his deposition taken on February 15, 2005. His testimony on page 48 of his deposition transcript, lines 12 through 22 was noted: Q. "Do you have any problems with your hands going to sleep now or anything like that? A. No.; Q.

Do they ever wake you up at night? A. No, ma'am.; Q. Do they ever go numb while you're driving? A. No, ma'am." Gremminger was asked if his deposition testimony had been correct. I had physical disabilities prior to working for Quality, and I did get my job done at Quality, he responded. The way that you had put the question, yeah, that was answered correct, Gremminger further answered. He was queried - So at the time of the deposition, your hands were not waking you up at night; correct? At that particular time, no, Gremminger answered. He was queried - Wasn't it correct that he didn't have any problems with his hands going numb while he was driving? Yeah, they went numb while I was driving, Gremminger answered. I probably didn't understand your question right at that time; I told you no I guess, and I guess I gotta stick by that, Gremminger admitted. He was asked if he had been taking any other types of medication other than Tylenol while he was driving at the time of his injury in February of 2004. Yeah, at nighttime when I'd go to bed, I'd take pain medicine, Gremminger answered. He stated that he was not taking any other types of pain medication while he was physically driving the truck during those ten-hour days, and agreed that that would be something he would take after he was off. Gremminger agreed that he had left Martin Transportation pretty much immediately before Quality. He agreed that he had testified at his deposition that he had not had any physical problems performing any of his job duties at Martin Transportation, and this was correct

Gremminger stated, during cross examination, that he had not received his GED. No, I have no GED, Gremminger stated. He agreed that he had taken the test for the GED. Gremminger's deposition testimony was noted: Q. "Okay. Did you graduate from high school?" A. "GED."; Q. "Where did you go to high school?" A. "I never did go to high school. I just took a GED test.". I never passed any, Gremminger stated at the hearing. I did take it when I was in the service, he said, but I never did pass it. I only had a ninth grade education, he said, it wasn't even that really. I only went to school there about a month and a half in ninth grade, Gremminger stated. Gremminger's deposition testimony was again noted: Q. "Did you finish elementary school?" A. "I went to the ninth grade." Q. "That's what I needed to know. And then you went ahead and got your GED later?" Q. "Yeah, when I went in the service.". No, I never did get a GED, Gremminger testified at the hearing, I went in the service, I took a test for it, but I never did pass it. He was asked if he has any problems reading, comprehension problems. No, I don't understand a lot of big words, he responded. Before this injury I could read, Gremminger said. He was asked if he had had any problems with math. Limited, Gremminger answered, I could add and subtract, do a little times; that's about it. It was noted that when he was asked at his deposition if he has any problems with math, he had answered "No". Well, you didn't say what type of math, Gremminger responded at the hearing. I mean, fractions and geometry or stuff I have no idea about none of that stuff, Gremminger stated. I do not have any problems with addition or subtraction, Gremminger said, I can do that. He agreed that he can make change and things like that.

He was asked, during cross examination - during the course of an average day at Quality when you were driving for ten hours, what were the number of breaks you would need to take during a day. Well, every two hours I would try to stop, Gremminger responded. I would stop for ten, fifteen minutes, he said, and then continue on. I would always take an hour for lunch, Gremminger added. He agreed that he has paperwork to do in his job. Besides keeping the logs, the other paperwork I have is just the shipping orders, the manifest, Gremminger stated.

Gremminger agreed that, as he had testified in his deposition, because of his back he might need to miss work for a few days at a time, maybe twice a year.

In regards to my CDL, Gremminger stated, I had to take a physical every year. The one I took with Quality was at the end of December 2003, he said. He was asked what all do they check out in those physicals. Everything you get on a normal physical, Gremminger responded. He stated that he still has a CDL.

Gremminger was asked if he has attempted to go back to work in any capacity since he left Quality. No, ma'am, he answered. I have not attempted any type of retraining, vocational retraining, he further testified.

The VA told me it was a waste of time, Gremminger testified, he said when you go down to the State, they're going to tell you the same because you don't have any formal education. I wouldn't make enough money to even get out and make it worthwhile to make a livelihood so --, Gremminger stated.

On redirect examination, Gremminger agreed that, as he had said during cross examination that with the stent in his heart he has had no heart or no chest pain. Agreeing that as a result of having the stent put in his heart, he has altered his exertion level, Gremminger stated I don't do anything that I can upset anything; I don't exert myself in no way. Gremminger agreed that he had said he has no hand numbness any more, but further stated that he does not feel he has the same strength in his hands that he did before the surgery and before he had the onset of carpal tunnel symptoms. When they cut something in there, I lost some strength, Gremminger said. I don't know what it was that Dr. Ollinger cut, but, (for example), you'd have to couple these hoses together, and they're pretty good size - three inch, sometimes four inch hoses - and it was hard to get them coupled and to get them uncoupled. Stating that he was sure he had lost a percentage of the strength, Gremminger further said he did not know how much. I could open up a jelly jar, and now I can't, he said, now I've got to bang it on a table if that has any reference. I'm always thinking of food, Gremminger said. He was asked - Do you think -- if you had no problems with your legs or right eye, but you have all the other issues that you're dealing with -- do you think you could drive for a trucking company? No, Gremminger answered. He was queried - If you had perfect vision in your right eye and the current condition of your left eye but with all your other associated health problems but eliminate the leg issues, could you pass a DOT physical? No, not now, he answered. Because of the vision, Gremminger said.

The claimant offered into evidence a copy of the Stipulation of Compromise Settlement for the primary case herein involving the claimant and the employer, Quality Carriers, Inc. (No. V). The stipulation reflected a date of injury of 02/17/04, and a settlement of 17.5% permanent partial disability of the left eye; the stipulation indicated that the Second Injury Fund was left open. Additionally, the claimant offered into evidence, without objection, past Workers' Compensation files concerning George Gremminger (No. S). Exhibit No. S included copies of four (4) Stipulations of Compromise Settlement. The first Stipulation of Compromise Settlement reflected two settlements - a settlement between the claimant and Consolidated Freightways for a work related injury occurring on 08/09/93 based on permanent partial disability of 15% of the body as a whole at the back, and a settlement between the claimant and the Second Injury Fund including preexisting disability of 15% of the body as a whole re: cardiovascular/heart; the settlements were entered/approved by an administrative law judge on 03/01/95. A medical record in Exh. No. S by a Dr. Alan H. Morris, M.D. and dated 12/06/93 noted that Gremminger, an over-the-road truck driver, had suffered low back pain as a result of an accident where another truck hit his and Gremminger then hit a light pole; the medical report stated a date of injury of 04/05/93, but handwritten on the report was -- "should be 8/9/93". Dr. Morris further wrote that a CT scan of the lumbar spine was done on 08/30/93 that showed "minimal posterior bulge at L3-4 and a bulge at L4-5 slightly more pronounced on the left than the right", and there was on evidence of nerve impingement. The doctor noted that Gremminger was off work for a total of three months for this 1993 low back injury. Dr. Morris' diagnosis was -- history compatible with musculo ligamentous lumbar sprain. No permanent restrictions were given; Dr. Morris released Gremminger and stated he could work in an unrestricted manner. The second Stipulation of Compromise Settlement reflected a settlement between the claimant and Consolidated Freightways for an injury on the job occurring on 04/15/93, settling for permanent partial disability of 5% of the right lower extremity at the knee; the settlement was entered/approved by an administrative law judge on 03/03/95. A report of an x-ray of the right knee performed on 04/23/93 was contained in the exhibit, and reflected findings of: "No fractures or joint effusions of the right knee are identified. Normal alignment is maintained". The third Stipulation of Compromise Settlement reflected a settlement between the claimant and Consolidated Freightways for a work related injury occurring on or about 02/21/97 and settling for permanent partial disability of 15% at each wrist; the settlement was entered/approved by an administrative law judge on 11/05/97. Exh. No. S included copies of operative reports reflecting that Dr. Ollinger on 03/21/97 performed on Gremminger the surgery of endoscopic decompression of right carpal tunnel for a diagnosis of right carpal tunnel syndrome, and on

04/07/97 performed on Gremminger the surgery of endoscopic decompression of left carpal tunnel for a diagnosis of left carpal tunnel syndrome. Treatment notes of Dr. Ollinger's were in the exhibit, and the doctor indicated in a June 5, 1997 entry an impression of – 1. resolved symptoms of carpal tunnel and 2. soft tissues excellent; and that Gremminger was returned to work without restrictions beginning June 8, 1997. A fourth Stipulation of Compromise Settlement was in Exh. S, and concerned a settlement between the claimant and the Second Injury Fund apparently based on the work-related bilateral carpal tunnel syndrome occurring on 02/21/97 combined with preexisting disability of 15% heart and 12.5% of the back/ ribs; the settlement was approved by an administrative law judge on 08/04/98. The exhibit contained a medical record of Barnes – Supplementary Record Of Occupational Injuries & Illness form - reflecting that Gremminger had been in a car accident on or about 04/05/93 and had sustained broken ribs on the right side.

The claimant offered the medical expert opinion of Dr. Cohen, board certified in neurology, who had evaluated Gremminger at the claimant's request on December 1, 2005 and testified by deposition on behalf of the claimant (No. T). Dr. Cohen discussed Gremminger's pre-existing conditions or disabilities and noted them to be: history of COPD and asthma, history of cigarette consumption, a 14-15 year history of sleep apnea for which he uses a CPAP machine with oxygen (it was noted that prior to the diagnosis of sleep apnea on one occasion Gremminger had fallen asleep and ran off the road), history of coronary artery disease (approximately 6-7 years earlier Gremminger had had stent placement), history of spinal arthritis (with CT scan of his low back and a discussion by a Dr. Achary about surgery; and he was unable to have an MRI due to his size). Dr. Cohen noted that prior to the primary work-related injury Gremminger could not lift his loads if he had the back pain. Dr. Cohen listed the medical records he had reviewed. The doctor discussed his examination findings on December 1, 2005. Dr. Cohen stated the following as his diagnosis regarding the primary work related injury of 02/17/04: 1. Ocular infarction with fixed deficit in the left eye causing horizontal upper visual field loss due to excessive work-related stress. The doctor stated that Gremminger's pre-existing conditions or disabilities were: 1. Multiple pre-existing conditions or disabilities including chronic obstructive pulmonary disease, sleep apnea, coronary artery disease; and 2. History of spinal stenosis with chronic lumbar strain/sprain with myalgia. Dr. Cohen opined the following in regards to any permanent disability for Gremminger:

It is my medical opinion that within a reasonable degree of medical certainty, he has a 50% permanent partial disability at the left eye and a 20% whole person disability due to other problems which are directly affected by his eye disorder in that he has to walk with a cane and he has fallen because of both the visual loss in the left eye and the loss of depth perception.

Of the disability referable to the left eye, approximately 2-3% is pre-existing and the remaining 47-48% permanent partial disability is from the primary work-related injury.

Referable to the whole body disability, approximately 2-3% is pre-existing and the remaining 17-18% is as a direct result of the primary work-related injury.

In regard to his other pre-existing conditions or disabilities, it is further my medical opinion that within a reasonable degree of medical certainty, he has a 10% whole person disability due to the chronic obstructive pulmonary disease, a 10% whole person disability due to the sleep apnea, a 10% whole person disability at the level of the lumbar spine, and a 10% whole person disability due to the coronary artery disease.

It is further my medical opinion that within a reasonable degree of medical certainty, his pre-existing conditions or disabilities combine with the primary work-related injury to create a greater overall disability than their simple sum and that due to this combination of disabilities that he is permanently and totally disabled from his prior employment as a professional driver and not capable of gainful employment and that his pre-existing condition or disabilities were a hindrance or obstacle to his employment or re-employment. (Cohen Dp. pp. 16-18)

During cross examination, it was noted that Dr. Cohen had given Gremminger a disability rating for the loss of vision to his eye, but also gave an additional disability rating of 20% of the body as a whole and had noted

that was on other factors; the doctor was asked if this additional disability was based primarily on the fact that Gremminger is walking with a cane. Dr. Cohen answered:

“And the problems he had of falling and other problems – other problems related to the body besides the eye. So that whole person was in regard to, in part, using the cane for stability, but mostly because of the falls that were occurring because of the eye problems.” (Cohen Dp. pg. 32)

Dr. Cohen, during cross examination by the Second Injury Fund, was questioned about ratings for pre-existing conditions. It was noted that he had assessed 10% permanent partial disability of the person of the whole due to the COPD; Dr. Cohen was asked what ongoing complaints did Gremminger relay he had in regard to the COPD up to the primary injury. “COPD, at the time that I saw him, I didn’t have any complaints from him specifically regarding his lungs”, Dr. Cohen answered. (Cohen Dp. pg. 38) It was noted that Gremminger’s sleep apnea was the next thing Dr. Cohen had rated, and the doctor was asked what ongoing complaints or problems did Gremminger relay he had with the sleep apnea leading up to his primary injury. “I didn’t have any symptoms or complaints from him when I saw him regarding his sleep apnea”, Dr. Cohen answered. (Cohen Dp. pg. 39) The doctor was queried as to what ongoing complaints or problems did Gremminger relay he had in regards to his coronary artery disease leading up to his primary work injury. “I didn’t have any symptoms from his regarding that condition”, the doctor responded. (Cohen Dp. pg. 39) Dr. Cohen stated that it would be something he would expect, as Gremminger had testified in his deposition, that as long as Gremminger uses a CPAP machine he doesn’t have any problems with the sleep apnea; the doctor was asked - what is the reason for the 10% rating for sleep apnea. Dr. Cohen answered:

“Sleep apnea is a severe condition. If the machine does not work correctly for some reason, they won’t be able to get a full night’s sleep. If there is no electricity, they won’t be able to use the machine. And then patients that gain weight, the pressure won’t be correct and the machine won’t be helping them and they’ll be tired and have problems from the fatigue. So that has to be assessed. And then other illnesses can affect their sleep. And the CPAP machine would have to be adjusted for that.” (Cohen Dp. pp. 39-40)

The doctor was further queried – So would it be fair to say that, in part, your 10 % rating is due on the possibility of those problems arising, electricity going out, gaining weight, or other diseases interfering with the sleep apnea? Dr. Cohen answered: “And that the patient has to rely on that machine to keep this condition from occurring. But all of that, yes.” (Cohen Dp. pg. 40) The doctor was asked – In regards to the sleep apnea, as long as Gremminger’s CPAP machine is working, his symptoms from the sleep apnea are essentially asymptomatic, is that correct? “At least stable and relatively asymptomatic”, Dr. Cohen answered. (Cohen Dp. pg. 40) Dr. Cohen stated that Gremminger did not give any history in regards to the coronary artery disease of any ongoing problems that he experienced in regards to his heart after the time he had stent placement up to the time of his primary injury.

Dr. Cohen agreed that he is not a vocational expert, during cross examination by the Second Injury Fund. The doctor agreed that he does not place people in jobs in the open labor market. When queried isn’t it correct that he would defer to a vocational expert as to whether or not there were any jobs available within the restrictions that he felt were appropriate for Gremminger, Dr. Cohen responded – “Yes”. (Cohen Dp. pg. 41) Dr. Cohen stated that his examination of Gremminger was on December 1, 2005, and agreed that this was approximately a year and a half after Gremminger’s work injury. The doctor was queried - In forming his opinion of Gremminger’s disability and also Gremminger’s employability, he took into consideration the physical findings of his exam as of the date of the exam, correct? “Yes”, Dr. Cohen answered. (Cohen Dp. pg. 42).

The claimant offered the vocational rehabilitation counselor expert opinion of Delores Elvera Gonzalez, CRC, a Vocational Rehabilitation Counselor, who testified by deposition on behalf of the claimant on November 14, 2006 (No. U) after evaluating George Gremminger at the claimant’s request on September

9, 2006. Gonzalez explained what documents she had reviewed as part of her evaluation. She agreed that after her evaluation she had prepared a report, dated September 22, 2006, concerning her findings of Gremminger. Gonzalez' September 22, 2006 report was marked at the deposition as Employee's Exhibit 2; it was agreed and stipulated to by the parties that the report would be typed into the record. (See, Gonzalez Dp. pg. 5)

In her report, Gonzalez noted the date of injury - 2/17/04. Gonzalez wrote that prior to meeting with Gremminger, she reviewed medical records, and listed those records: Henry G. Ollinger, M.D.; Mallinckrodt Institute of Radiology (MIR); Heartland Hospital East; George D. Mulder, M.D.; Missouri Baptist Medical Center; Hemant Sheth, M.D.; St. John's Mercy Hospital; BarnesCare; George Richardson, M.D.; St. Anthony's Medical Center; A. Rashid Qureshi, M.D.; James R. Criscione, M.D.; David T. Volarich, D.O.; Max David, M.D.; James K. Walsh, Ph.D.; Judson F. Martin, M.D.; Pain Management Service Center; David F. Ellenbrogan, D.C.; St. Luke's Hospital; Mark Chin, M.D.; Neil Ettinger, M.D.; Sleep Medicine Research Center; Alan H. Morris, M.D.; David M. Peeples, M.D.; Barnes Retina Institute; Nicholas E. Engelbrecht, M.D.; Michael S. Korenfeld, M.D.; Raymond F. Cohen, M.D.; John Cochran VA Hospital; and Gary A. Miller, M.D.

Gremminger's diagnoses were listed in Gonzalez' report: Near total vision loss O.S.; Central retinal artery occlusion; Pigment epithelial detachment, right eye; Hypertension; Atherosclerotic heart disease; S/P myocardial infarction; Degenerative joint disease; Severe obstructive sleep apnea; Chronic obstructive pulmonary disease; Arthritis; Asthma; Severe coronary artery disease; Bilateral carpal tunnel syndrome with decompression; Sciatica secondary to lumbosacral sprain; Spinal stenosis at L4-L5; Degenerative changes of lumbar vertebral bodies; Left quadriceps rupture; Mechanical low back pain; Morbid obesity; Hypophosphatemia; Nicotine dependency.

Gonzalez next discussed Gremminger's personal history, his medical history, and his educational history and abilities were discussed. Gremminger's vocational history was discussed by Gonzalez. The medical records reviewed by Gonzalez were discussed including a summary of pertinent information was discussed beginning with treatment in April 1991.

A transferability of skills for Gremminger was discussed by Gonzalez: This process revealed that Mr. Gremminger does not have transferable skills that could be used in other jobs within his residual functional capacity, Gonzalez wrote. I prepared to administer CareerScope to Gremminger but because of his visual problems he was unable to be tested, Gonzalez wrote. Further written was:

Mr. Gremminger has not been released to return to work because of persistent pain and restriction of function.

Advancing age also has a significant impact on transferability. Mr. Gremminger is fifty-eight years old. To find the client who is almost at retirement age and performed medium to very heavy work for the last thirty-three years to have transferable skills, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or industry.

Furthermore, these skills must be highly marketable. A client with this adverse vocational profile cannot be expected to make a vocational adjustment to substantial changes in work.

In order to establish transferability of skills for such a client, one must show that the client can apply the skills he has acquired during the performance of his past work to semi-skilled or skilled job duties of other jobs with a minimal change in proficiency (with little vocational adjustment required).

The medical evidence reveals that Mr. Gremminger cannot perform his past relevant work of thirty-three years. Mr. Gremminger does not have transferable skills to other jobs because he is so severely limited. This evaluation process did not reveal any job that Mr. Gremminger can perform for which there is a reasonably stable job market.

Mr. Gremminger is unable to engage in any substantial gainful activity and should not be expected to perform in an ongoing working capacity in the future. (See, Gonzalez Dp.61-62)

Gonzalez wrote the following summary:

According to the medical evidence of record, Mr. Gremminger has severe limitation of functional capacity secondary to multiple injuries and disabilities. His current residual functional capacity is less than sedentary work. The medical evidence corroborates continued significant, residual complaints that present a chronic hindrance in his ability to perform basic work functions and some activities of daily living.

The documentary evidence supports this finding. Careful consideration has been given to the medical evidence and vocational information generated from this evaluation.

