

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

Injury No.: 01-169238

Employee: Gene Lilley  
Employer: Daimler Chrysler (Settled)  
Insurer: Self-Insured (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: October 12, 2001  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 2, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued October 2, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22<sup>nd</sup> day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

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

\_\_\_\_\_  
Alice A. Bartlett, Member

CONCURRING OPINION FILED

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

CONCURRING OPINION

I join Commissioner Bartlett in affirming the conclusion of the administrative law judge that employee failed to meet his burden of proving he sustained an occupational disease by repetitive trauma to his back. I agree that

employee failed to present expert medical evidence to establish the occupational disease claim. I write separately to state my strenuous objection to the administrative law judge's unnecessary dicta regarding the characteristics of a permanently and totally disabled individual that appears in the first paragraph under the heading *Nature and Extent of Permanent Disability*.

The administrative law judge begins his overly simplistic generalization by noting that the permanent total disability issue is moot. He should have stopped there but he goes on to share his ideas about the way permanent total disability "typically" or "usually" presents. In his recitation of the factors that contribute to the inability to compete in the open labor market, the administrative law judge fails to mention intellectual capacity, learning or training ability, prior work experience or age. These factors are often relied upon by vocational experts in reaching their conclusions about employability and are relied upon by courts in upholding permanent total disability findings. A proper determination of an employee's ability to compete in the open labor market is not confined to consideration of physical factors as the administrative law judge's dicta suggests.

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John J. Hickey, Member

## AWARD

Employee:	Gene Lilley	Injury No.:	01-169238
Dependents:	N/A	Before the	
Employer:	Daimler Chrysler (Settled)	<b>Division of Workers'</b>	
Additional Party:	SIF (Only)	<b>Compensation</b>	
Insurer:	Self-Insured	Department of Labor and Industrial	
Hearing Date:	July 21 and 31, 2006	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	JED:tr

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: alleged October 12, 2001
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: alleged lumbar spine

- 14. Nature and extent of any permanent disability: None
- 15. Compensation paid to-date for temporary disability: None
- 16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Gene Lilley Injury No.: 01-169238

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Disputed
- 19. Weekly compensation rate: PPD \$329.42
- 20. Method wages computation: Disputed

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:  
60 weeks from Employer (Settled)
- 22. SIF liability: None  
  
TOTAL: -0-
- 23. Future requirements awarded: N/A

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the Claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the Claimant:

N/A

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

Employee: Gene Lilley Injury No.: 01-169238  
Dependents: N/A Before the

**Division of Workers'  
Compensation**

Employer: Daimler Chrysler (Settled)

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: SIF (Only)

Insurer: Self-Insured

Checked by: JED:tr

This case involves a disputed low back injury, together with alleged Second Injury Fund ("hereafter") liability, resulting to Claimant on January 8, 2000. Employer admits Claimant was employed on said date and previously settled its risk of liability. The SIF remains a party. Both parties are represented by counsel.

Issues for Trial

1. Accident;
2. Medical causation;
3. Incidence of occupational disease;
4. Future medical care;
5. Permanent disability;
6. Second Injury Fund liability;
7. Rate of compensation.

FINDINGS OF FACT

1. Claimant Gene Lilley is 49 years old. He resides in Livingston, IL. Claimant is a high school graduate, having taken the normal high school curriculum. Claimant has no formal education, academic or vocational, beyond high school.

2. Claimant was employed by DaimlerChrysler as an assembler for approximately 23 years until his termination from employment in or around 2003. While employed by DaimlerChrysler Claimant commuted from his home in Livingston, IL on a daily basis.

***Prior Low back Injuries***

3. Claimant filed a workers' compensation claim against his employer for an alleged injury to his low back on or about 8/30/94 (#94-127663). Claimant states that this injury occurred when he was installing sliding doors on minivans, and he experienced a "pop" in his back.

4. Claimant states that he had no problems with his back prior to 1994, and concedes that he had no other significant preexisting disabilities prior to 1994.

5. Claimant presented at employer's infirmary on 8/30/94 with complaints of low back pain. Claimant states that no treatment was afforded him by employer's medical department, but medical records from employer's medical department entered into evidence indicate that Claimant was evaluated by company physician and prescribed Flexeril. Records indicate that Claimant was seen by company doctor for follow up visits on 9/1/94 and 9/6/94. Diagnosis was lumbar strain. (EE Ex. A-E).

6. Claimant underwent series of radiographs of the lumbar spine at Community Memorial Hospital, Staunton, IL on 8/31/94 at the request of Nicholas Pineda, M.D., Claimant's primary care physician. The opinion of the reviewing radiologist was mild degenerative arthrosis and mild lumbar scoliosis. (EE Ex. A-A.)

7. Dr. Pineda's medical records indicate that on 10/22/96 Claimant reported to Dr. Pineda that he had awakened the previous Friday morning (10/18/96) with low back pain, and that Claimant had reported this to the company doctor on Monday (10/21/96). Claimant underwent a second series of radiographs of the lumbar spine at

Community Memorial Hospital, Staunton, IL on 11/4/96 at the request of Dr. Pineda. The opinion of the reviewing radiologist was minimal anterior marginal spurring diffusely in the lumbar spine. Claimant was referred to Craig Beyer, M.D., an orthopedic specialist. (EE Ex. A-A, pp. 3-5.)

8. Claimant was examined by Dr. Beyer on 11/19/96. On Dr. Beyer's intake questionnaire Claimant indicated that he had sustained accidents on 8/31/94 and 10/25/96. On a subsequent page of the patient questionnaire Claimant indicated that he woke up with back pain on 10/25/96 and had sprained his back at work two years earlier from repetition. Dr. Beyer's initial impression was that Claimant had mechanical back pain, and he recommended that Claimant undergo a physical therapy program of paraspinal strengthening, abdominal strengthening, and flexibility training. Dr. Beyer further recommended that Claimant quit smoking, lose weight and become better conditioned. Dr. Beyer issued work restrictions for Claimant and started him on anti-inflammatory medication. (EE Ex. A-B.)

9. Claimant underwent a physical therapy evaluation on 11/25/96 by Anderson Rehab Services, Maryville, IL. The evaluator recommended that Claimant undergo physical therapy sessions twice weekly for two or three weeks, in addition to home exercises. The treatment plan was approved by Dr. Beyer. (EE Ex. A-B.)

10. Claimant returned to Dr. Beyer on 12/31/96. Dr. Beyer noted significant progress and cleared Claimant to return to work without restriction on 1/6/97. (EE Ex. A-B.)

11. Records from employer's medical department indicate that Claimant visited medical department with complaints of ongoing low back pain on 1/6/97, 2/12/97, 2/26/97, 3/11/97, 3/12/97, 5/20/97, 5/31/97, 8/28/97, 9/17/97, 10/6/97, 10/21/97, 11/11/97, 11/18/97 and 12/9/97. Records indicate that on 3/11/97 Claimant complained of burning sensation at right hip. (EE Ex. A-E.)

12. Claimant was referred to Matthew F. Gornet, M.D., for further evaluation and treatment in 4/97. Dr. Gornet ordered an MRI of Claimant's lumbar spine which was performed on 4/15/97 at DePaul Health Center. The