Mr. Gremminger's impairments have produced pain of severe intensity, frequency, and duration, and have affected his ability to perform basic work-related functions. He is unable to do any prolonged sitting, standing, or walking. He complains of increased severe pain when in a seated, standing, or walking position for more than just a few minutes. He is blind in his left eye and must use a magnifying glass to see printed material with his right eye.

Although he is able to perform most activities of daily living, it is necessary for him to rest and be given the opportunity to change positions as needed to maintain a reasonable level of comfort. His impairments remain severe despite surgeries, physical and occupational therapy, pain medications, pain management, and regular medical attention and treatment.

Dr. Cohen opined that:

Due to this combination of disabilities that he is permanently and totally disabled from his prior employment as a professional truck driver and not capable of gainful employment, and that his pre-existing conditions or disabilities were a hindrance or obstacle to his employment or re-employment.

He needs to be restricted from any type of driving other than possibly some short distances around his home. He needs to be restricted from any type of heights or walking on uneven surfaces. He also needs to be restricted from any work in which he does any forceful activity because of the lungs and because of the heart. He should avoid extremes in temperature.

The client's impairments have severely compromised his ability to either return to his past relevant job or to perform even sedentary work on a sustained basis.

It is my opinion that Mr. Gremminger is not a candidate for vocational rehabilitation. Mr. Gremminger is not capable of any competitive work for which there is a reasonably stable job market. Mr. Gremminger has a combination of adverse vocational factors that would preclude employment currently and in the future. (See, Gonzalez Dp. pp. 62-64)

Gonzalez was asked at her deposition if it was her opinion that Gremminger cannot compete in the open labor market. "Yes, sir", Gonzalez answered. (Gonzalez Dp. pg. 65) She was asked her opinion on whether an employer could reasonably be expected to hire Gremminger considering his present physical condition and reasonably expect him to successfully perform the work. Gonzalez answered: "He might be hired, however, I doubt that he would be able to perform on the open labor market given his need for accommodation." (Gonzalez Dp. pg. 65) Gonzalez was asked – In your opinion, Gremminger's inability to compete in the open labor market is due to the combination of his injuries and disabilities which include his eye condition; is that correct? "Yes, sir", Gonzalez answered. (Gonzalez Dp. pg. 65)

On cross examination, Gonzalez was again queried, wasn't it her opinion regarding Gremminger's employability that it relates to all of the factors she had noted in her report. "Yes, sir", Gonzalez responded. (Gonzalez Dp. pg. 66) She was queried - It's just not solely related to his vision loss? Gonzalez answered: "Oh, no. It's a combination of all of his disabilities." (Gonzalez Dp. pg. 66)

On cross examination by the Second Injury Fund, Gonzalez was asked if she had done any type of intelligence testing. "I tried", Gonzalez answered. (Gonzalez Dp. pg. 67) Agreeing that she couldn't because

of Gremminger's vision, Gonzalez added: "He needs to use a magnifying glass to read any printed material. And I used CareerScope to do the interest and aptitude testing and there was no way. We tried. He couldn't. There was no way that he could perform the testing." (Gonzalez Dp. pg. 67) She was queried - So there's no way for you to really determine what his intelligence level is; is that correct? Gonzalez answered: "No. The only thing that I had was academic level. He, I believe, finished the eighth grade and never obtained a GED or a high school diploma. And he said that he had been in a lot of trouble and was not able to finish school." (Gonzalez Dp. pp. 67-68) Gonzalez was further queried - There's nothing to indicate in the records that Gremminger's intellectual ability would prohibit him from learning a new job, would that be fair to say? She responded: "No. I don't think that there's any -- I didn't see a problem, but I wish that I could have evaluated him." (Gonzalez Dp. pg. 68)

Gonzalez agreed, during cross examination, that she is not a doctor. When asked if she would defer to a doctor as to the causation of Gremminger's various disabilities, Gonzalez responded - "That's correct." (Gonzalez Dp. pg. 68) Gonzalez agreed that her opinion of Gremminger's inability to work is based on the combination of all the limitations, restrictions, and disabilities throughout the medical records, and her evaluation that are listed in her report of September 2006. Gonzalez was asked if it was correct her opinions are based in part on all of Gremminger's physical conditions, and complaints, and limitations as they existed as of the date of her evaluation in September of 2006. "That's correct", Gonzalez agreed. (Gonzalez Dp. pg. 69)

During cross examination, Gonzalez was asked if Gremminger had given her any indication that he had any physical problems doing his job at Quality Carriers before the alleged eye injury. Gonzalez answered:

"He said that he had difficulty climbing up the little ladder to the top. And he said that it was--and I'm just doing this from memory; okay?

He said that he had difficulty lifting something when he got up on the top of the trailer. And that he occasionally had problems with his hands holding the steering wheel. But that was it." (Gonzalez Dp. pg. 70)

She was queried if it would be fair to say that Gremminger did not tell her of any problems with the sitting aspect of doing his job. Gonzalez responded: "He said his back hurt. And he said that he had problems with the swelling in his knees. In fact, he showed me the swelling in his one knee when I was there. But that's all that I can remember." (Gonzalez Dp. pg. 70) Gonzalez stated that she did not have Gremminger's deposition dated February 15, 2005. She was queried-- If Gremminger had testified in his deposition- on page forty-eight, lines twelve through twenty-two - that his hands did not give him any problems driving, they didn't go numb, they didn't fall asleep, they didn't cause him any problems, would that be different than your recollection of what he told you? Gonzalez answered:

"When we were sitting at his table and talking, he said that his hands would give him problems, and I would suppose that it would be when he was climbing up the ladders and when he was trying to lift whatever it was that he was supposed to be lifting.

I know that he was a very proud man and every time that he was injured, he went back to work. I don't know how he did it. He's one of the most disabled people that I've ever met. And I don't want to say that he wasn't telling me the truth or, you know, telling the truth during his deposition, but his hands were misshapen when I saw him, and it was probably from some type of osteoarthritis. So I believed him." (Gonzalez Dp. pg. 71)

Gonzalez admitted that what she had just been told about what Gremminger had testified in his deposition was a little different than her understanding. She added: "He just said that he had problems with his hands. And I believe that he had carpal tunnel surgery bilaterally, and that after the surgery he didn't have any restrictions." (Gonzalez Dp. pp. 71-72) Gonzalez admitted that she had not asked Gremminger if any of the physical problems he had been having had gotten better, gotten worse, or stayed the same since the date of

his alleged eye injury. She added: "I would assume that since he's been off work that maybe things have improved. But most of the things that are wrong with him are degenerative in nature and you would think that it wouldn't get better." (Gonzalez Dp. pg. 72)

Gonzalez agreed that she had a lot of medical information listed in her report that went on for a number of pages; she stated that she believed this was all the medical information she considered in forming her opinions, and she utilized all that information in forming her opinions. It was noted that she had listed in her report some restrictions imposed on Gremminger by Dr. Cohen; she was asked if there are jobs that exist in the open labor market within those restrictions. "Yes", Gonzalez answered. (Gonzalez Dp. pg. 74) Probably at the sedentary level, Gonzalez stated. She added:

"And the reason I'm saying that is because of the forceful activity, because of his lungs and his heart, extremes of temperature, the fact that he should be restricted from any type of height or walking on uneven surfaces.

So if you take away light, medium heavy, very heavy, then you have sedentary. But then within the sedentary, you know, besides Dr. Cohen's restrictions, you have to consider the fact that he has, you know, a blind left eye, and then he has problems with the fact that he probably should not do repetitive type activity with both hands." (Gonzalez Dp. pp. 74-75)

Gonzalez stated this was from the fact that Gremminger "had bilateral carpal tunnel syndrome". (Gonzalez Dp. pg. 75) She agreed that there is no doctor who says this. Gonzalez agreed that if you look at only the restrictions imposed by Dr. Cohen in his 12/05 report, there are jobs within those restrictions. She was asked what other doctors' restrictions was she taking into consideration besides Dr. Cohen's in forming her opinions. Gonzalez answered:

"Well, the fact that Dr. Peeples indicated that he had two plus edema at the ankles and signs of arterial venous insufficiency in the lower extremities.

I mean, you just can't--you know, these doctors don't say, you know, he shouldn't be, you know, like a secretary, or he shouldn't be whatever. Sometimes they take it upon themselves to let the reader, you know, a physical therapist, an attorney, a Vocational Rehabilitation Counselor, look at what they're saying the person has and then you draw from that what the person is able to do or not be able to do." (Gonzalez Dp. pg. 76)

Gonzalez agreed that she is not a medical expert. "But I'm a vocational expert", she added. (Gonzalez Dp. pg. 76) She agreed that she would defer to a medical expert as to actual physical restrictions. Gonzalez was asked to testify about Gremminger's restriction due to his eye: "If a person has a blind eye, they shouldn't be using that eye to drive with say, or to do work that requires vision in both eyes. So that would definitely be a restriction even if they don't say it." (Gonzalez Dp. pg. 78) Gonzalez agreed that this was her opinion as a vocational expert. In determining which doctors' restrictions she had relied on, Gonzalez agreed that all of the restrictions that the doctors imposed that she relied on would be contained within her report. Gonzalez added:

"You know, the fact that he had the severe coronary artery disease with severe stenosis, and the fact that he had severe sleep apnea and required oxygen at night, and that he had chronic obstructive pulmonary disease, that he had problems with defusion in his lungs.

Dr. Volarich back in, I guess it was as early as 1994 indicated that he had bulging discs, that he had left leg radiculopathy. And at that time, he said that he was subject to recurrence of strain/sprain in his spine and peripheral skeleton, and that he should avoid any lifting in excess of twenty-five to thirty pounds and limit this to an occasional basis only. He should avoid repetitive stooping, squatting, bending, pushing, pulling, twisting, lifting." (Gonzalez Dp. pp. 79-80)

She was asked if she knew if Gremminger had followed these restrictions. "I think that maybe he didn't considering that he went back to being a truck driver", Gonzalez answered. (Gonzalez Dp. pg. 80) She agreed that even though those restrictions were imposed, as far as she could tell by doing the jobs Gremminger did, he was not able to follow those. Gonzalez stated that she did not know if she had asked Gremminger if during the time he worked for Quality Carriers if he had to miss any time from work due to any of these other physical problems leading up to the date of the eye injury.

*See, generally, Highley v. Von Weise Gear*, 2008 WL 563450 (Mo.App. E.D.,2008) in which the Commission noted that, per Section 287.220, Second Injury Fund liability occurs where a claimant establishes either that the preexisting partial disability combined with a disability from a subsequent injury to create a permanent and total disability, or the two disabilities combined result in a greater disability than that which would have occurred from the last injury alone; and that whether the combination of injuries resulted in permanent and total disability is determined based upon the worker's ability to compete in the open labor market. *See, also, generally, Karoutzos v. Treasurer of State*, 55 S.W.3d 493, 498-499 (Mo.App. W.D., 2001) *overruled on other grounds, Hampton*, 121 S.W.3d at 223, in which the Court held:

"In order to recover from the Fund, a claimant must first prove a pre-existing permanent partial disability whether from compensable injury or otherwise, pursuant to § 287.220.1. The permanent disability pre-dating the injury in question must 'exist at the time the work-related injury was sustained and be of such seriousness as to constitute a hindrance or obstacle to employment or re-employment should the employee become unemployed.' *Messex v. Sachs Elec. Co.*, 989 S.W.2d 206, 214 (Mo.App.1999).....

Second, "a preexisting disability must combine with a disability from a subsequent injury in one of two ways: (1) the two disabilities combined result in a greater overall disability than that which would have resulted from the new injury alone and of itself; or (2) the preexisting disability combined with the disability from the subsequent injury to create permanent total disability." *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522, 526 (Mo.App.1999) (citation omitted). There are no specific requirements when the pre-existing disability and the primary injury combine to cause permanent total disability. *Id.*

Total disability is defined as the inability to return to any employment and not merely the employment in which the employee was engaged at the time of the accident. § 287.020.7. 'The test for permanent total disability is the worker's ability to compete in the open labor market in that it measures the worker's potential for returning to employment.' *Reese*, 5 S.W.3d at 526. 'The critical question then becomes whether any employer in the usual course of employment would reasonably be expected to hire this employee in his or her present physical condition.' *Id.*"

It is found that in a review of the conclusions of the two experts' in this case on the issue of Second Injury Fund liability, Dr. Cohen and Delores Gonzalez, there is no homogeneity in the bases for their opinions in regards to the combination of claimant's disabilities and the effect thereof. *See, generally, Anderson v. Emerson Elec. Co.*, 698 S.W.2d 574 (Mo.App. E.D. 1985) *overruled on other grounds, Hampton*, 121 S.W.3d at 223, in which the Court held that the determination by the Commission that the employee was not entitled to benefits from the Second Injury Fund was supported by sufficient evidence where there was no evidence that the combined effect of preexisting cardiac condition and compensable back injury was greater than the sum of disabilities resulting from each independently or that the two disabilities combined to result in total permanent disability. In this case, Dr. Cohen specifically noted disability for the following injuries for the claimant: as a result of the primary, work-related injury - the left eye and a whole person disability due to other problems which are directly affected by his eye disorder; and pre-existing injuries of - left eye, the whole person due to the chronic obstructive pulmonary disease, the whole person due to the sleep apnea, the whole person at the level of the lumbar spine, and the whole person due to the coronary artery disease. As Dr. Cohen made no mention of any other conditions, injuries or disabilities, it was for the named pre-existing disabilities that Dr. Cohen opined combined with the primary work-related injury he had

diagnosed to create a greater overall disability than their simple sum and that due to this combination of disabilities Gremminger was permanently and totally disabled from his prior employment and not capable of gainful employment, and that these pre-existing conditions or disabilities were a hindrance or obstacle to his employment or re-employment. Gonzalez noted the following diagnoses for Gremminger: Near total vision loss O.S.; Central retinal artery occlusion; Pigment epithelial detachment, right eye; Hypertension; Atherosclerotic heart disease; S/P myocardial infarction; Degenerative joint disease; Severe obstructive sleep apnea; Chronic obstructive pulmonary disease; Arthritis; Asthma; Severe coronary artery disease; Bilateral carpal tunnel syndrome with decompression; Sciatica secondary to lumbosacral sprain; Spinal stenosis at L4-L5; Degenerative changes of lumbar vertebral bodies; Left quadriceps rupture; Mechanical low back pain; Morbid obesity; Hypophosphatemia; Nicotine dependency. It is clear that Gonzalez took into consideration all the injuries and disabilities listed in her report in reaching her conclusion that she felt Gremminger is unable to compete in the open labor market due to the combination of his injuries and disabilities. Gonzalez agreed during cross examination that her opinion regarding Gremminger's employability related to all of the factors she had noted in her report. She was further queried -- It's just not solely related to his vision loss? -- and Gonzalez answered: "Oh, no. It's a combination of all of his disabilities." (Gonzalez Dp. pg. 66) Gonzalez noted reviewing additional medical records and other information that Dr. Cohen did not indicate he had reviewed, and Gonzalez stated that she had utilized all that information in forming her opinions. For example, in her testimony that she felt there were jobs that existed in the open labor market within the restrictions imposed on Gremminger by Dr. Cohen, Gonzalez made additional comments which indicated a consideration of injuries or disabilities beyond those considered by Dr. Cohen:

"So if you take away light, medium heavy, very heavy, then you have sedentary. But then within the sedentary, you know, besides Dr. Cohen's restrictions, you have to consider the fact that he has, you know, a blind left eye, and then he has problems with the fact that he probably should not do repetitive type activity with both hands." (Gonzalez Dp. pp. 74-75)

The record herein includes evidence of pre-existing permanent partial disability found for both of the claimant's hands as a result of a work-related injury of bilateral carpal tunnel syndrome; in evidence is a copy of a Stipulation of Compromise Settlement reflecting a settlement between Gremminger and Consolidated Freightways on 11/05/97 for permanent partial disability of 15% at each wrist due to a work related injury occurring on or about 02/21/97, and in evidence are copies of operative reports reflecting that endoscopic surgeries were performed on Gremminger on 03/21/97 for a diagnosis of right carpal tunnel syndrome and on 04/07/97 for a diagnosis of left carpal tunnel syndrome. There is no evidence that Dr. Cohen took into consideration any disability in the claimant's left and right hands in combination with the disability from the claimant's primary work injury in reaching his decision on the effect of a combination of work related and pre-existing disabilities in regards to the question of permanent total disability. The record included additional numerous other pre-existing conditions that the claimant testified were hindrances and obstacles to his employment, and there was evidence of other pre-existing injuries and conditions for which pre-existing permanent partial disability had been found.

*See, generally, Walsh v. Treasurer of the State of Mo., 953 S.W.2d 632, 637 (Mo.App. S.D., 1997) overruled on other grounds, Hampton, 121 S.W.3d at 223 in which the Court held:*

"In a workers' compensation case, the claimant has the burden of proving all of the elements of his claim. *Lawrence v. Joplin R-VIII School, 834 S.W.2d 789, 793 (Mo.App. S.D.1992)*. If the claimant seeks permanent total disability benefits, he must prove that he cannot compete in the open job market, and that an employer, in the usual course of business, would not reasonably be expected to hire him in his present physical condition, and a vocational rehabilitation expert's opinion. *Story v. Southern Roofing Co., 875 S.W.2d 228, 232-33 (Mo.App. S.D.1994)*."

*See, generally, also, Houltzhouser v. Central Carrier Corp.*, 936 S.W.2d 908, 912 (Mo.App. S.D. 1997), *overruled on other grounds, See, Hampton*, 121 S.W.3d at 223 in which the court noted that the opinion of a vocational rehabilitation expert as to a claimant's employability based on their examination of reports concerning the claimant's condition is substantial and competent evidence on the issue of whether or not an employer could reasonably be expected to hire the claimant.

In this case, it is found that the lack of an analogous factual basis upon which the experts relied to form their opinions about the parameters for permanent total disability renders the opinions not supportive of each other, thus resulting in no competent expert opinions and an insufficient record for a finding of permanent total disability.

It also should be mentioned that in regards to the test for permanent total disability --whether any employer in the usual course of employment would reasonably be expected to hire the employee in his or her present physical condition -- it is found that in this case, the evidence indicates that the employer herein, Quality Carriers, Inc., continued to be willing to employ Gremminger subsequent to his work related injury herein and it was the claimant's own decision to leave this employment. Gremminger testified that after the February 17, 2004 injury he worked for Quality Carriers until June 2004. They wanted me to continue working, Gremminger testified, and I told them it was too dangerous, I was too scared to do it anymore, so I had to quit. It should be further noted that during cross examination, Gremminger was asked if he has attempted to go back to work in any capacity since he left Quality, and he answered - No, ma'am. I have not attempted any type of retraining, vocational retraining, he further testified. The VA told me it was a waste of time, Gremminger testified, he said when you go down to the State, they're going to tell you the same because you don't have any formal education. I wouldn't make enough money to even get out and make it worthwhile to make a livelihood so --, Gremminger stated. The Veterans Hospital record (No. M) that is in evidence included a Vocational Rehabilitation JB Consult assessment, performed on 06/28/04 by a John Berkenwald, and in the Plan section the following was written: "He is NSC and, therefore, not eligible for the federal voc rehab program. Pt has been referred to Missouri's vocational agency for possible formal work assessment and testing."

For all the reasons stated above, it is found that the evidence is not competent to establish a combination of pre-existing disabilities with the claimant's February 17, 2004 primary injury/disability such that he could be found to be permanently and totally disabled due to a combination; thus liability against the Second Injury Fund for permanent total disability cannot be found.

The claimant offered evidence of possible Second Injury Fund liability for permanent partial disability. Section 287.220.1 RSMo sets forth the parameters for such liability, and states, in pertinent part:

If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree

or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for

Again, there is evidence of permanent partial disability for the primary work related injury herein occurring on February 17, 2004 in that a copy of the Stipulation of Compromise Settlement for the primary case herein involving the claimant and the employer, Quality Carriers, Inc. (No. V) is in evidence and reflects a settlement of 17.5% permanent partial disability of the left eye; the Stipulation notes the issues to be – “nature and extent of permanent partial disability, temporary total disability, liability of past and/or future medical expenses, and all other issues”; the Second Injury Fund was left open on the Stipulation. Dr. Cohen opined that as a result of the February 17, 2004 work related accident, Gremminger had sustained 47-48% permanent partial disability at the left eye as a result of the February 17, 2004 work-related left eye injury. (NOTE: It is found that Dr. Cohen’s opinion of “20% whole person disability due to other problems which are directly affected by his eye disorder in that he has to walk with a cane and he has fallen because of both the visual loss in the left eye and the loss of depth perception” is a nebulous rating to which a finding of any specific body part injury would be speculative.) There is also evidence of pre-existing disability for the claimant. Dr. Cohen assessed permanent partial disability for pre-existing conditions of: 2-3% left eye, 10% whole person due to the chronic obstructive pulmonary disease, 10% whole person due to the sleep apnea, 10% whole person at the level of the lumbar spine, and 10% whole person due to the coronary artery disease. The claimant offered copies of Stipulation of Compromise Settlement forms reflecting, it is found, settlements for the February 17, 2004 work related injury and for pre-existing injuries and conditions for permanent partial disability approved by an administrative law judge as follows: Regarding the February 17, 2004 primary injury herein, a 17.5% permanent partial disability of the left eye. Regarding pre-existing injuries and conditions: a. a 03/01/95 settlement as a result of an 08/09/03 work related injury of - 15% body as a whole for the lumbar spine due to the work related injury, and 15% body as a whole re: cardiovascular/heart against the Second Injury Fund; b. an 03/03/95 settlement as a result of an 04/15/93 work related injury of 5% of the right lower extremity at the knee; c. a 11/05/97 settlement as a result of an 02/21/97 injury of 15% at each wrist; and d. an 08/04/98 settlement of “15% heart, 12.5% back/ribs” against the Second Injury Fund in combination with the 02/21/97 work related bilateral carpal tunnel syndrome injury. Sub-section 287.190.6(1) RSMo 2004 concerns the effect of a determination of permanent partial disability, and states:

"Permanent partial disability" means a disability that is permanent in nature and partial in degree, and when payment therefor has been made in accordance with a settlement approved either by an administrative law judge or by the labor and industrial relations commission, a rating approved by an administrative law judge or legal advisor, or an award by an administrative law judge or the commission, the percentage of disability shall be conclusively presumed to continue undiminished whenever a subsequent injury to the same member or same part of the body also results in permanent partial disability for which compensation under this chapter may be due; provided, however, the presumption shall apply only to compensable injuries which may occur after August 29, 1959.

The claimant gave testimony about his prior conditions and injuries, and how they had affected his ability to work (again, the claimant’s testimony will be given only some weight, as noted earlier, he has been found to, at times, exaggerate and/or expand facts putting his credibility in question). Testifying about his health issues before the February 17, 2004 injury, Gremminger indicated health issues with sleep apnea, bad heart, lungs, lower back, legs, poor circulation in the legs. He stated that he had problems with his wrists and elbows and shoulders. Gremminger agreed that over the years since the early 1990’s to the present he has received treatment concerning these problems. He testified about physical limitations due to his physical

problems prior to February 17, 2004. For example, Gremminger stated just before February of 2004 I could not walk very far before I had to stop, Gremminger stated, probably about ten, fifteen minutes, ten minutes probably at the maximum. I don't think I could run just before February 17, 2004, Gremminger said, and explained I wouldn't have enough breath, and I was too scared to try running because I had a heart attack prior to that. The claimant agreed that leading up to February 17, 2004 his back would go out occasionally, and further stated that when it would go out he would miss on an average three to four days work. Explaining how the sleep apnea affected him at work, Gremminger stated I quit breathing when I'm sleeping, and I was always tired and I would fall asleep just sitting here talking to you. He was asked if he had ever fallen asleep at the wheel. Well, sure, that's how I had several accidents on the road, Gremminger answered. These accidents were prior to February 17, 2004, he said.

On cross examination by the Second Injury Fund, Gremminger testified that while working for Quality Carriers, Inc, the employer herein, he averaged 65 to 70 hours a week working, further stating -- Well, you couldn't run over 70. Of that 65 to 70 hours I spent, ten hours a day would be spent driving, Gremminger stated. Usually you would end up working almost every day, Gremminger stated, once in a while you would have a couple days off at tank washes where you go; I'd probably say five and a half days a week, six days for sure of actually working, he stated. Of those ten hours a day, when I say actually working, those ten hours a day were spent driving, Gremminger agreed. He agreed that he would take occasional breaks during the day while he was driving those ten hours. During cross examination, Gremminger agreed that he is on a C-Pap machine for his sleep apnea, and agreed that he had started using this machine before his injury in February of 2004. He agreed that as long as he uses that machine, he gets sleep, and he is okay during the day from the sleep apnea; he agreed that therefore, leading up to February of 2004 his problems with his sleep apnea were pretty much under control. Gremminger stated that he had a stent placed in his heart because of heart problems, and since he has had the stent placed he has not actually had any other problems with his heart including no chest pain since then. He was asked if he was having any problems with his carpal tunnel at the time the doctor had released him from his care. Not then, but later as time went on I was starting to get the same thing where my hands go numb and my arms are getting numb again, Gremminger answered. This started probably about six or eight months after I had had my surgery, he said. Gremminger stated that he remembered having his deposition taken on February 15, 2005. His testimony on page 48 of his deposition transcript, lines 12 through 22 was noted: Q. "Do you have any problems with your hands going to sleep now or anything like that? A. No.; Q. Do they ever wake you up at night? A. No, ma'am.; Q. Do they ever go numb while you're driving? A. No, ma'am." Gremminger was asked if his deposition testimony had been correct. I had physical disabilities prior to working for Quality, and I did get my job done at Quality, he responded. The way that you had put the question, yeah, that was answered correct, Gremminger further answered. He was queried - So at the time of the deposition, your hands were not waking you up at night; correct? At that particular time, no, Gremminger answered. He was queried -- Wasn't it correct that he didn't have any problems with his hands going numb while he was driving? Yeah, they went numb while I was driving, Gremminger answered. I probably didn't understand your question right at that time; I told you no I guess, and I guess I gotta stick by that, Gremminger admitted.

In reviewing the medical evidence, it is found that there is evidence of diagnosis and examination for the claimant's February 17, 2004 work related left eye injury. For example, Dr. Qureshi's 08/31/04 entry (No. I) in which, after examination, diagnosed Gremminger with "EYES Scotoma and blindness in the left eye". Dr. Korenfeld, M.D.'s of Comprehensive Eye Care, Ltd. records (No. Q) indicated that the doctor examined Gremminger on February 9, 2005, and in a discussion of his examination findings, Dr. Korenfeld wrote in the Assessment and Plan section of his February 12, 2005 letter:

"The visual loss in the left eye is profound and unlikely to recover. It is most likely that he has had a vascular occlusion in his left eye and because of this, we have recommended that he continue his Plavix and aspirin. If he has not had a carotid Doppler study and a echocardiogram, this would be a reasonable thing to do since abnormalities in the carotid artery and cardiac valves are often associated with vascular occlusion in the

eye.”

The records of Veterans hospital (No. M) included 03/23/05 entry which indicated Gremminger was in for a visual analysis, and had complaints that included: 1. decreased visual acuity since 02/16/04, only can see the top of the visual field, blurry in the center, blocked, can't see through it, notice decrease in visual acuity and depth perception while putting on a cap on a drain valve on a chemical “tanker” St. Clair Mo, was getting ready to go on a run, has not changed since 2/16/04. It was noted that a Carotid Duplex performed on 06/10/04 included the following impression:

Occlusion of the left internal carotid artery. The possibility of a severely flow limiting 99% stenosis cannot be entirely excluded, and if the patient is considered a surgical candidate, carotid angiography may be helpful to exclude lumen patency.

In a 07/01/04 entry it was written that a carotid test had been performed on 06/29/04, and the written summary was: “In summary there is evidence for total occlusion of the left internal carotid artery and a 50 to 79 percent stenosis of the right internal carotid.” An August 3, 2004 letter by a Carlotta Taylor-White, A.P.N. of Prime Medicine to Family Services, Franklin County Missouri noted: “Mr. Gremminger has near total loss vision secondary to severe carotid stenosis.”. There is also medical evidence, it is found, of prior treatment, diagnosis or examination addressing the claimant’s pre-existing physical problems noted by Dr. Cohen that combined with the February 17, 2004 work related injury to produce a synergistic effect, those pre-existing injuries/conditions being: chronic obstructive pulmonary disease, sleep apnea, the lumbar spine, and coronary artery disease.

It is found that the competent and substantial evidence supports a finding of 47% permanent partial disability of the left eye as a result of the February work related herein; this would be  $140 \text{ weeks} \times 47\% = 65.8 \text{ weeks}$ . See, generally, *Conley v. Treasurer of Missouri*, 999 S.w.2d 269 (Mo.App. E.D. 1999) in which the Court states that a Stipulation of Compromise Settlement between the claimant and the employer/insurer for a work related injury reflecting a permanent partial disability is relevant on the issue of permanent partial disability for the work related injury in a Second Injury Fund case, but is not binding on the Second Injury Fund. It is further found that in regards to the claimant’s pre-existing disabilities, there is sufficient and substantial evidence establishing permanent partial disability at or above the threshold for Second Injury Fund liability as follows: in regards to the pre-existing lumbar spine injury/condition -- 15% permanent partial disability of the body as a whole referable to the lumbar spine; in regards to the pre-existing heart/cardiovascular/coronary artery disease -- 15% permanent partial disability of the body as a whole referable to the heart/cardiovascular/coronary artery disease. It is found that the evidence indicates a permanent partial disability amount below threshold per Section 287.220.1 for the remaining pre-existing conditions considered by Dr. Cohen of -- COPD and sleep apnea.

Considering the immediately above findings, it is further found that there is competent and substantial evidence establishing Second Injury Fund liability for the following permanent partial disability due to the synergistic effect from the combination of the claimant’s disability from the February 17, 2004 work-related left eye injury combined with the pre-existing injuries/conditions of the lumbar spine and heart/cardiovascular/coronary artery disease as follows:  $[68.5 \text{ weeks (primary disability)}] + [(400 \text{ weeks} \times 15\%) + (400 \text{ weeks} \times 15\%)] = 188.5 \text{ weeks}$ . It is found that the competent evidence supports a finding of a synergistic effect due to the combination of the primary and pre-existing disabilities of a 15% load. This would result in the following Second Injury Fund liability:  $188.5 \text{ weeks} \times 15\% = 28.28 \text{ weeks}$ ;  $28.28 \text{ weeks} \times \$347.05/\text{week} = \$9814.57$ .

## SUMMARY OF THE EVIDENCE

George Edward Gremminger, the claimant, testified that he was born on 07/2/1948. He stated that he lives in Bland, Missouri with his wife to whom he has been married for almost 30 years. The claimant stated that his wife is dependent upon him for support. Gremminger testified that the extent of his education is ninth grade. I never received a GED, he said. The claimant stated that he was in the Army for two years, 1967 to 1969, and never was in combat. I was honorably discharged, he said. After the Army I started working doing some factory work for probably two years at the most, Gremminger stated, and then I started driving a truck. He agreed that he has therefore driven trucks since about 1970 or 1971. The claimant was asked - Other than driving a truck and the two years of factory work, have you done any other type of job? No, not really, Gremminger answered.

I am not currently working, Gremminger stated, my sources of income currently are just our SSI, and I have a small pension. He agreed that he is on Social Security disability, and stated that he has been for about two years this January or February 2008. He was asked to explain his understanding as to what his Social Security disability is based on. Loss of my eyesight, Gremminger answered, and sleep apnea, my hands, carpal tunnel, bad back.

I last worked for Quality Carriers, the claimant testified. It was an easy job to get, Gremminger said, I didn't have to lift much or do a lot of walking. I started with Quality Carriers, I think it was January of 2004, the claimant said. He agreed that to get this job he was required to take a physical. The first one I flunked because of my breathing, he said, you have to wear a face mask, and the doctor didn't think I could do it because I got bad lungs. So they sent me to another doctor, and he understood you didn't wear the face mask all the time, you just put it on just in case there was an accidental spill, so he gave me my certificate to go, Gremminger stated. He agreed that during those physicals he had an eye exam, and stated that he passed those eye exams.

Gremminger testified about the duties he performed with Quality Carriers. Loading and unloading, he said. I had to climb up a ladder and open the vent if they used a pump so it wouldn't suck the container in a V shape, and drag hoses up to the wall and hook them up to the wall, hook them up to the back of the trailer, he said. I had to drive the truck too, Gremminger stated, and pick it up and take it and deliver it. He agreed that he was required to get on top of the truck. I did this two to three times a week, Gremminger stated, if I was at the delivery. It depended on what kind of trailer it was, he said, if it was a rear load, I had to get up there a lot because it wouldn't suck it all out, and if there was a, what we called a belly load, you had to get up once or twice. The claimant was asked to describe how it was for him to get on top of the truck; was it difficult or was it easy for him to get on top of the truck. It was hard to get up there I guess mainly because of my size, my lungs, Gremminger answered, I would be up there panting. Explaining how he got up on top of that truck, Gremminger testified that it was by a ladder. We had ladders, he said, some of them was all the way down to the ground. It wasn't too hard to get up on them, but a lot of them was busted off and they never did fix them, so sometimes I would have to get a bucket and stand on a bucket to get to the first rung of the ladder, Gremminger stated.

Gremminger agreed that he was injured while working for Quality Carriers. I got injured on February 17, 2004, he said. It was in the early morning, Gremminger said, my boy had picked me up and he drives a truck too for another company, and he had taken me up there to my truck so my wife didn't have to get up early. I climbed up on the top to close the dome and my eyes started fluttering and it stung, and I said man, something happened to my eye, and I waited for a few minutes and got the top closed and went down, Gremminger stated, and my boy said let me look at it and he said boy, dad, that thing is blood red. I said well, I've got to go get a load and I said I guess it will be all right, Gremminger said. I thought I just broke a blood vein there, you know, a blood vessel or something, he stated. I called my boss that morning and told him what had happened, and he said well, call me tomorrow and let me know how it's going, the claimant stated. So every day after that I was a call in, he said. I ended up telling him it was getting worse instead of better, Gremminger testified, and finally he got me an appointment with an eye doctor down there in

Carolina.

The claimant was asked how was he feeling physically when he got up on top of the truck on February 17, 2004. Exhausted, Gremminger answered. He was asked if this feeling of exhaustion while he was on top of the truck, was that normal, did he normally feel that way. Well, when I had to climb the ladder, I'd be like that, yes, Gremminger responded. He was asked if that feeling had ever happened any other time that he was working for Quality Carriers other than when he had to climb on top of that truck. That was about the hardest part of the whole job was climbing up on top of that thing, opening and closing that dome, Gremminger responded. The claimant was queried if there was any other time away from work that he had felt that form of being tired or panting. No, I didn't do anything to aggravate it, he answered. You know I didn't do any kind of grass cutting or anything hard or climbing or moving stuff, Gremminger stated.

Gremminger was asked if he had known on February 17, 2004 if he had any loss of vision in his left eye. Yeah, the claimant answered, as soon as that had happened it looked like there was a -- started with it looked like an eyelash laying on my eye. That's how come I told my kid, Gremminger said, I thought I broke a blood vein. As time went on, it got worse to where I didn't have hardly any sight in the left eye, he stated. He was asked to explain the time frame for the development of the loss of vision that he had with his left eye, was it a week or --. It was pretty quick; about a week, Gremminger answered. I didn't have any insurance, Gremminger testified, my boss kept telling me he was going to get me down and get my eye checked, and he never could get me down there, and finally he got me down there and I went to an eye doctor. That's when he said did you go to the hospital; you had a stroke, the claimant stated. I said - I didn't know I had one, Gremminger testified. I had never had any vision problems with my left eye before February 17, 2004, Gremminger said.

The claimant was asked to testify about how, if at all, did the loss of vision in his left eye affect his work at Quality Carriers. I lost my livelihood, the claimant responded. I can't see to drive at night, he said, I would hit barrels and I lost my peripheral vision. When I back up, I don't know when to stop, I just keep on backing up because I can't tell the distance in it, Gremminger stated. He agreed that he was crashing into things. After February 17, 2004, I worked for Quality Carriers till June, Gremminger stated. They wanted me to continue working, he said, and I told them it was too dangerous, I was too scared to do it anymore, so I had to quit.

Gremminger agreed that he had gone to Carolina Eye Center for treatment. They just checked my eyes, the claimant said. As soon as he looked, he said there's nothing he could do, Gremminger stated. I did not see any other doctors after Carolina Eye Center, Gremminger said, I come back here and went to John Cochran Hospital, and I went to Jefferson Barracks Hospital, and I had a nurse practitioner who sent me down to an eye doctor that they have there. The eye doctor told me that I should go then right away down to John Cochran because they could do nothing then either. Gremminger agreed that this was the last treatment that he got at John Cochran for his left eye. He was asked if any of the physicians did anything to restore any or all of his vision in his left eye. No, there's nothing they could do, Gremminger answered, they said it was too late.

The claimant was asked if the loss of vision in his left eye had changed, or was better, worse, or had stayed the same since a week after February 17, 2004. It's about the same, the claimant answered. It's gone now, he said. It's affected my right eye though, Gremminger added. He was asked to describe the loss of his vision now in his left eye; is it a total or does he have a little bit. I have a little bit of right when they turn the lights out and I look at a chart, Gremminger answered, I can see a little bit of the top of the right chart.

Prior to February 17, 2004 I did not have any problems with my right eye, Gremminger stated. Now I have an enlarged artery due to the stroke, Gremminger said, and I have to go December 10th down to the Retina Center at St. Luke's Hospital, and they're going to try to give me a shot in the eye to get the artery to shrink. Stating that this has affected his vision with his right eye, Gremminger explained that it has decreased. I'm

20/50 in the right eye and I was 20/30 after the stroke, and now I'm 20/50 now, he said. The claimant was queried - Other than the physical stress that you indicated of getting up on top of the truck, was there any other stress involved with the job at Quality Carriers? Oh, yeah, Gremminger answered. You had to be on time; they would send you sometimes to get your tractor or your trailer cleaned out and the place they'd send you to wouldn't take the product so then you'd have to probably go to another state, and you'd lose time, the claimant stated. If you didn't have product on it, you didn't make any money, he said, so there was a lot of problems there. He agreed that it affected him psychiatrically.

Gremminger was asked if he had had any other health issues just before the February 17, 2004 injury. Yeah, he answered, I had a lot of health issues. Sleep apnea, bad heart, lungs, lower back, legs, poor circulation in the legs, Gremminger stated. Agreeing that he has some problems with his wrists, Gremminger stated - arthritis. My wrists and elbows and shoulders, he added. He agreed that over the years since the early 1990's to the present he has received treatment concerning these problems, and added - I went to Dr. Elleborgen for five years and went to Pain Management. Dr. George Risen; I've been to a bunch of them, the claimant said.

The claimant was asked since February of 2004 if he would say with regard to his prior health conditions - the sleep apnea, the COPD, congestive heart failure, the low back, the heart, the carpal tunnel - have those conditions remained the same, gotten better, or gotten worse since the February 17, 2004. Well, I'm sure the COPD has gotten worse, Gremminger answered. The rest of them are pretty well the same, he said.

Just before February 17, 2004 I was able to exercise, Gremminger stated. I would try walking, he said, nothing fancy or anything, just walking. Just before February of 2004 I could not walk very far before I had to stop, Gremminger stated, probably about ten, fifteen minutes, ten minutes probably at the maximum. I don't think I could run just before February 17, 2004, Gremminger said, and explained I wouldn't have enough breath, and I was too scared to try running because I had a heart attack prior to that. The reason why I could only walk ten minutes at a time was because my back gives out, Gremminger said. He was asked how many stairs did he think he could climb just before February 17, 2004. We had twelve; we had a river house, and it was hard to get to the top of that, Gremminger answered. I just couldn't get myself up, between my knees and my back, he explained, pretty hard. I could stand probably ten or fifteen minutes before I'd have to sit just before February 17, 2004, Gremminger stated. My weak back would force me to sit down, he said. Just before February 17, 2004 I think I could comfortably lift probably 25, 30 pounds, Gremminger stated, not much more than that. I think I could repetitively lift ten pounds maybe just before February 17, 2004, Gremminger stated. Agreeing that the weather affects his conditions, Gremminger testified that the cold and hot bothers my lungs real bad, and cold bothers my hands. He stated that this has changed since February 17, 2004 in his lungs.

The claimant agreed that leading up to February 17, 2004 his back would go out occasionally. I could be doing "prettiner" anything and my back would go out, Gremminger testified, driving, getting in and out of the truck, bending over wrong to tie my shoe laces. When it would go out I would miss on an average three to four days work, Gremminger stated. If I was at home, I had a bed to get into, he said, but if I was out on the road, I had to sleep in the truck. I would be out of work for a week or two, Gremminger stated, sometimes longer. It depended on how long it took for that to heal down there, he said, I would have to get muscle relaxers over there at Dr. Richardson. I probably missed some time from work leading up to February 17, 2004 because of my lung condition, Gremminger said, colds, and I get colds easy compared to a lot of people. Right now I'm on three inhalers and a nebulizer and oxygen, Gremminger stated. I was not on the same regiment with inhalers leading up to February 17, 2004, the claimant said, I only had two of them then.

The claimant was asked what positions were the best for him to relieve the pain complaints that he has in his low back. Just sitting, Gremminger answered, but I have to change my position quite a bit. When I sit too long my legs go numb, Gremminger stated. This has not changed since February 17, 2004,

Gremminger stated, it was doing that before that.

Gremminger testified about his physical problems that existed before February 17, 2004 which he is still taking prescribed medication for; he agreed it was with the doctors he had listed before, they were the ones that prescribe the medication. Gremminger agreed that the medication he is talking about is for his COPD, congestive heart, low-back pain, and sleep apnea. I also take blood thinners, Gremminger said, and have been for four or five years, and also aspirin. He agreed that the medication affects him by making him tired or drowsy, and also affects his memory and concentration.

Gremminger agreed that before February 17, 2004 he had had at least two other Workman's Compensation injuries. August 9, 1993 was an injury to my back, Gremminger agreed and at that time I was working for Consolidated Freightways. He agreed that he had brought a primary claim against Consolidated and resolved that claim through a compromise settlement, and he had also settled a claim against the Second Injury Fund. I had another Consolidated Freightways claim dated February 21, 1997 and that was a bilateral carpal tunnel condition, Gremminger agreed. He agreed that he had resolved that by compromise settlement against Consolidated, and that he had additionally brought a claim that he had settled against the Second Injury Fund concerning his heart and back.

Gremminger testified I probably had missed a few days because of my back problems while performing my job duties at Quality Carriers. But I done my job and I got my job done, Gremminger stated. I missed some work at Consolidated and at Martin, Gremminger testified, I missed it at all of them. He agreed that he had missed some work with Consolidated with regard to his carpal tunnel condition. Gremminger stated that he had missed some work because of his low back condition while with Consolidated, and when he had the sleep apnea. I didn't know what I had, Gremminger stated, I had to go to three or four different doctors to get tested; I missed worked because of that. Explaining how the sleep apnea affected him at work, Gremminger stated I quit breathing when I'm sleeping, and I was always tired and I would fall asleep just sitting here talking to you. He was asked if he had ever fallen asleep at the wheel. Well, sure, that's how I had several accidents on the road, Gremminger answered. These accidents were prior to February 17, 2004, he said.

On cross examination by the Second Injury Fund, Gremminger was asked to testify as to the average number of hours he was working for Quality. Well, you couldn't run over 70, he answered, I guess it's about 65 to 70 hours every week. Of that 65 to 70 hours I spent, ten hours a day would be spent driving, Gremminger stated. He was asked how many days a week on average was he working. Well, usually you would end up working almost every day, Gremminger answered. Once in a while you would have a couple days off at tank washes where you go; I'd probably say five and a half days a week, six days for sure of actually working, he stated. Of those ten hours a day, when I say actually working, those ten hours a day were spent driving, Gremminger agreed. He agreed that he would take occasional breaks during the day while he was driving those ten hours. When asked if he had to load or unload while working for Quality, Gremminger answered – Sometimes; I'd have to be there if they was loading and open the dome up, and then usually I'd have to unload. Immediately before Quality I worked for Martin Transport, Gremminger stated. Agreeing that his job duties at Martin were different than his job duties at Quality, Gremminger explained -- a tanker was at Quality, and the other was a van. And they had done all the loading and unloading at Martin, he said, I never had to unload at Martin. Explaining why he had left Martin, Gremminger said it wasn't enough money. He agreed that Quality was more money. Queried if Quality paid more per mile, Gremminger responded - Well, supposed to have.

During cross examination, Gremminger agreed that he is on a C-Pap machine for his sleep apnea, and agreed that he had started using this machine before his injury in February of 2004. He was asked - Once you started using that machine, did your sleep apnea cause you any problems? No, Gremminger answered. He agreed that as long as he uses that machine, he gets sleep, and he is okay during the day

from the sleep apnea; he agreed that therefore, leading up to February of 2004 his problems with his sleep apnea were pretty much under control. Gremminger stated that he had a stent placed in his heart because of heart problems, and since he has had the stent placed he has not actually had any other problems with his heart including no chest pain since then. He agreed that he got treatment for carpal tunnel with Dr. Ollinger. He was asked if he was having any problems with his carpal tunnel at the time the doctor had released him from his care. Not then, but later as time went on I was starting to get the same thing where my hands go numb and my arms are getting numb again, Gremminger answered. This started probably about six or eight months after I had had my surgery, he said. Gremminger stated that he remembered having his deposition taken on February 15, 2005. His testimony on page 48 of his deposition transcript, lines 12 through 22 was noted: Q. "Do you have any problems with your hands going to sleep now or anything like that? A. No.; Q. Do they ever wake you up at night? A. No, ma'am.; Q. Do they ever go numb while you're driving? A. No, ma'am." Gremminger was asked if his deposition testimony had been correct. I had physical disabilities prior to working for Quality, and I did get my job done at Quality, he responded. The way that you had put the question, yeah, that was answered correct, Gremminger further answered. He was queried - So at the time of the deposition, your hands were not waking you up at night; correct? At that particular time, no, Gremminger answered. He was queried - Wasn't it correct that he didn't have any problems with his hands going numb while he was driving? Yeah, they went numb while I was driving, Gremminger answered. I probably didn't understand your question right at that time; I told you no I guess, and I guess I gotta stick by that, Gremminger admitted. He was asked if he had been taking any other types of medication other than Tylenol while he was driving at the time of his injury in February of 2004. Yeah, at nighttime when I'd go to bed, I'd take pain medicine, Gremminger answered. He stated that he was not taking any other types of pain medication while he was physically driving the truck during those ten-hour days, and agreed that that would be something he would take after he was off. Gremminger agreed that he had left Martin Transportation pretty much immediately before Quality. He agreed that he had testified at his deposition that he had not had any physical problems performing any of his job duties at Martin Transportation, and this was correct

It was noted at the hearing that Gremminger had on a knee brace and had crutches; he was asked when did he start using the knee brace on his left knee. December 24, 2004, he answered. When queried wasn't it correct that he had had a fall at that time, Gremminger responded - Fell down my daughter's basement stairs because I couldn't judge it right. It was noted that at the time of his deposition in February of 2005 Gremminger was using a cane and was not using crutches; he was asked when did he start using crutches. I fell in June of this year (2007) out in the back yard -- because of the crutch, and I figured it's a lot safer with the crutches, Gremminger answered. I've used the brace every since they made it for me, (about 3 ½ years) April or May I think of 2004, 2005, something like that, he said. Gremminger agreed that he had gotten the brace after his fall down his daughter's stairs.

Gremminger stated, during cross examination, that he had not received his GED. No, I have no GED, Gremminger stated. He agreed that he had taken the test for the GED. Gremminger's deposition testimony was noted: Q. "Okay. Did you graduate from high school?" A. "GED."; Q. "Where did you go to high school?" A. "I never did go to high school. I just took a GED test.". I never passed any, Gremminger stated at the hearing. I did take it when I was in the service, he said, but I never did pass it. I only had a ninth grade education, he said, it wasn't even that really. I only went to school there about a month and a half in ninth grade, Gremminger stated. Gremminger's deposition testimony was again noted: Q. "Did you finish elementary school?" A. "I went to the ninth grade." Q. "That's what I needed to know. And then you went ahead and got your GED later?" Q. "Yeah, when I went in the service.". No, I never did get a GED, Gremminger testified at the hearing, I went in the service, I took a test for it, but I never did pass it. He was asked if he has any problems reading, comprehension problems. No, I don't understand a lot of big words, he responded. Before this injury I could read, Gremminger said. He was asked if he had had any problems with math. Limited, Gremminger answered, I could add and subtract, do a little times; that's about it. It was noted that when he was asked at his deposition if he has any problems with math, he had answered "No". Well, you didn't say what type of math, Gremminger responded at the hearing. I mean, fractions and

geometry or stuff I have no idea about none of that stuff, Gremminger stated. I do not have any problems with addition or subtraction, Gremminger said, I can do that. He agreed that he can make change and things like that.

He was asked, during cross examination - during the course of an average day at Quality when you were driving for ten hours, what were the number of breaks you would need to take during a day. Well, every two hours I would try to stop, Gremminger responded. I would stop for ten, fifteen minutes, he said, and then continue on. I would always take an hour for lunch, Gremminger added. He agreed that he has paperwork to do in his job. Besides keeping the logs, the other paperwork I have is just the shipping orders, the manifest, Gremminger stated.

Gremminger agreed that, as he had testified in his deposition, because of his back he might need to miss work for a few days at a time, maybe twice a year.

He was asked if he had applied for unemployment compensation at any time since leaving Quality. I don't think I have, Gremminger answered.

In regards to my CDL, Gremminger stated, I had to take a physical every year. The one I took with Quality was at the end of December 2003, he said. He was asked what all do they check out in those physicals. Everything you get on a normal physical, Gremminger responded. He stated that he still has a CDL.

Gremminger agreed, during cross examination, that he had said his right eye has started to deteriorate since the date of this injury. Considering only my left eye, I don't think I would be able to continue driving, Gremminger stated. My wife drives me now everywhere we go, he said, and stated that this was because of the loss of vision in the right eye.

Gremminger was asked if he has attempted to go back to work in any capacity since he left Quality. No, ma'am, he answered. I have not attempted any type of retraining, vocational retraining, he further testified. The VA told me it was a waste of time, Gremminger testified, he said when you go down to the State, they're going to tell you the same because you don't have any formal education. I wouldn't make enough money to even get out and make it worthwhile to make a livelihood so --, Gremminger stated.

On redirect examination, Gremminger agreed that, as he had said during cross examination that with the stent in his heart he has had no heart or no chest pain. Agreeing that as a result of having the stent put in his heart, he has altered his exertion level, Gremminger stated I don't do anything that I can upset anything; I don't exert myself in no way. Gremminger agreed that he had said he has no hand numbness any more, but further stated that he does not feel he has the same strength in his hands that he did before the surgery and before he had the onset of carpal tunnel symptoms. When they cut something in there, I lost some strength, Gremminger said. I don't know what it was that Dr. Ollinger cut, but, (for example), you'd have to couple these hoses together, and they're pretty good size - three inch, sometimes four inch hoses - and it was hard to get them coupled and to get them uncoupled. Stating that he was sure he had lost a percentage of the strength, Gremminger further said he did not know how much. I could open up a jelly jar, and now I can't, he said, now I've got to bang it on a table if that has any reference. I'm always thinking of food, Gremminger said. He was asked - Do you think -- if you had no problems with your legs or right eye, but you have all the other issues that you're dealing with -- do you think you could drive for a trucking company? No, Gremminger answered. He was queried - If you had perfect vision in your right eye and the current condition of your left eye but with all your other associated health problems but eliminate the leg issues, could you pass a DOT physical? No, not now, he answered. Because of the vision, Gremminger said.

Medical records in evidence included the following:

Medical records of Mercy Medical Center (No. A) concerned the treatment of Gremminger during the period of November 1988 through September 17, 2002 for various ailments. The initial entry of 11/09/88 noted that Gremminger was doing well, occasionally has chest pressure; it was written that Gremminger would return to work on 11/19/88. In the next entry of 05/30/89 it was noted that Gremminger's weight was 275 pounds (on 11/09/88 it was 262); it was written that Gremminger reported feeling down, and that his medication was giving him headaches; Gremminger's five (5) medications were listed, and also noted was that he was given a work slip for May 25, 1989 through May 29, 1989. In the 09/15/89 entry it was written that Gremminger had complaints of low back pain, and needed blood pressure medicine refilled. It was written in the 09/15/89 entry that there was 3+ pitting edema; blood pressure readings of 170/68 and 160/84 were written. In the next entry of 03/20/90 it was written that Gremminger stated he wanted to stop smoking. The record contained various tests results (i.e. 05/13/92 ECG reporting a normal sinus rhythm; 05/07/02 barium enema due to blood in stool)

A 10/04/93 entry stated that a truck had turned in front of Gremminger and he struck his back on the dashboard; that he continued to work for 4 days and back got progressively worse, and he had pin along course of sciatic nerve on left; it was noted that Gremminger had filed for workers' compensation; it was noted that Gremminger had gone to Barnes Hospital for a CT scan. The 11/13/93 entry noted that Gremminger had returned to work. The diagnoses listed in the 01/15/94 entry included – hypertension, 3+ edema, COPD, sciatica, obesity.

Subsequent entries indicated that Gremminger was treated for various ailments (i.e. possible boil on left leg, 08/24/96; congestion and has been wheezing, 11/06/96). The 01/21/97 entry noted that there was a recheck of abcess on left leg; it was written that Gremminger was given a work slip for 01/21-23/97. Gremminger's complaints of low back pain was again noted in the 01/27/98 entry; the diagnoses listed in the entry included – hypertension, hyperlipidemia, COPD. These diagnoses continue in the record, with occasional other diagnoses such as allergic rhinitis, obesity (in the 05/18/99 entry it was written that Gremminger's weight was 318 pounds). A 04/27/01 entry noted Gremminger's complaint as – "Lower back is out since Saturday evening when I got out of shower"; it was written that Gremminger reported he had gone to a chiropractor; it was written that Gremminger wanted a Cortisone shot; the medications Gremminger was on (about 12 medications) was listed in the entry. The next entry of 08/27/02 noted Gremminger's complaints of ankles swelling; again Gremminger's medications (8) were listed in the entry. In the next and last entry, it was noted that moles had been removed.

Medical records of Missouri Baptist Medical Center (No. C) included several reports of tests performed on Gremminger, i.e. report of an electrocardiogram performed on Gremminger on 06/24/93 stated an interpretation of – negative; it was written that he pre-test EKG was within normal limits, and during the EKG "(a)t no time during, STAT after, or 6 minutes after the procedure did the patient develop any significant ST segment or wave changes". An XR Nuclear Medicine report stated that a MYO Perf Rest test performed on Gremminger included the result:

There is an area of decreased perfusion I the rest image involving the inferior and septal walls. These areas do not perfuse upon rest as well. These static areas of decreased perfusion are most consistent with an area of scarring or infarction. There is no definite area of stress related ischemia identified.

The record contained a report indicating that on 03/21/97 Dr. Henry Ollinger, M.D. performed on Gremminger endoscopic decompression of the right carpal tunnel for the diagnosis of – right carpal tunnel syndrome. The record further contained a report indicating that on 04/07/97 Dr. Ollinger performed on Gremminger endoscopic decompression of the left carpal tunnel for the diagnosis of – left carpal tunnel syndrome.

Medical records of St. Luke's Hospital (No. B) concerned the hospitalization treatment of Gremminger 09/15/94 – 09/18/94 for the following final diagnoses: Principal diagnosis – Congestive heart

failure; and Secondary diagnoses – Severe obstructive sleep apnea syndrome, Chronic obstructive lung disease, Obesity; (Hypercholesterolemia was also listed in the secondary diagnoses on the Physician's Attestation Copy form). The record indicated that Gremminger was employed at Consolidated Freightways at this time. In the History & Physical sheet by Dr. Mark Chin, M.D., dated 09/15/94, the following history of present illness was written:

This 46-year-old white male has a history of a small myocardial infarction in 1987, status post angioplasty to the left circumflex artery in July, 1993, at St. John's Mercy Hospital. He has been having progressive dyspnea on effort, paroxysmal nocturnal dyspnea, and weakness for the past several months. He denies any symptoms of chest pain, palpitations, or dizziness. He feels very tired in the daytime. He also feels dyspneic when he lays flat at night. He has to go to bathroom many times at night. He has gained 150 pounds in the last 1-1/2 years. He was also noted to have loud snoring at night by his wife. He had an intravenous dipyridamole-thallium imaging study at Missouri Baptist Hospital in August, 1994, and he was told it was negative for myocardial ischemia. He has been having an excellent appetite. His abdominal girth and pedal edema have also increased over the last several months.

The past medical history noted was: "Remarkable for borderline diabetes mellitus for many years, on diet control He also has had a herniated disk of the lumbar spine." A consultation note was prepared by a Dr. Neil Ettinger, M.D., a pulmonary consultant, on 09/15/94 during Gremminger's hospitalization, and additional history was noted:

Over the last several months, he has been experiencing increasing dyspnea with exertion, paroxysmal nocturnal dyspnea, and lower extremity swelling.....Mr. Gremminger has a long history of cigarette smoking, smoking two-packs per day for over 20 years.....Mr. Gremminger is extremely sleepy during the day. He has fallen asleep at the wheel in his job as a truck driver. This has resulted in several accidents, one of which landed him in the hospital for treatment of broken bones. Mr. Gremminger continues to drive despite the sleepiness. His recent symptoms of dyspnea on exertion, increasing abdominal girth and weight have resulted in seeking some medical assistance.

Dr. Ettinger's written impression after evaluation of Gremminger was: Possible obstructive sleep apnea.

The discharge summary discussed the hospital course for Gremminger, including that he had undergone "a sleep apnea study on the day of admission, and was found to have severe obstructive sleep apnea syndrome", and with the use of Bi-Pap Gremminger felt much better at night with much less daytime sleepiness and weakness. It was further written that Gremminger was placed on diuretics for the congestive heart failure, and he had lost six pounds over the next two days. Also, an echocardiogram had been obtained, the doctor wrote, which showed a "grossly normal study". Thyroid function tests were also within normal limits, it was written. Dr. Chin finally wrote that Gremminger was discharged on 09/18/94 feeling much better. Gremminger's discharge medications (8) were listed, it was written that Gremminger could resume regular activity as tolerated, and was to be seen by Dr. Ettinger in one week. Again, the final discharge diagnoses were as noted above.

Medical records of Dr. Henry G. Ollinger, M.D. (No. D) consisted of the treatment entries of Dr. Ollinger during treatment of Gremminger for bilateral carpal tunnel. During the period of March 13, 1997 through his final evaluation of Gremminger on August 4, 1997. In the initial treatment entry of March 13, 1997, it was noted that Gremminger was 48 years old, was a smoker, and had medical conditions of – sleep apnea, using a C-pap at night; and medicines were cardizem, aspirin, and an inhaler for asthma. Further written in the General Data section was: "Denies medical condition except overweight at 330 pounds. He said he has been evaluated for diabetes and thyroid and that is negative." In the Work history section was written: "Consolidated Freight 11 years, 40+ hours a week driving big rig trucks 600+ miles a day. He is currently performing regular work.". It was noted that an EMG/NCV test had been done and was interpreted as "moderately severe bilateral carpal tunnel syndrome". Dr. Ollinger's written diagnosis in the entry was –

Bilateral carpal tunnel syndrome. In the Discussion section of the march 13, 1997 entry, Dr. Ollinger included: "It is my judgment bilateral CTS here whereas the risk is increased by his overweight condition are conditions that are substantially aggravated by his 11 year work experience as a trucker for Consolidated Freightway....Regarding management, considering the duration of symptoms, intensity of symptoms, and the degree of NCV changes proper management defaults to operative decompression of the carpal tunnels. In the final treatment entry of August 4, 1997, Dr. Ollinger wrote in the Impression section: 1. Completely resolved symptoms of a carpal tunnel bilateral; and 2. Soft tissues have healed very well. "Is at MMI and requires no additional evaluation, care, work restrictions", Dr. Ollinger wrote.

Dr. Ollinger prepared an evaluation report dated August 4, 1997 in which he wrote his opinion that "Gremminger has sustained a zero (0) percent permanent partial disability at the level of the right wrist and a zero (0) percent permanent partial disability at the level of the left wrist referencing Gremminger's post-op status, completely resolved symptoms of a bilateral carpal tunnel syndrome. His soft tissues have healed very well".

Medical records described as those of a Dr. Elleborgen (No. E) reflected treatment of Gremminger during a period of 04/09/99 through 03/04/02 for various problems such as blood pressure, neck and shoulder pain (04/15/99), upper back pain, low back pain off and on throughout the record up through the final entry of 03/04/02.

Medical records of Clarkson Eye Center (No. G) consisted of two (2) examination sheets indicating treatment of Gremminger on May 8, 2001 and on June 11, 2002. The first exam sheet of 05/08/01 indicated that Gremminger had presented because he needed new glasses, his last eye exam being 3 years earlier; the medical history noted in the 05/08/01 entry was – hypertension, heart medications, smoking; the diagnosis indicated in the entry appeared to be "presbyopia" - diminution of accommodation of the lens of the eye occurring normally in old age (See, Medical Dictionary, Twenty-second Edition, 1977). The final exam sheet for June 11, 2002 noted Gremminger complaints of – eyes red and burning; the medical history was – hypertension, and stent in heart; the diagnosis included – dry eyes.

Medical records of Dr. A. Rashid Qureshi, M.D. (No. I) concerned the treatment of Gremminger during the period of May 1, 2001 through September 2004; (See, also Claimant's Exhibit No. F, St. Anthony's Medical Center record re: 05/01/01 treatment). History of Present Illness in the 05/01/2001 entry was:

This is a 52-year-old man who is known to have atherosclerotic heart disease, and has had previous coronary angioplasty. The patient, apparently while driving his truck in Tulsa, Oklahoma, had an episode of chest pain, and was admitted to the hospital. Myocardial infarction was ruled out; however, the patient had a stress echocardiogram that shows inferior lateral ischemia. The patient was seen in my office for further evaluation of this.

In the Habits section it was noted that Gremminger was a smoker. In the Family/Social History section was written: "The patient is a truck driver. He is married, and lives with his wife." Dr. Qureshi wrote of treatment rendered to Gremminger during his 23 hour admission:

The patient underwent cardiac catheterization and was found to have eccentric severe stenosis of circumflex coronary artery after second obtuse marginal branch. Left anterior descending coronary artery has a 40% to 50% stenosis in the proximal portion, and 50% in the mid-portion. The right coronary artery is completely occluded.

The patient underwent coronary angioplasty and stent placement of the circumflex coronary artery without incident. An attempted recanalization of the right coronary artery was not successful and it was felt that it is probably chronic occlusion, and does not need any further intervention. The left ventricle function is normal

at this time.

The written final diagnosis on 05/01/01 was: Angina pectoris; Atherosclerotic heart disease, status post coronary angioplasty and stent placement; Hypertensive cardiovascular disease; Obesity; and Sleep apnea.

The record indicated, in the next entries of June and July 2001, that Gremminger was being treated in Cardiac Rehab. The next entry of September 2001 noted in the physical exam findings Gremminger's weight as – 314 pounds; the written assessment was – “Needs to stop smoking”. In the next treatment entry of April 2, 2002, the following was noted about Gremminger: 1. Arteriosclerotic heart disease – status post myocardial infarction and 2. Status post coronary artery angioplasty and stent placement. Further written was: “Other active medical problems are – 1. Obesity, marked; 2. Hyperlipidemia; 3. Hypertensive cardiovascular disease; and 4. Sleep apnea. In the Past History section was included:

He is known to have arteriosclerotic heart disease – status post coronary angioplasty. The patient initially had a myocardial infarction several years ago. Cardiac catheterization at that time showed 60% stenosis of the right coronary artery, however, later on a stress test showed that he had reversible defects. Catheterization in June of last year showed 60-70% stenosis of the left anterior descending coronary. 2nd obtuse marginal branch has an eccentric plaque with 80% stenosis. The right coronary artery was completely occluded. The patient underwent coronary angioplasty of the obtuse marginal branch. The right coronary artery could not be cannulated. Since then, he had been maintained on medical management with Cardizem 200 mg daily, Nitro Stat p.r.n., Zocor 20 g daily and Accuprinl 20 mg once daily. The patient, since his last visit, has put on 40 lbs. Apparently, he still is driving a truck and stops at rest areas and is eating a lot of fried food.

In the 04/02/02 entry, Review of Systems section was included: Respiratory system – “Shortness of breath with cough, apparently he needs to have another sleep study”; CVS – “Orthopnea, exertional dyspnea without significant disorder”. In the Physical Examination section, Gremminger's weight was noted to be – 344 pounds; Eyes were – “Pupils are equal and regular, and react to light and accommodation”. In a November 1, 2002 entry, it was written that Gremminger was doing fairly well. Further written in the 11/01/02 entry was: “The patient was getting significant bradycardia during his episode of sleep apnea; however, the Holter monitor did not show any significant AV Block. He has ventricular premature contraction which probably reflects on his heart rate. Continue with same medication.”

This record indicated that Gremminger was next seen almost two years later, on August 31, 2004 (final entry); the doctor wrote that in the interim of the two years Gremminger had apparently developed some problems. Written in an Assessment section was:

The patient has put on 40 lbs in weight and most of the symptoms are probably related to his obesity. He needs to get back to his diet, and exercise. Cardiac wise, it appears, at least this time, he is doing fairly well. He needs to have a lipid profile performed at his physician's office.

In the Past History section of the August 31, 2004 entry was written:

Arteriosclerotic heart disease, status post coronary artery angioplasty. The patient had coronary arteriogram in 2001. At that time, he was found to have severe coronary artery disease with complete occlusion of the right coronary artery, severe stenosis of the proximal circumflex coronary artery and moderate disease of the proximal mid left anterior descending coronary artery. The patient underwent PTCA of the circumflex coronary artery with recanalization. Attempt at recanalization of the occluded artery were not successful. The patient apparently did fairly well and went back to work. The patient apparently had an episode of blindness in the left eye and had trouble driving his truck, and was evaluated at VA Hospital for this. The patient also has sleep apnea, hypertension, obesity, and has had C-PAP machine in the past.

In the Family and Social History section was written: "The patient still smokes. As mentioned, he is apparently out of a job and health insurance. The Review of Systems section of the 08/31/04 entry included: "EYES Scotoma and blindness in the left eye". In another Assessment section in the 08/31/04 entry, it was written that Gremminger had brought extensive records which had been reviewed; and that it appeared that Gremminger had "had an ultrasound, which showed complete occlusion of the left carotid artery with no significant flow." The record indicated that Dr. Qureshi continued to perform cardiac testing on Gremminger; a report of a Myocardial Perfusion Study requested by Dr. Qureshi was in the record and stated that the reason for the study was - Chest pain and shortness of breath, Known arteriosclerotic heart disease, and Status post coronary angioplasty. The record included a report of an Adenosine Stress Test performed on Gremminger on 09/08/04 by Dr. Qureshi; the written history was – "This is a 56-year-old man who is known to have arteriosclerotic disease, status post coronary angioplasty. The patient also has sleep apnea and hyperlipidemia. The patient has been having episodes of shortness of breath with chest pain".

Medical records of Dr. Max H. David, M.D. (No. P) of St. Louis Medical Professionals indicated that Gremminger presented for evaluation of multiple medical problems on August 11, 2004. It was noted that Gremminger was being "(f)ollowed at the VA. Needs a doc closer as the VA sometimes is late with his meds.". Gremminger's complaints were noted as – only occipital headaches not going away with Tylenol # 3, and wants to stop smoking. Written in the past Medical History section of the entry was:

"There is a vascular history of peripheral vascular disease and arterial insufficiency/ Claudication. There is a cardiac history of coronary angioplasty (PTCA), coronary artery disease, coronary stent, heart murmur, hyperlipidemia, hypertension and valvular heart disease. There is a neurologic history of cerebrovascular disease, headaches and stroke. There is an orthopedic history of osteoarthritis. Has history L eye blindness secondary to CVA." (sic)

In the Social History section was written: "He admits to smoking 2 PPD. He admits to past alcohol consumption." After examination discussions, the written Assessment on August 11, 2004 was: Hypertension Benign; Obesity Morbid (it was recorded that Gremminger weighted 303 pounds at this time); Tobacco Use Disorder; Hypercholesterolemia; Coronary Artery Disease Native Artery; Blindness total One, other normal; Cerebrovascular Disease – late Effect other late Effects; PVD (Peripheral Vascular Disease) Peripheral Angiopathy; and Headache. In the Discussion/Recommendations section, Chronic Headaches was noted, and it was written that the natural history and treatment of this problem was discussed with Gremminger; "Probably related to vascular dz." was written. Vascular disease was also noted in the Discussion/Recommendations section, and it was written that Gremminger had been instructed to continue at VA, and that his prescriptions would be refilled as needed if VA did not send them in time. It was written that Gremminger was to follow-up as needed.

The record contained a prescription sheet completed by Dr. David on 09/14/04 for an MRI of Gremminger's lumbar spine for complaints of pain in the lumbar region. An 09/17/04 report from Nydic Open MRI of America noted that Gremminger had been referred by Dr. Max David. The 09/17/04 report indicated that an MRI was attempted on 09/17/04 but could not be done "(d)ue to PT's size".

Medical records of Sleep Medicine and Research Center (No. K) was an evaluation report signed by Dr. Giban Kader, M.D., Medical Director, and James K. Walsh, Ph.D., Executive Director. It was noted that Gremminger had been referred by Dr. Qureshi "for re-evaluation for obstructive sleep apnea"; it was noted that Gremminger was evaluated on 04/30/02. The following was written in the May 2, 2002 report:

HISTORY OF SLEEP-RELATED COMPLAINT: the patient was initially evaluated at SMRC in September 1994. He had loud snoring, cessation of respiration, and weight of 356 pounds at the time. He had a

respiratory disturbance index of 121.1 with the lowest oxygen saturation of 53%. He required BiPAP at an inspiratory pressure of 12.0 and expiratory pressure of 6.0. The patient was not seen in follow-up.

The patient describes that in the last two years he began to have difficulty sleeping through the night again. He sleeps in stretches of two hours. He awakens without explanation. He does have to urinate several times a night. He feels tired during the day, and he falls asleep driving and veers off the road regularly. The patient is a truck driver and has an irregular schedule. Often he has to go to work at 2:00 a.m. but may not be on instructions to drive for hours after. He generally is unable to return to sleep and may sit to wait out the time to start driving, as late as 2:00 p.m. the next day. He feels exhausted and will doze. Generally he will pull over and take a nap to help get relief from sleepiness.

The patient has gained 50 pounds in the last two years. He snores every night.

**PAST MEDICAL HISTORY:** He has had hypertension that is currently controlled. He has also had difficulty with smoking and with drinking alcohol. However, he stopped drinking a case a day in 1994. He continues to smoke three packs of cigarettes a day, having started at age 13. He has recently had a thallium cardiac stress test that was stable. He had chest pain with a coronary occlusion treated with a stent in April 2001. He has had arthritis, asthma, coronary artery disease, hypertension, and chronic obstructive pulmonary disease.

In the Physical Examination section, it was noted that Gremminger's weight was now 346 pounds. The written diagnoses in the May 2, 2002 evaluation report was: Severe obstructive sleep apnea; Hypoventilation secondary to obesity mismatch; Obesity; Irregular sleep/wake; Chronic obstructive pulmonary disease; Arthritis; Asthma; Coronary artery disease treated with stent; Hypertension; Prior excessive alcohol usage; and A short run of V tach. In the Recommendation section, it was written that Gremminger's obstructive breathing and hypoventilation was markedly improved with a B-PAP, Gremminger was to follow-up with Dr. Qureshi for cardiac arrhythmia, was to regulate sleep, and was to return to the Center in July 2002.

Medical records of Pathology Partners (No. J) consisted of report of a colonoscopy performed on Gremminger on 06/14/02 due to complaints of abdominal distress/pain; diagnosis was – large intestine sigmoid benign polyps which were removed and reviewed in Pathology, and large intestine rectum benign polyps were found and removed, and reviewed in Pathology.

Medical records of Cardiac Diagnostic Center (No. N) consisted of a report of an Adenosine Thallium Stress Test and an Adenosine Thallium Scan both performed on 07/01/03 by Dr. Qureshi. The Adenosine Thallium Stress Test report noted that Gremminger was "...known to have arteriosclerotic heart disease, status post coronary angioplasty. The patient also had Diabetes Mellitus". Further written was – "The patient has been having intermittent episodes of shortness of breath associated with chest discomfort, suggestive of angina pectoris". The written conclusion in the Adenosine Thallium Stress Test report was – 1. Negative Adenosine infusion for EKG changes of ischemia or angina pectoris, and 2. Nuclear Imaging results to follow. The written conclusion in the Adenosine Thallium Scan report was – 1. Abnormal Spect Thallium myocardial perfusion study with a fixed inferior defect without reversibility, and 2 Mild left ventricular enlargement with decreased inferior wall motion and adequate ejection fraction of 0.53.

Medical records of Pain Management Services (No. H) indicated that Gremminger was treated by a Dr. Judson F. Martin, M.D. on two (2) occasions. The first entry indicated that Gremminger was seen on 12/28/01 for complaints of low back pain. In the History of Present Illness section was written:

George Gremminger is an obese 53 year old white male who has had low back pain for a number of years which became acutely worse two weeks ago when he was getting out of the shower. He has had bouts of low back pain throughout the years as well as some radicular complaints into the left lower extremities. He has had CT scans done a number of years ago at Barnes Hospital which are unavailable for review....He has

had no numbness or tingling in the lower extremities. He complains of no pain in the lower extremities at this time. He has been treated with hydrocodone and muscle relaxants which has provided only minimal relief in his pain.

Past medical history in the 12/28/01 entry was: Hypertension, Breathing difficulties, Chest pain in the past, Heart attack age of 40 – been in cardiac rehab, also had multiple pulmonary tests, and Sleep apnea. In the Social history section of the 12/28/01 entry was written: “He is a truck driver and sits for a number of hours per day. He is very sedentary. He is married. He has two grown children. He smokes two packs of cigarettes.” The written impression on 12/28/01 was: Mechanical low back pain, Morbid obesity, Hypertension, COPD, and Degenerative joint disease. The written treatment plan included medications, weight loss was recommended, continue physical therapy, and home exercise program was also recommended; it was written that Gremminger was to return in about 4-5 weeks.

The next treatment entry indicated Gremminger presented on April 18, 2002 with complaints of – low back to mid back pain. The diagnosis was – Mechanical low back pain, and morbid obesity.

This document described as the medical records of Dr. Tim Dagenhart, M.D. (No. L) is a copy of a Medical Examiner’s Certificate which reflects that on 01/05/04 the Medical Examiner, Dr. Tim Dagenhart, certified that he had examined Gremminger in accordance with Federal Motor Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties state that Gremminger was qualified.

Medical records of Carolina Eye Center (No. O) consisted of a two-page record indicating that Gremminger presented on 04/10/04 as a new patient by referral of friends, and had complaints of an eye infection. It was noted in the record that Gremminger was an over-the road (OTR) truck driver. The record further indicated that Gremminger had had a loss of some vision some months earlier.

Medical records Dr. Michael S. Korenfeld, M.D. of Comprehensive Eye Care, Ltd. (No. Q) consisted of a February 12, 2005 letter by Dr. Korenfeld to Dr. Taylor-White. Dr. Korenfeld wrote that he had seen Gremminger in his office on February 9, 2005. It was written that Gremminger “presented with a chief concern of having reduced vision in his left eye. It was noted that Gremminger relayed that he had had a stroke in February 2004 where he lost peripheral vision. After discussion of his examination findings, Dr. Korenfeld finally wrote the following in the Assessment and Plan section of his February 12, 2005 letter:

This patient has a structural abnormality in his only good eye. Because of this, we have recommended that he be examined by a retina specialist with the possibility that he could also have some occult new blood vessels in this eye. The visual loss in the left eye is profound and unlikely to recover. It is most likely that he has had a vascular occlusion in his left eye and because of this, we have recommended that he continue his Plavix and aspirin. If he has not had a carotid Doppler study and a echocardiogram, this would be a reasonable thing to do since abnormalities in the carotid artery and cardiac valves are often associated with vascular occlusion in the eye. If you choose to obtain any testing for this gentleman please forward a copy of your results to me for my records.

Medical records of Barnes Retina Institute (No. R) included an eye exam form and a February 23, 2005 consultation report by a Dr. Nicholas E. Engelbrecht, M.D. to Dr. Korenfeld. Dr. Engelbrecht noted the following history for Gremminger:

He is a 56 year-old gentleman who had a history of “stroke” in the left eye approximately one year ago with stable vision with that time. He had noted more recently that he is having difficulty reading with the right eye. He had no other history of ocular injury or surgery. He is currently on no ocular medications.

After discussing his exam findings and results of a fluorescein angiography, Dr. Engelbrecht wrote the following impression:

It is my impression that Mr. Gremminger has a pigment epithelial detachment in the right eye with relatively good visual acuity at 20/30. As there is no proven treatment for this at this time, I have recommended observation and the use of Amsler grid testing. He does have some difficulty with upcoming probable loss of insurance. He has been seen through VA system in the past. I have not scheduled follow up for him at this time. I recommend he follow up at the VA as scheduled next month. We will be happy to see him any point in the future.

Medical records of Veterans Hospital (No. M) concerned treatment of Gremminger during the period of 12/07/99 through 05/17/05. The 12/07/99 entry noted that Gremminger was in for a routine appointment, he denied any problems on that date. Among the history noted for Gremminger was that he was an over the road truck driver, and that he had smoked 2 packs per day for 30 years; his medications were listed (7); noted in this and subsequent entries was that Gremminger was given a tobacco cessation education. The written assessment on 12/07/99 included: hypercholesterolemia, copd, sleep apnea, pvd (to be scheduled for vascular studies), tobacco abuse, and hypertension (stable, and his current medications were noted). In the next entry of 09/25/02 it was written that Gremminger had been to the VA in the past but then was using his private insurance and recently lost his job and wanted to re-enroll in VA system. Gremminger's complaints on 09/24/02 were chest and sinus congestion and lung sounds, and his history of sleep apnea was noted; Gremminger's current medications were listed (12). In the primary care history and physical entry of 12/23/02 the notations included that he had been previously diagnosed with myocardial infarction, had hypertension for many years, knee pain for many ears and was an over the road truck driver, obesity (344 pounds); copd, umbilical hernia repaired in 1998 and no complaints. On physical exam among the notations were that Gremminger had a history of low back pain, and there was a concern of radiculopathy, hyperlipidemia with lower extremity edema. The diagnosis in the 05/05/03 entry was; 1. hypertension (prob need to be lower); 2. old disrupt knee ligament (cont current care exercise as poss); 3. obesity (enc given, cont diet and walk); 4. CAD (cont daily aspirin, and lipid control and diet and exercise); 5. Hyperlipidemia; 6. osteoarthritis; 7. abnormal liver function tests; 8. COPD (stable); 9. Sleep apnea (use cpap as much as possible reduces water weight); 10. Colonic polyps; 11. etc. The diagnoses remained the same into August of 2003.

In a 03/15/05 entry it was written that Gremminger reported pain in the left knee; it was noted that he had had multiple falls since Christmas 2004, last of which was the day before. The record indicated a diagnosis of – left Quad tendon disruption with resulting large subQ hematoma. It was written that Gremminger was a difficult situation and he wanted to pursue non-operative treatment due to his medical comorbidities including coronary artery disease and carotid stenosis, but it was medically determined that the surgical risks were relatively low.

A 03/23/05 entry indicated that Gremminger was in for a visual analysis, and had complaints of: 1. decreased visual acuity since 02/16/04, only can see the top of the visual field, blurry in the center, blocked, can't see through it, notice decrease in visual acuity and depth perception while putting on a cap on a drain valve on a chemical "tanker" St. Clair Mo, was getting ready to go on a run, has not changed since 2/16/04; 2. numbness when right arm is elevated; 3. photophobia for many year, worse now after the vision loss; and 4. concerned about ocular health. It was noted that a Carotid Duplex performed on 06/10/04 stated the following impression:

Occlusion of the left internal carotid artery. The possibility of a severely flow limiting 99% stenosis cannot be entirely excluded, and if the patient is considered a surgical candidate, carotid angiography may be helpful to exclude lumen patency.

Moderate mixed plaque at the right carotid bulb and proximal internal and external carotid arteries resulting in moderate stenosis, less the level of the hemodynamic significance (50% diameter).

In a 03/24/05 progress note, it was written that Gremminger presented with a chief complaint of follow up of hypertension, followed cardio/Dr. Kereshi, discharged from ?Jeff City?, was unable to have surgery for left

quad tendon rupture due to spinal stenosis and unable to be intubated, complaint of chronic low back pain and patient reports pain due to 1992 motor vehicle accident. It was noted that Gremminger reported pain in the left knee due to a recent fall. It was noted in the entry: "the patient prefers to remain on Plavix to prevent stroke or further visual loss; it was also noted that the knee injury was now considered subacute and a nonoperative management would be pursued, including a hinged knee brace. In a 07/01/04 entry it was written that a carotid test had been performed on 06/29/04, and the written summary was: "In summary there is evidence for total occlusion of the left internal carotid artery and a 50 to 79 percent stenosis of the right internal carotid." An August 3, 2004 letter by a Carlotta Taylor-White, A.P.N. of Prime Medicine to Family Services, Franklin County Missouri stated:

Mr. Gremminger has near total loss vision secondary to severe carotid stenosis. He also has multiple other vascular disease, which are currently being treated and further evaluation of at the St Louis VAMC. He is currently under care requiring routine visits every other month as well as following up with multiple specialist within our system.

It is my best recommendation that this gentleman not continue his current occupation as a truck driver. It is unsafe for the public as well as this patient to ask him to pursue any further employment until the final diagnosis are made and the intervention completed. He is prescribed multiple medications, which may also alter his judgment or cause him serious signs and symptoms that may cause injury to himself.

A Vocational Rehabilitation JB Consult assessment, performed on 06/28/04 by a John Berkenwald, was in the record, and stated the following:

Background: Pt is a 55 y.o. W/M/M, being treated according to Pt, in outpatient clinic for treatment a number of somatic complaints including: COPD, HTN, obesity, sleep apnea, arthritic spine, disease arteries and blind in L eye. Pt is NSC. He believes he can stand maximum of 10 to 15 minutes, walk .5 mile, and climb maximum of 4-5 steps without rest. Sitting, bending at waist, or lifting, Pt stated, was not problematic.

Pt. picked up copy of St. Louis VA newsletter from interviewers desk and stated he could see large print but not well enough to read. Later during the interview when possible retraining was being discussed Pt stated he could see well enough to read items such as the newsletter with aid of eyeglasses.

Pt stated he has a pending Worker's Compensation case and is represented by counsel.

Behavioral observations: Pt was prompt reporting for his appointment. His manner of dress (bib overall, ball cap) and behavior were appropriate to the situation. Pt was friendly and cooperative He appeared to be in the average range of intellectual function. He had surgical dressing taped to his neck. Pt explained he had cyst drained during prior med clinic appointment.

Education: Pt dropped out of school after completing the 8th grade. Pt explained, "my family was poor and I had to go to work." Pt does not have a GED. "I never needed one," pt said. pt stated he knows how to read and perform basic arithmetic.

Military: According to VBA computer record, Pt served in the Army less than one year, from 8/4/66 to 7/19/67. Pt stated he was in military for two years. Pt stated he "got into trouble" and was given a General Discharge.

Work History: Pt has been an over-the-road truck driver for many years. Since January 2004, has been employed as a tanker driver for mar Weaver Trucking. He is currently employed but anticipates termination of his employment because of his vision problems particularly when driving at night.

Discussion: Pt has housing. He resides in St. Clair, MO southwest of St. Louis. Pt has a car and a commercial drivers license (CDL). Pt stated his financial resources are strained. He seemed motivated to remain gainfully employment but is convinced he would require retraining. Pt denies marketable skills with exception of truck driving. He spoke of interest in retraining as a cook but this does not appear to be in keeping with his stated physical capabilities, i.e. limited standing.

Given Pt's 8th grade education, multiple medical problems, and self described limited physical capabilities, strong motivation may enable Pt to overcome obstacles to training.

Plan:

He is NSC and, therefore, not eligible for the federal voc rehab program. Pt has been referred to Missouri's vocational agency for possible formal work assessment and testing.

The VA record of 07/09/04 reflected that Gremminger was upset when told after the US Carotid test that the plan was to follow the stenosis on the right side with repeat clinic and repeat Carotid US done in 6 months with no immediate plan to fix the right sided stenosis. The record indicated continued treatment of Gremminger for the diagnoses made in December 2002 into 2005. the record ended with radiology reports including: a. 05/17/05 CT lumbar spine report noting complaints of increased pain with radiation, and the impression was -- "Moderate severe spinal stenosis at L4-L5 Degenerative changes of lumbar vertebral bodies at multiple levels. Further evaluation if clinically indicated is recommended by MR of the lumbosacral spine." b. Chest x-ray report of 07/08/05 stating the impression -- No active cardiopulmonary disease.

Dr. Raymond Cohen, D.O. testified by deposition on behalf of the claimant (No. T) Board certified in neurology, Dr. Cohen stated that he evaluated Gremminger at the claimant's request on December 1, 2005. Dr. Cohen's evaluation report was read into the deposition; the history of injury was as follows:

"Mr. Gremminger is a 57-year-old right handed man who worked as an over-the-road tractor trailer driver for approximately 6 ½ months for Quality Carriers. He is currently unemployed and on Social Security.

While at work for this employer on or about 2-17-04, he was up on top of the truck. He was closing the top lid. As he did this, his left eye suddenly started fluttering and he had burning in the eye.

The top cap on the tanker was difficult to open and it did cause him to have a significant amount of force in order to open it. He states that immediately after this is when he noted the loss of vision in the left eye.

Those symptoms did not resolve.

.....He states that he had severe stress while working there. He would have to climb up on a tractor trailer in order to fill the trailer.

He weighs approximately 300 pounds. He would have to grab onto a small ladder, and climb up to the top of the trailer. This was extremely difficult for him to do.

The ladder would be from 3-4 feet off of the ground and he would have to stretch his legs in order to start the climb up. This would be approximately 10 steps to get to the top.

He would have a hose in one hand or he would have to throw a hose up to the top of the trailer. It was difficult for him to have to climb up the steps with the hose in the one hand. He would have to do this work whether it rained or snowed. It was extremely slippery.

He states that while working for this employer, when it was windy he had occasions when he was nearly blown off of the tanker but he was never actually blown off.

There was a time when he was in Michigan when it was raining and snowing and it was extremely difficult for him to stay on top of the trailer. He states that he would work for six weeks and then come back.

There was a period when he was gone for three months doing this work and then he came back and did social work. He states that he was under severe stress as the dispatcher on a daily basis would tell him that

he was late. He states that this would make him upset and depressed as well as increasing his stress in an attempt to do these deliveries.

When he had to deliver latex, this would take longer than the other deliveries. He states that because the latex was so thick, he would have to climb up on top of the trailer to let air out and open the dome. He would have to crank the dolly up which raised the back end. This would slow him down. If there was any latex left in, he would have to repeat the whole process to drain the latex.

He states that his time depended on how much was in the trailer and if the truck valve was working properly. He also drove with other products in the tank including not only the latex but bleach, peroxide, and caustic acid. He would have to be extremely careful when around those products.

As noted above in the history, he states that he had severe stress from this employment with Quality Carriers. He did have stressful situations previously with other tractor trailer driving.

He stated that with this new employer, i.e., Quality Carrier, he had increased stress as he was not paid for any unloading with the empty trips. He states that prior to that, he was paid for driving both with and without a load. (Cohen Dp. pp. 7-11)

Dr. Cohen noted Gremminger's complaints as:

"He cannot see out of the top half of his left eye. He has a loss of depth perception. It is difficult for him to drive. He no longer drives much. He states that someone from his church brought him up here today. He has to walk with a cane and he has fallen. He has put on 50 pounds since this stroke occurred. He now has to use oxygen when he sleeps with his sleep apnea machine. He is on multiple medications. He brought a two page list with him of his medications and they are in his file." (Cohen Dp. pg. 11)

Gremminger's pre-existing conditions or disabilities were discussed by Dr. Cohen, and were noted to be: history of COPD and asthma, history of cigarette consumption, a 14-15 year history of sleep apnea for which he uses a CPAP machine with oxygen (it was noted that prior to the diagnosis of sleep apnea on one occasion Gremminger had fallen asleep and ran off the road), history of coronary artery disease (approximately 6-7 years earlier Gremminger had had stent placement), history of spinal arthritis (with CT scan of his low back and a discussion by a Dr. Achary about surgery; and he was unable to have an MRI due to his size). Dr. Cohen noted that Gremminger is currently taking Hydrocodone for ongoing back pain, and that prior to the primary work-related injury could not lift his loads if he had the back pain; it was written that Gremminger continues to have significant ongoing low back pain and cannot stand for greater than 10 minutes and cannot bend, and at times cannot get out of bed, and the low back pain is worse with driving. Dr. Cohen listed the medical records he had reviewed.

The doctor discussed his examination findings which included: difficulty with depth perception in that with both eye open he had difficulty telling which object the doctor was holding in front of himself and unable to tell which was either equal or farther apart; difficulty seeing out of the right eye as well as when attempting to read; gait was slow and unsteady and walked with a cane; right arm – left quadriceps was weak 4/5; body habitus was obese; lungs revealed decreased breath sounds bilaterally; no carotid flow could be auscultated on the left and minimally on the right; right knee pain with motion testing; tender to palpation over the lumbosacral area; loss of motion of approximately 50% in all directions and complaints of low back pain; straight leg raising was negative at 90 degrees, but test increased his complaints of low back pain.

Dr. Cohen stated the following as his diagnosis regarding the primary work related injury of 02/17/04: 1. Ocular infarction with fixed deficit in the left eye causing horizontal upper visual field loss due to excessive work-related stress. Pre-existing conditions or disabilities were: 1. Multiple pre-existing conditions or disabilities including chronic obstructive pulmonary disease, sleep apnea, coronary artery disease; and 2. History of spinal stenosis with chronic lumbar strain/sprain with myalgia. The doctor stated the following as to his opinion on causation in regards to the primary work related injury:

“It is my medical and neurological opinion that within a reasonable degree of medical certainty that the above noted diagnosis listed under the primary work-related injury is as a direct result of his work and that the work is a substantial factor in disability.

By history he did have a medical history of vascular disease and in part some of the cause of the ocular infarction was due to the pre-existing vascular disease but in my medical opinion, a substantial factor in his ocular infarction was the severe stress that he described above in the history as well as the difficult physical parts of the job such as climbing the small ladder and getting on top of the trailer, especially with his large body habitus.” (Cohen Dp. pg. 16)

Dr. Cohen stated the following in regards to any permanent partial disability:

It is my medical opinion that within a reasonable degree of medical certainty, he has a 50% permanent partial disability at the left eye and a 20% whole person disability due to other problems which are directly affected by his eye disorder in that he has to walk with a cane and he has fallen because of both the visual loss in the left eye and the loss of depth perception.

Of the disability referable to the left eye, approximately 2-3% is pre-existing and the remaining 47-48% permanent partial disability is from the primary work-related injury.

Referable to the whole body disability, approximately 2-3% is pre-existing and the remaining 17-18% is as a direct result of the primary work-related injury.

In regard to his other pre-existing conditions or disabilities, it is further my medical opinion that within a reasonable degree of medical certainty, he has a 10% whole person disability due to the chronic obstructive pulmonary disease, a 10% whole person disability due to the sleep apnea, a 10% whole person disability at the level of the lumbar spine, and a 10% whole person disability due to the coronary artery disease.

It is further my medical opinion that within a reasonable degree of medical certainty, his pre-existing conditions or disabilities combine with the primary work-related injury to create a greater overall disability than their simple sum and that due to this combination of disabilities that he is permanently and totally disabled from his prior employment as a professional driver and not capable of gainful employment and that his pre-existing condition or disabilities were a hindrance or obstacle to his employment or re-employment. (Cohen Dp. pp. 16-18)

Dr. Cohen stated that in his review of the medical records he did not see any history of any past ocular infarction. The doctor was his opinion of whether or not with regard to Gremminger, intense physical exertion and stress could have caused him to have an ocular infarction, and Dr. Cohen answered – “Yes”. (Cohen Dp. pg. 19) Dr. Cohen explained what an ocular infarction is:

“That means like a stroke, if you will, of the eye. Ocular for eye and infarction means loss of blood flow. So ocular infarction would mean that the patient lost some or possibly all of their vision from the involved eye.” (Cohen Dp. pg. 20)

Dr. Cohen agreed that the loss of the vision was because of an occlusion or a blockage. The doctor was asked – In your opinion if Gremminger had not had the intense physical exertion as you had listed or the stress such as you had described with regard to his work at Quality Carriers, would that fact reduce his risk for ocular infarction. It would, yes”, Dr. Cohen answered. (Cohen Dp. pg. 20) The doctor was asked to describe how the stress at Gremminger’s job had affected Gremminger’s physical condition, and Dr. Cohen responded:

“Everyone generally has some form of stress or another, and it’s usually over a period of time, then stops. Occasionally, people will have a lot of stress and their body deals with it in more benign ways.

But generally speaking, long-term periods or periods of severe stress cause the body’s hormones to be elevated and stay elevated and they’re the sympathetic nervous system hormones or substances, if you will, the so-called fight or flight chemicals.

And in an acute situation, a fight or flight means that these sympathetic chemicals cause the body to be able to sustain any severe stress, such as if someone was trying to hurt you and you had to run, that's the fight or flight. But when you have a stress on a daily basis or, again, severe periods of stress, the sympathetic chemicals, hormones, transmitters, if you will, stay elevated and damage the blood vessels over a period of time." (Cohen Dp. pp. 20-21)

On cross examination by the employer/insurer, Dr. Cohen was asked his understanding of what Gremminger was specifically doing at the time the incident occurred. Dr Cohen answered:

"Yes, he stated that when this occurred, he was up on the top of the truck and was closing the top lid. As he did this, his left eye suddenly started fluttering and he had a burning sensation. Those were his symptoms. What he had told me was the top cap on the tanker was difficult to open, and he stated it did cause him to have to use a significant amount of force in order to open it. And, basically, that's what he was describing that he was doing at that time." (Cohen Dp. pg. 23)

The following testimony then occurred:

1. Doctor, I think in your report you also go into other descriptions of stress that Mr. Gremminger reported to you. But, basically, didn't the activities and his job functions that he had at Quality Carriers, wouldn't those -- didn't he even tell you that those were similar to most of the truck driving jobs that he had in the past?
1. They were similar in some sense. What he had described to me was what he did for this employer, but back to your question, he said they were similar at -- somewhat similar.
1. Okay. Looking at the second paragraph at the bottom of page 2, wouldn't you agree that Mr. Gremminger noted that the primary change from his prior jobs to what he described at Quality Carriers was the fact that he was not paid for empty trips?
1. My recollection from my history was that that was part of the problem. Plus the other parts of the stress from working with this employer that he had described to me were more severe than he had before, although, as I said a minute ago, he did have some stress with the type of work that he did, that is, the stressful situations working as a tractor trailer driver. But what he had described to me, and I quoted, was what he said was more difficult or more unusual or more stressful plus the fact that he wasn't getting paid for the other part of the trip. (RULING: Claimant's objections on grounds of - question is vague and calling for doctor to speculative – are overruled. Cohen Dp. pg. 24)
1. Okay. So you noted his history that he had been a truck driver for about thirty years, is that correct, or is that your understanding?
1. That's my understanding.
1. He was basically under the same stresses as far as driving, working long hours, deadlines to meet, wouldn't that be your understanding as well?
1. Yes.
1. Doctor, on the day that this incident occurred, Mr. Gremminger didn't indicate to you that he was doing anything more physically demanding than he would normally do on his job, did he? He didn't note anything unusual that day as opposed to any other time that he was doing his job.

1. As far as what he did for the Quality Carriers, he described the work that he was doing on top of the trailer as physically difficult for him to do. As far as if he did that with the other employers prior to that, I'm not exactly sure whether that when his eye became involved that it was more difficult than before.
1. Okay. That didn't exactly answer my question. I guess what I'm asking is on that date on February 17th of '04, what he described to you he was doing to you at the time he experienced the fluttering in his eye, he didn't tell you that that was any different than the work he had been doing or the activities he would have to do at any other time while on his job with Quality Carriers, did he?
1. That's correct.
1. And you had a description of some of his other job activities, which included, I believe you said, carrying hoses up onto the top of the truck. Now, he wasn't carrying any hoses with him at the time that this happened, to your knowledge, was he?
1. As far as that specific day and time, I'm not positive right this second if he did have to use those hoses to load or unload the substance in that trailer. (Cohen Dp. pp. 24-26)

During cross examination, Dr. Cohen stated that he would admit Gremminger had some pre-existing medical conditions that would be considered vascular risk factors. Dr. Cohen agreed that Gremminger had told him he had a history of cigarette smoking, and the doctor agreed that he had noticed in the Veteran's Administration records that Gremminger had noted his cigarette smoking habit was two packs of cigarettes per day; the doctor agreed that this was prior to the incident in February 2004; Dr. Cohen further agreed that this would be considered a vascular risk factor and would be at least a part of the cause of Gremminger's ocular infarction. Dr. Cohen agreed that Gremminger had also been diagnosed as being obese and this was a condition that was pre-existing February 2004; the doctor stated that this would also be considered a vascular risk factor "(i)f the person was significantly...obese....", and further agreed that he considered 300 or 350 pound to be significantly obese and a risk factor; Dr. Cohen agreed that this would at least be a part of the cause of Gremminger's ocular infarction. (Cohen Dp. pg. 28) Agreeing that Gremminger was diagnosed with hypertension prior to February 2004, Dr. Cohen stated that this would be considered a vascular risk factor "...if the pressure was high enough and did not respond to medications.."; the doctor agreed that this could also be at least a part of Gremminger's ocular infarction. (Cohen Dp. pg. 28) Dr. Cohen agreed that it was his understanding that Gremminger had been diagnosed with coronary artery disease prior to February 2004 and that the records indicated Gremminger had had two myocardial infarctions, or two heart attacks; the doctor agreed that Gremminger had had some type of surgery or angioplasty with placement of stents due to his heart condition; Dr. Cohen agreed that Gremminger's coronary artery disease and the history he has would be considered a vascular risk factor and could certainly be a part of the cause for Gremminger's ocular infarction. The doctor agreed that Gremminger had obstructive pulmonary disease prior to 2004; when queried if this would be considered a vascular risk factor, Dr. Cohen responded – "I'm not sure that that condition itself would other than if the person had enough of a breathing problem that they weren't getting enough oxygen to the vessels, then it might be." (Cohen Dp. pg. 30) The doctor was queried - So it's possible that this could also be a part of the cause of Gremminger's ocular infarction, and Dr. Cohen answered: "It's primarily the cigarette that lead to that, but in part, it's possible that the lungs could, depending on how bad the COPD is." (Cohen Dp. pg. 30) Dr. Cohen agreed that Gremminger also suffered from hypercholesterolemia prior to February 2004; when asked if this could be considered a vascular risk factor, Dr. Cohen responded – "In some people it is. It's not a hundred percent certain that it is, but it seems to be a factor that needs to strongly be considered." (Cohen Dp. pg. 30) The doctor agreed that the hypercholesterolemia could also be considered a cause of Gremminger's ocular infarction.

Dr. Cohen agreed, during cross, examination, that when he saw Gremminger, Gremminger did not complain of any other symptoms other than the visual loss following the incident in February 2004. The doctor agreed

that it was his impression that Gremminger did not have a cerebral infarction which would have been a stroke that affects the brain, but rather what he had was a blockage of an artery to the eye. Dr. Cohen agreed that on his physical examination of Gremminger there were no positive neurological findings other than the visual loss to the eye. The doctor was queried – Wouldn't you agree that there are not other physical problems directly related to that incident in February of 2004 other than the visual loss? "That's correct", Dr. Cohen answered. (Cohen Dp. pg. 32) It was noted that Dr. Cohen had given Gremminger a disability rating for the loss of vision to his eye, but also gave an additional disability rating of 20% of the body as a whole and had noted that was on other factors; the doctor was asked if this additional disability was based primarily on the fact that Gremminger is walking with a cane. Dr. Cohen answered:

"And the problems he had of falling and other problems – other problems related to the body besides the eye. So that whole person was in regard to, in part, using the cane for stability, but mostly because of the falls that were occurring because of the eye problems." (Cohen Dp. pg. 32)

On cross examination by the Second Injury Fund, it was noted that Dr. Cohen had mentioned in his evaluation report that Gremminger had had a CT scan of his low back and a Dr. Achary discussing with Gremminger about having low back surgery; Dr. Cohen was asked if he knew when that discussion had taken place. "My understanding when I used had or past tense, that it was before his eye problems, but I don't know the time when that occurred." (Cohen Dp. pg. 33) Dr. Cohen testified that he did not remember at the moment seeing Dr. Achary's records. It was noted that at his deposition Gremminger had stated that no one had told him or discussed with him the need for back surgery; Dr. Cohen was queried – so your opinion that it came before the eye injury, this information came from Gremminger himself? "Yes, it did", Dr. Cohen answered. (Cohen Dp. pg. 33) Dr. Cohen agreed that he would defer to the actual medical records to determine the actual date of that discussion. Dr. Cohen agreed that he had mentioned that Gremminger was taking Hydrocodone for his back pain, and stated that he was not aware of when Gremminger had started taking the Hydrocodone. "My best recollection was that it was before his eye injury....., but I'm not a hundred percent certain on the time when he was taking the Hydrocodone before the primary work-related injury", Dr. Cohen testified. (Cohen Dp. pg. 34) The doctor agreed that it would be fair to say that he would defer to the medical records to date the beginning of that prescription.

During cross examination by the Second Injury Fund, Dr. Cohen was asked if the condition of Gremminger's low back had gotten better, gotten worse or stayed the same since the date of his work related injury. "I believe from reading my notes, it was about the same", the doctor answered. (Cohen Dp. pg. 34) Dr. Cohen testified that at that moment he did not know if he had asked Gremminger if his breathing condition, the COPD and the asthma, had gotten better, worse or stayed about the same since the date of his work injury. In regards to his sleep apnea, Dr. Cohen stated, "(a)s best I know regarding that condition, it's remained the same." (Cohen Dp. pg. 35) The doctor was asked his understanding of why Gremminger was using a cane. "The cane was used to help prevent him from falling", Dr. Cohen answered. (Cohen Dp. pg. 35) Dr. Cohen indicated that he was aware of Gremminger's prior knee injury and conditions – "There's some notes in the VA records about a couple of problems with his knees, and one of them was a tear of the big muscle that goes on the top of the knee or the quadriceps". (Cohen Dp. pg. 35) Dr. Cohen stated that it was possible in part that Gremminger is using the cane because of his knee. The doctor was queried – If in his deposition Gremminger stated that the reason he was using the cane was because of his knee, would that be different from your understanding of why he was using it? "In part, yes", Dr. Cohen responded. (Cohen Dp. pg. 36)

Dr. Cohen, during cross examination by the Second Injury Fund, was questioned about ratings for pre-existing conditions. It was noted that he had assessed 10% permanent partial disability of the person of the whole due to the COPD; Dr. Cohen was asked what ongoing complaints did Gremminger relay he had in regard to the COPD up to the primary injury. "COPD, at the time that I saw him, I didn't have any complaints from him specifically regarding his lungs", Dr. Cohen answered. (Cohen Dp. pg. 38) It was noted that

Gremminger's sleep apnea was the next thing Dr. Cohen had rated, and the doctor was asked what ongoing complaints or problems did Gremminger relay he had with the sleep apnea leading up to his primary injury. "I didn't have any symptoms or complaints from him when I saw him regarding his sleep apnea", Dr. Cohen answered. (Cohen Dp. pg. 39) The doctor was queried as to what ongoing complaints or problems did Gremminger relay he had in regards to his coronary artery disease leading up to his primary work injury. "I didn't have any symptoms from his regarding that condition", the doctor responded. (Cohen Dp. pg. 39) Dr. Cohen stated that it would be something he would expect, as Gremminger had testified in his deposition, that as long as Gremminger uses a CPAP machine he doesn't have any problems with the sleep apnea; the doctor was asked - what is the reason for the 10% rating for sleep apnea. Dr. Cohen answered:

"Sleep apnea is a severe condition. If the machine does not work correctly for some reason, they won't be able to get a full night's sleep. If there is no electricity, they won't be able to use the machine. And then patients that gain weight, the pressure won't be correct and the machine won't be helping them and they'll be tired and have problems from the fatigue. So that has to be assessed. And then other illnesses can affect their sleep. And the CPAP machine would have to be adjusted for that." (Cohen Dp. pp. 39-40)

The doctor was further queried – So would it be fair to say that, in part, your 10 % rating is due on the possibility of those problems arising, electricity going out, gaining weight, or other diseases interfering with the sleep apnea? Dr. Cohen answered: "And that the patient has to rely on that machine to keep this condition from occurring. But all of that, yes." (Cohen Dp. pg. 40) The doctor was asked – In regards to the sleep apnea, as long as Gremminger's CPAP machine is working, his symptoms from the sleep apnea are essentially asymptomatic, is that correct? "At least stable and relatively asymptomatic", Dr. Cohen answered. (Cohen Dp. pg. 40) Dr. Cohen stated that Gremminger did not give any history in regards to the coronary artery disease of any ongoing problems that he experienced in regards to his heart after the time he had stent placement up to the time of his primary injury.

Dr. Cohen agreed that he is not a vocational expert, during cross examination by the Second Injury Fund. The doctor agreed that he does not place people in jobs in the open labor market. When queried isn't it correct that he would defer to a vocational expert as to whether or not there were any jobs available within the restrictions that he felt were appropriate for Gremminger, Dr. Cohen responded – "Yes". (Cohen Dp. pg. 41) Dr. Cohen stated that his examination of Gremminger was on December 1, 2005, and agreed that this was approximately a year and a half after Gremminger's work injury. The doctor was queried - In forming his opinion of Gremminger's disability and also Gremminger's employability, he took into consideration the physical findings of his exam as of the date of the exam, correct? "Yes", Dr. Cohen answered. (Cohen Dp. pg. 42)

Dr. David Peeples, M.D. testified by deposition on behalf of the employer/insurer (Roman Numeral II) Dr. Peeples stated that he is a board certified neurologist, and that he evaluated Gremminger on one occasion, May 12, 2006, on behalf of the employer/insurer. The doctor discussed the history relayed by Gremminger:

"He told me he was 57 years old, right-handed, and had been an on-the-road truck driver for 35 years. He had been employed for roughly six months by Quality Carriers when the incident of 2/17/04 occurred. By way of background, his job involved driving a tractor trailer/tanker with caustic chemicals over the road. Part of his normal work activities would involve climbing the dome after it had been washed out. The ladder was estimated to be 8-10 steps.

He would also have to hookup the hoses underneath the belly of the tanker to bleed out air from the container. He had done this a number of times during his 6 month employment without incident. He does not recall the actual day, but indicates that on February of 2004 he awoke early to begin a trip. He climbed up the ladder to secure the dome and felt a 'fluttering' in his left eye and associated stinging sensation. He indicates his eye turned red and the thought he 'ruptured a blood vein'.

He subsequently drove to pick up his load in Sauget and drove to Detroit. He states he (sic) was able to drive, but he had difficulty with depth perception and blurriness of vision of the left eye.

While relating this to me, he indicated that at the time he felt he had been under a significant amount of physical and emotional stress due to various time constraints and lack of remuneration by his employer. He emphasized this several times but did not describe any episodes of what I would consider unusual work stress, given that he has been a truck driver his entire life.

At any rate, he continued to drive with difficulties of vision in his left eye, and states he ultimately was evaluated by an eye doctor at the VA and was told he had a 'stroke'.

At no point did he have symptoms of left cerebral hemispheric ischemia, such as speech or language problems or right-handed sensory motor symptoms. His deficits were restricted to loss of vision in the left eye.

He last worked in or around June of 2004 and presently is on Social Security Disability for multiple medical problems.

He states presently he drives very little and that he stays home and is basically sedentary. He uses a magnifying glass to read due to poor vision in both eyes, particularly on the left.

Mr. Gremminger reports additional problems with daily activities due to left leg pain which he injured in a fall in December of 2004. This not to work related to the incident." (Peeples Dp. pp. 6-9)

Concerning Gremminger's past medical history, Dr. Peeples testified: "He has multiple vascular risk factors including hypertension, coronary artery disease status post stenting, hypercholesterolemia, sleep apnea, obesity and cigarette use." (Peeples Dp. pg. 9)

Dr. Peeples listed the medical and other records concerning Gremminger he had reviewed. In his discussion of his physical exam findings, Dr. Peeples stated: "That is basically a normal neurologic exam with the exception of visual loss in his left eye." (Peeples Dp. pg. 11) The doctor explained what visual field deficit in the left eye meant: "The pathologic problem was restricted to the retina or the left eye alone as opposed to the brain itself.....He had, basically he had difficulty seeing things above the horizon with his left eye." (Peeples Dp. pp. 11-12)

Dr. Peeples testified as to his diagnosis as a result of his evaluation of Gremminger: "He sustained a left central retinal artery occlusion in a setting of severe left carotid occlusive disease and multiple vascular risk factors." (Peeples Dp. pg. 12) The doctor testified as to his opinion on causation for his diagnosis: "He has extensive vascular risk factors which include, aside from his age and gender, hypertension, coronary artery disease, documented carotid atherosclerotic occlusive disease, sleep apnea, morbid obesity and cigarette use.....He was a stroke waiting to happen." (Peeples Dp. pg. 13) The doctor was asked to explain what central retinal artery occlusion was: "That is an occlusion that is restricted specifically to the central artery that supplies the retina. It is not an infarction of the brain, per se. But again, it is restricted to the left eye." (Peeples Dp. pg. 13)

The doctor was asked his opinion of whether or not Gremminger had sustained any permanent partial disability as a result of his condition, and Dr. Peeples answered: "He has permanent partial visual loss in the left eye as a result of a central retinal artery occlusion." (Peeples Dp. pg. 13) Dr. Peeples again stated that it was his opinion as to causation that this was not related to the November 17, 2004 incident.

On cross examination by the claimant, Dr. Peeples stated that he had not reviewed medical records from Barnes Retina Institute, Dr. Engelbrecht, Clarkson Eye Center, Carolina Eye Center, Dr. Kornfeld, Dr. Ellen Brogan, St Anthony's Medical Center, Mercy Medical Group, Dr. Saloma, Dr. Chin, or from Dr. David.

During cross examination, Dr. Peeples surmised the cause of Gremminger's central retinal artery occlusion:

"The most probable path, physiologic mechanism is either a small, little embolus traveled downstream and

lodged in the central artery or there is what is called an inciteful thrombosis. It came to the point where eventually it closes off due to platelets.” (Peeples Dp. pg. 17)

The doctor was asked if he believed increasing arterial pressure can cause a central retinal artery occlusion, and Dr. Peeples answered: “That is a theory. It has never been actually proven. It is assumed it may be.” (Peeples Dp. pp. 17-18) The doctor was further queried – Increasing arterial pressure can cause a central retinal artery occlusion? Dr. Peeples responded:

“Not without, not in the absence of, no risk factors. If you have a stroke that’s based on atherosclerosis, chronic hypertension and all the vascular risk factors, more often than not. It just doesn’t happen on its own.” (Peeples Dp. pg. 18)

Dr. Peeples was queried - Gremminger didn’t have a stroke? The doctor answered: “Yes, he did. He had a stroke of the central retinal artery.” (Peeples Dp. pg. 18) The following testimony then occurred:

1. Do you believe that physical exertion can increase arterial pressure?

1. Physical exertion does increase arterial pressure.

1. Can exercise increase the blood flow to the carotid artery?

1. Yes.

1. Do you believe a patient such as Mr. Gremminger has a decreased ability to regulate his blood pressure with exertion due to his risk factors?

1. He may. That’s not to say that he does, but he may, based on risk factors. (Peeples Dp. pp. 18-19)

Dr. Peeples was asked if he knew how much effort was required by Gremminger to do his job, and the doctor responded:

“Well, he was an over-the-road truck driver. And what he described to me, or what he indicates that he was doing at the time his symptoms started was he was climbing an eight- to ten-rung ladder on to the top of the truck.” (Peeples Dp. pg. 19)

The doctor agreed that Gremminger is 350 pounds, and noted that Gremminger has hypertension and diabetes. Dr. Peeples said it would be a fair statement to say that it would take more exertion to do what Gremminger described than somebody of a more modest body weight, such as a five-foot-nine person weighing about 180 pounds.

Agreeing during cross examination that it was his opinion that regardless of what the cause of Gremminger’s condition, Gremminger could not work as an over-the-road truck driver, Dr. Peeples further stated: “I think his visual problems would preclude that.” (Peeples Dp. pg. 21)

Delores Elvera Gonzalez, CRC, testified by deposition on behalf of the claimant on November 14, 2006. (No. U) Gonzalez testified that her occupation is a Vocational Rehabilitation Counselor, currently self-employed by herself. She agreed that she had evaluated George Gremminger at the claimant’s request. Gonzalez explained what documents she had reviewed as part of her evaluation:

“The first thing I did was schedule an appointment with Mr. Gremminger at his home in Bland, Missouri.

I then read all of the medical information that was provided to me by your office. And the medical information is listed on page seven of my report.

I then traveled to Mr. Gremminger's home. I did a client interview which included his educational history, his subjective complaints, and his vocational history.

I then returned to my office and did a transferability of skills analysis and completed my report. (Gonzalez Dp. pp. 4-5)

I interviewed Gremminger on September 9, 2006 to assess his potential for vocational rehabilitation, Gonzalez said. She agreed that after her evaluation she had prepared a report, dated September 22, 2006, concerning her findings of Gremminger; Gonzalez' September 22, 2006 report was marked at the deposition as Employee's Exhibit 2; it was agreed and stipulated to by the parties that the report would be typed into the record. (See, Gonzalez Dp. pg. 5)

In her report, Gonzalez noted the date of injury - 2/17/04. Gonzalez wrote that prior to meeting with Gremminger, she reviewed medical records, and listed those records: Henry G. Ollinger, M.D.; Mallinckrodt Institute of Radiology (MIR); Heartland Hospital East; George D. Mulder, M.D.; Missouri Baptist Medical Center; Hemant Sheth, M.D.; St. John's Mercy Hospital; BarnesCare; George Richardson, M.D.; St. Anthony's Medical Center; A. Rashid Qureshi, M.D.; James R. Criscione, M.D.; David T. Volarich, D.O.; Max David, M.D.; James K. Walsh, Ph.D.; Judson F. Martin, M.D.; Pain Management Service Center; David F. Ellenbrogan, D.C.; St. Luke's Hospital; Mark Chin, M.D.; Neil Ettinger, M.D.; Sleep Medicine Research Center; Alan H. Morris, M.D.; David M. Peebles, M.D.; Barnes Retina Institute; Nicholas E. Engelbrecht, M.D.; Michael S. Korenfeld, M.D.; Raymond F. Cohen, M.D.; John Cochran VA Hospital; and Gary A. Miller, M.D.

Gremminger's diagnoses were listed in Gonzalez' report: Near total vision loss O.S.; Central retinal artery occlusion; Pigment epithelial detachment, right eye; Hypertension; Atherosclerotic heart disease; S/P myocardial infarction; Degenerative joint disease; Severe obstructive sleep apnea; Chronic obstructive pulmonary disease; Arthritis; Asthma; Severe coronary artery disease; Bilateral carpal tunnel syndrome with decompression; Sciatica secondary to lumbosacral sprain; Spinal stenosis at L4-L5; Degenerative changes of lumbar vertebral bodies; Left quadriceps rupture; Mechanical low back pain; Morbid obesity; Hypophosphatemia; Nicotine dependency.

Gonzalez next discussed Gremminger's personal history. He is fifty-eight years old, and has been married to his second wife for twenty-four years. His children are all emancipated. From 1965 to 1967, Gremminger served in the U.S. Army as an artillery man and received an honorable discharge. He has a valid CDL. He smokes tobacco but is trying to quit, and has not used alcohol for twenty years. He is disabled and is currently unemployed. He is receiving Social Security Disability benefits. Prior to his injury, Mr. Gremminger's hobby was collecting knives. He indicated that since his injury, he spends time reading with the use of a magnifying glass. Mr. Gremminger stated he does not sleep well at night and only sleeps for three hour periods.

Gonzalez discussed Gremminger's medical status. He reported he does not have diabetes, but he does have heart disease and arthritis of the spine. Mr. Gremminger has high blood pressure which is controlled with medication. He is five feet nine inches tall and weighs three hundred and twenty-three pounds. He is right-hand dominant. He indicated he weighed three hundred and twenty-five pounds prior to his injury. Gremminger's current medications were listed. His relayed physical condition and limitations were discussed, and included the following. He must use a walker or cane to ambulate. Mr. Gremminger is unable to stand in one place for more than ten to fifteen minutes, and often falls after walking for more than one minute. His legs often give out and he loses his balance. He is unable to lift more than twenty-five pounds and must alternate arms when driving due to the pain in his arms and the numbness he sometimes experiences in his hands. He can only drive during the day for very short distances due to his blind left eye.

Gremminger indicated that he also has a hearing loss in both ears. He cannot bend, stoop, or climb. It is very difficult for Gremminger to kneel, and he must hold on to a stationary object to arise and to maintain his balance. He must change positions often when sitting due to discomfort. He has been advised to avoid fixed positions. He often experiences shortness of breath because of multiple medical problems. He stated he is able to reach with both arms but if he lifts, it strains his low back. Gremminger stated that hot, cold, wet, and/or humid conditions increase the pain in his back and knees. He experiences shortness of breath when exposed to dusty, dirty environments, and he is irritated by noisy situations. He experiences daily headaches and dizziness when looking up. He has memory and concentration problems which he attributes to his medications.

Gremminger's educational history and abilities were discussed: Gremminger completed the eighth grade and two months of the ninth grade in the Calloway County (Missouri) Schools in 1962. He has not received a high school diploma or GED. He indicated he did not like school and had no college preparatory classes or other special training. Gremminger is able to read with his right eye but only by using a magnifying glass. He is able to write but cannot for more than just a couple of minutes because of numbness in his hands.

His vocational history was discussed (most of which were Union – Teamsters jobs). a) Quality Carriers, Charleston, North Carolina, 12-03 to 6-04, Job Title - Tractor Trail and Tank Truck Driver; Wages – Three Hundred and ten dollars per week, Job Description - Tractor Trailer Truck Driver: Drove a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver products, chemicals, or materials in liquid, loose, or packaged form. The Dictionary of Occupational Titles classifies this job as medium, semi-skilled work. Tank Truck Driver: Drove a tank to deliver chemicals to customers. Drove truck into position to load at filling rack. Opened valves or started pumps to fill tank. Read gauges or meters and recorded quantity loaded. Drove truck to customer's premises. Connected hose to tank and opened valves. Medium, semi-skilled work. b) Martin Transport, Mandovi, Wisconsin, 2003 to 2004, Job Title - Tractor Trailer and Tank Truck Driver, Wages - Five hundred and seventy dollars per week, Job Description - Tractor Trailer Truck Driver: Drove a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver products, general freight, or materials in liquid, loose, or packaged form. Medium, semi-skilled work. Tank Truck Driver: Drove a tank truck to deliver chemicals to customers. Drove truck into position to load at filling rack. Opened valves or started pumps to fill tank. Read gauges or meters and recorded quantity loaded. Drove truck to customer's premises. Connected hose to tank and opened valves. Medium, semi-skilled work. c) Climate Express, Washington, Missouri, length of employment was 2002, Job Title - Tractor Trailer and Tank Truck Driver, Wages - Five hundred and thirty dollars per week, Job Description - Tractor Trailer Truck Driver: Drove a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver products, general freight, or materials in liquid, loose, or packaged form. Medium, semi-skilled work. Tank Truck Driver: Drove tank truck to deliver chemicals to customers. Drove truck into position to load at filling rack. Opened valves or started pumps to fill tank. Read gauges or meters and recorded quantity loaded. Drove truck to customer's premises. Connected hose to tank and opened valves. Medium, semi-skilled work. d) Consolidated Freightways Corporation, St. Louis, Missouri (Portland, Oregon), 1988 to 2002, Job Title - Tractor Trailer Truck Driver, Wages - Fifty-eight thousand dollars per year. Job Description: Drove a diesel-powered tractor-trailer combination with dual trailers, usually long distances, to transport and deliver general freight or materials in liquid, loose, or packaged form. Medium, semi-skilled work. e) Midwest Freightways, St. Louis, Missouri, Length of Employment - 1988 (part-time), Job Title:- Tractor Trailer Truck Driver, Wages - One hundred and ten dollars per week. Job Description: Worked part-time driving a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver groceries in a packaged form. Medium, semi-skilled work. g) Empire Transport, Mesa, Arizona, Length of Employment – 1987, Job Title - Tractor Trailer Truck Driver, Wages - Three hundred and fifty dollars per week. Job Description: Drove a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver products, livestock, or materials in liquid, loose, or packaged form. Medium, semi-skilled work. h) Arizona Motor Freight, Phoenix, Arizona, Length of Employment - 1987 (part-time), Job Title

- Tractor Trailer Truck Driver, Wage - Three hundred dollars per week, Job Description: Drove a diesel-powered tractor-trailer combination part-time, usually long distances, to transport and deliver products and general freight in loose or packaged form. Medium, semi-skilled work. i) Johnson Motor Freight, Phoenix, Arizona, Length of Employment – 1987, Job Title - Tractor Trailer Truck Driver, Wages - Two hundred and seventy-five dollars per week, Job Description: Drove a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver products and general freight in liquid, loose, or packaged form. Medium, semi-skilled work. j) Scarborough Refrigerated Trucking, Phoenix, Arizona, Length of Employment – 1987, Job Title - Tractor Trailer Truck Driver, Wages - Two hundred and forty dollars per week, Job Description: Drove a diesel-powered refrigerated tractor-trailer combination, usually long distances, to transport and deliver produce. Medium, semi-skilled work. k) American Red Ball Moving Company, Indianapolis, Indiana, Length of Employment – 1987, Job Title - Van Driver, Wages - Two hundred and eighty dollars per week, Job Description Drove a diesel-powered tractor-trailer combination, usually long distances, to transport and deliver furniture. Very heavy, semi-skilled work. k) American Freight Company, Dayton, Ohio, 1979 to 1984, Job Title - Tractor Trailer Truck Driver, Wages - Six hundred dollars per week, Job Description - Drove a diesel-powered tractor-trailer combination with dual trailers, usually long distances, to transport and deliver general freight and materials in liquid, loose, or packaged form. Medium, semi-skilled work l) Terminal Transport, Cartersville, Georgia, 1974 to 1979, Job Title - Tractor Trailer Truck Driver, Wages - Four hundred and fifty dollars per week, Union – Teamsters, Job Description: Drove a diesel-powered tractor-trailer combination with a forty-five foot refrigerated trailer and dry box, usually long distances, to transport and deliver products. Medium, semi-skilled work. m) Sam Tanksley, Cape Girardeau, Missouri, Length of Employment – 1973, Job Title - Tractor Trailer Truck Driver – Wages - Thirteen percent of the load, Union – Teamsters, Job Description - Drove a diesel-powered tractor-trailer combination with a forty foot refrigerated reefer trailer, usually long distances, to transport and deliver produce. Medium, semi-skilled work. n) Hugh Major, Roxanna, Illinois, Length of Employment – 1972, Job Title - Flatbed Truck Drive, Wages - Twelve percent of the load, Union – Teamsters, Job Description - Hauled steel on a flatbed truck. Medium, semi-skilled work. o) Mail Line Hauling, St. Clair, Missouri, Length of Employment – 1972, Job Title - Box Truck Driver, Wages - One hundred and seventy-five dollars per week, Union – Teamsters, Job Description - Drove a refrigerated truck with a capacity under three tons to transport materials in liquid or packaged form to and from specified destinations. Medium, semi-skilled work. p) Sealtest Dairy, St. Clair, Missouri, Length of Employment – 1971, Job Title - Box Truck Driver, Wages - Seventy-five dollars per week, Union – Teamsters, Job Description: Drove a refrigerated truck with a capacity under three tons to transport materials in liquid or packaged form to and from specified destinations. Medium, semi-skilled work. q) Petrolane Gas Company, St. Clair, Missouri, Length of Employment – 1971, Job Title - Tank Truck Driver, Wages - Ninety dollars per week, Union – Teamsters, Job Description: Drove tank truck to deliver gasoline, fuel oil, lubricating oil, or liquefied petroleum gas to customers. Drove truck into position to load at filling rack. Opened valves or started pumps to fill tank. Read gauges or meters and recorded quantity loaded. Drove truck to customer's premises. Connected hose to tank and opened valves. Medium, semi-skilled work.

Gremminger indicated he has no skills and/or experience with office machines, bookkeeping, shipping/receiving, supervising, inventory control, scheduling, or instructing. He has no skills and/or experience with construction or farm equipment, but has skills and experience with transportation equipment. He has some experience with hand tools, but none with machine/shop tools. Gremminger has a CDL, but does not have any other special licenses or certificates.

Medical records that were reviewed were listed, and a summary of pertinent information was discussed beginning with treatment in April 1991. It was noted that on 2/17/04, Gremminger sustained a central retinal artery occlusion. Subsequent treatment was discussed. Dr. Cohen's evaluation of Gremminger on 12/1/05 was discussed as was Dr. Peebles' 5/12/06 evaluation.

A transferability of skills for Gremminger was discussed by Gonzalez: This process revealed that Mr.

Gremminger does not have transferable skills that could be used in other jobs within his residual functional capacity, Gonzalez wrote. I prepared to administer CareerScope to Gremminger but because of his visual problems he was unable to be tested, Gonzalez wrote. Further written was:

Mr. Gremminger has not been released to return to work because of persistent pain and restriction of function.

Advancing age also has a significant impact on transferability. Mr. Gremminger is fifty-eight years old. To find the client who is almost at retirement age and performed medium to very heavy work for the last thirty-three years to have transferable skills, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or industry.

Furthermore, these skills must be highly marketable. A client with this adverse vocational profile cannot be expected to make a vocational adjustment to substantial changes in work.

In order to establish transferability of skills for such a client, one must show that the client can apply the skills he has acquired during the performance of his past work to semi-skilled or skilled job duties of other jobs with a minimal change in proficiency (with little vocational adjustment required).

The medical evidence reveals that Mr. Gremminger cannot perform his past relevant work of thirty-three years. Mr. Gremminger does not have transferable skills to other jobs because he is so severely limited. This evaluation process did not reveal any job that Mr. Gremminger can perform for which there is a reasonably stable job market.

Mr. Gremminger is unable to engage in any substantial gainful activity and should not be expected to perform in an ongoing working capacity in the future. (See, Gonzalez Dp.61-62)

Gonzalez wrote the following summary:

According to the medical evidence of record, Mr. Gremminger has severe limitation of functional capacity secondary to multiple injuries and disabilities. His current residual functional capacity is less than sedentary work. The medical evidence corroborates continued significant, residual complaints that present a chronic hindrance in his ability to perform basic work functions and some activities of daily living.

The documentary evidence supports this finding. Careful consideration has been given to the medical evidence and vocational information generated from this evaluation.

Mr. Gremminger's impairments have produced pain of severe intensity, frequency, and duration, and have affected his ability to perform basic work-related functions. He is unable to do any prolonged sitting, standing, or walking. He complains of increased severe pain when in a seated, standing, or walking position for more than just a few minutes. He is blind in his left eye and must use a magnifying glass to see printed material with his right eye.

Although he is able to perform most activities of daily living, it is necessary for him to rest and be given the opportunity to change positions as needed to maintain a reasonable level of comfort. His impairments remain severe despite surgeries, physical and occupational therapy, pain medications, pain management, and regular medical attention and treatment.

Dr. Cohen opined that:

Due to this combination of disabilities that he is permanently and totally disabled from his prior employment as a professional truck driver and not capable of gainful employment, and that his pre-existing conditions or disabilities were a hindrance or obstacle to his employment or re-employment.

He needs to be restricted from any type of driving other than possibly some short distances around his home. He needs to be restricted from any type of heights or walking on uneven surfaces. He also needs to be restricted from any work in which he does any forceful activity because of the lungs and because of the heart. He should avoid extremes in temperature.

The client's impairments have severely compromised his ability to either return to his past relevant job or to perform even sedentary work on a sustained basis.

It is my opinion that Mr. Gremminger is not a candidate for vocational rehabilitation. Mr. Gremminger is

not capable of any competitive work for which there is a reasonably stable job market. Mr. Gremminger has a combination of adverse vocational factors that would preclude employment currently and in the future. (See, Gonzalez Dp. pp. 62-64)

Gonzalez was asked at her deposition if it was her opinion that Gremminger cannot compete in the open labor market. "Yes, sir", Gonzalez answered. (Gonzalez Dp. pg. 65) She was asked her opinion on whether an employer could reasonably be expected to hire Gremminger considering his present physical condition and reasonably expect him to successfully perform the work. Gonzalez answered: "He might be hired, however, I doubt that he would be able to perform on the open labor market given his need for accommodation." (Gonzalez Dp. pg. 65) Gonzalez was asked – In your opinion, Gremminger's inability to compete in the open labor market is due to the combination of his injuries and disabilities which include his eye condition; is that correct? "Yes, sir", Gonzalez answered. (Gonzalez Dp. pg. 65)

On cross examination, Gonzalez was again queried, wasn't it her opinion regarding Gremminger's employability that it relates to all of the factors she had noted in her report. "Yes, sir", Gonzalez responded. (Gonzalez Dp. pg. 66) She was queried - It's just not solely related to his vision loss? Gonzalez answered: "Oh, no. It's a combination of all of his disabilities." (Gonzalez Dp. pg. 66)

Gonzalez was asked if she still worked for the Department Of Veterans Affairs. She responded: "No, sir. I retired from the Department Of Veterans Affairs." (Gonzalez Dp. pg. 66) Gonzalez agreed that she had retired in 2006. She stated that she didn't have any time where she had worked on Gremminger's case as far as Veterans. "He was not a disabled veteran as far as I know", Gonzalez further stated. (Gonzalez Dp. pg. 67)

On cross examination by the Second Injury Fund, Gonzalez was asked if she had done any type of intelligence testing. "I tried", Gonzalez answered. (Gonzalez Dp. pg. 67) Agreeing that she couldn't because of Gremminger's vision, Gonzalez added: "He needs to use a magnifying glass to read any printed material. And I used CareerScope to do the interest and aptitude testing and there was no way. We tried. He couldn't. There was no way that he could perform the testing." (Gonzalez Dp. pg. 67) She was queried - So there's no way for you to really determine what his intelligence level is; is that correct? Gonzalez answered: "No. The only thing that I had was academic level. He, I believe, finished the eighth grade and never obtained a GED or a high school diploma. And he said that he had been in a lot of trouble and was not able to finish school." (Gonzalez Dp. pp. 67-68) Gonzalez was further queried - There's nothing to indicate in the records that Gremminger's intellectual ability would prohibit him from learning a new job, would that be fair to say? She responded: "No. I don't think that there's any -- I didn't see a problem, but I wish that I could have evaluated him." (Gonzalez Dp. pg. 68)

Gonzalez agreed, during cross examination, that she is not a doctor. When asked if she would defer to a doctor as to the causation of Gremminger's various disabilities, Gonzalez responded – "That's correct." (Gonzalez Dp. pg. 68) Gonzalez agreed that her opinion of Gremminger's inability to work is based on the combination of all the limitations, restrictions, and disabilities throughout the medical records, and her evaluation that are listed in her report of September 2006. Gonzalez was asked if it was correct her opinions are based in part on all of Gremminger's physical conditions, and complaints, and limitations as they existed as of the date of her evaluation in September of 2006. "That's correct", Gonzalez agreed. (Gonzalez Dp. pg. 69)

It was noted, during cross examination, that Gonzalez had listed a number of the jobs Gremminger had in his vocational history; she was asked if she was aware, for instance, when Gremminger was working for Quality Carriers how long his average workday was. Gonzalez stated – "As I sit here right now, I don't remember." (Gonzalez Dp. pg. 69) "I do know that he worked for several months after he was injured"; "We did talk about that, and how he was able to do that", she added. (Gonzalez Dp. pg. 69) Gonzalez was queried if she had

asked Gremminger what percentage of his day, whatever the length of it was, was spent sitting versus standing. "Well, he was a truck driver and so most of it would have been seated", Gonzalez answered. (Gonzalez Dp. pg. 69) She was asked if Gremminger had given her any indication that he had any physical problems doing his job at Quality Carriers before the alleged eye injury. Gonzalez answered:

"He said that he had difficulty climbing up the little ladder to the top. And he said that it was--and I'm just doing this from memory; okay?

He said that he had difficulty lifting something when he got up on the top of the trailer. And that he occasionally had problems with his hands holding the steering wheel. But that was it." (Gonzalez Dp. pg. 70)

She was queried if it would be fair to say that Gremminger did not tell her of any problems with the sitting aspect of doing his job. Gonzalez responded: "He said his back hurt. And he said that he had problems with the swelling in his knees. In fact, he showed me the swelling in his one knee when I was there. But that's all that I can remember." (Gonzalez Dp. pg. 70) Gonzalez stated that she did not have Gremminger's deposition dated February 15, 2005. She was queried-- If Gremminger had testified in his deposition- on page forty-eight, lines twelve through twenty-two - that his hands did not give him any problems driving, they didn't go numb, they didn't fall asleep, they didn't cause him any problems, would that be different than your recollection of what he told you? Gonzalez answered:

"When we were sitting at his table and talking, he said that his hands would give him problems, and I would suppose that it would be when he was climbing up the ladders and when he was trying to lift whatever it was that he was supposed to be lifting.

I know that he was a very proud man and every time that he was injured, he went back to work. I don't know how he did it. He's one of the most disabled people that I've ever met. And I don't want to say that he wasn't telling me the truth or, you know, telling the truth during his deposition, but his hands were misshapen when I saw him, and it was probably from some type of osteoarthritis. So I believed him." (Gonzalez Dp. pg. 71)

Gonzalez admitted that what she had just been told that Gremminger had testified in his deposition was a little different than her understanding. She added: "He just said that he had problems with his hands. And I believe that he had carpal tunnel surgery bilaterally, and that after the surgery he didn't have any restrictions." (Gonzalez Dp. pp. 71-72) Gonzalez admitted that she had not asked Gremminger if any of the physical problems he had been having had gotten better, gotten worse, or stayed the same since the date of his alleged eye injury. She added: "I would assume that since he's been off work that maybe things have improved. But most of the things that are wrong with him are degenerative in nature and you would think that it wouldn't get better." (Gonzalez Dp. pg. 72)

Gonzalez agreed that she had a lot of medical information listed in her report that went on for a number of pages; she stated that she believed this was all the medical information she considered in forming her opinions, and she utilized all that information in forming her opinions. It was noted that she had listed in her report some restrictions imposed on Gremminger by Dr. Cohen; she was asked if there are jobs that exist in the open labor market within those restrictions. "Yes", Gonzalez answered. (Gonzalez Dp. pg. 74) Probably at the sedentary level, Gonzalez stated. She added:

"And the reason I'm saying that is because of the forceful activity, because of his lungs and his heart, extremes of temperature, the fact that he should be restricted from any type of height or walking on uneven surfaces.

So if you take away light, medium heavy, very heavy, then you have sedentary. But then within the sedentary, you know, besides Dr. Cohen's restrictions, you have to consider the fact that he has, you know, a blind left eye, and then he has problems with the fact that he probably should not do repetitive type activity with both hands." (Gonzalez Dp. pp. 74-75)

Gonzalez stated this was from the fact that Gremminger “had bilateral carpal tunnel syndrome”. (Gonzalez Dp. pg. 75) She agreed that there is no doctor who says this. Gonzalez agreed that if you look at only the restrictions imposed by Dr. Cohen in his 12/05 report, there are jobs within those restrictions. She was asked what other doctors' restrictions was she taking into consideration besides Dr. Cohen's in forming her opinions. Gonzalez answered:

“Well, the fact that Dr. Peeples indicated that he had two plus edema at the ankles and signs of arterial venous insufficiency in the lower extremities.

I mean, you just can't--you know, these doctors don't say, you know, he shouldn't be, you know, like a secretary, or he shouldn't be whatever. Sometimes they take it upon themselves to let the reader, you know, a physical therapist, an attorney, a Vocational Rehabilitation Counselor, look at what they're saying the person has and then you draw from that what the person is able to do or not be able to do.” (Gonzalez Dp. pg. 76)

Gonzalez agreed that she is not a medical expert. “But I'm a vocational expert”, she added. (Gonzalez Dp. pg. 76) She agreed that she would defer to a medical expert as to actual physical restrictions. Gonzalez was asked to testify about Gremminger's restriction due to his eye: “If a person has a blind eye, they shouldn't be using that eye to drive with say, or to do work that requires vision in both eyes. So that would definitely be a restriction even if they don't say it.” (Gonzalez Dp. pg. 78) Gonzalez agreed that this was her opinion as a vocational expert. In determining which doctors' restrictions she had relied on, Gonzalez agreed that all of the restrictions that the doctors imposed that she relied on would be contained within her report. Gonzalez added:

“You know, the fact that he had the severe coronary artery disease with severe stenosis, and the fact that he had severe sleep apnea and required oxygen at night, and that he had chronic obstructive pulmonary disease, that he had problems with defusion in his lungs.

Dr. Volarich back in, I guess it was as early as 1994 indicated that he had bulging discs, that he had left leg radiculopathy. And at that time, he said that he was subject to recurrence of strain/sprain in his spine and peripheral skeleton, and that he should avoid any lifting in excess of twenty-five to thirty pounds and limit this to an occasional basis only. He should avoid repetitive stooping, squatting, bending, pushing, pulling, twisting, lifting.” (Gonzalez Dp. pp. 79-80)

She was asked if she knew if Gremminger had followed these restrictions. “I think that maybe he didn't considering that he went back to being a truck driver”, Gonzalez answered. (Gonzalez Dp. pg. 80) She agreed that even though those restrictions were imposed, as far as she could tell by doing the jobs Gremminger did, he was not able to follow those. Gonzalez stated that she did not know if she had asked Gremminger if during the time he worked for Quality Carriers if he had to miss any time from work due to any of these other physical problems leading up to the date of the eye injury.

Date: April 22, 2008

Made by: /s/ LESLIE E.H. BROWN  
LESLIE E.H. BROWN  
Chief Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ JEFFREY W. BUKER  
JEFFREY W. BUKER  
Director  
Division of Workers' Compensation

**ISSUES: Nature and extent of permanent disability, whether partial or whole; Liability of the Second Injury Fund, if any** begins on page 21.

**SUMMARY OF THE EVIDENCE** begins on page 44.

These sections were amended in 2005.

Section 287.190.6 amended in 2005.

In his May 12, 2006 evaluation report (marked at the deposition as Employer/Insurer's Exhibit No. 2 and offered into evidence without objection, See Peeples Dp. pg. 14), Dr. Peeples wrote: "As I don't feel the central retinal artery occlusion was due to his work activities he has a zero percent (0%) permanent partial disability rating specifically related to the 02/17/04 reported work injury."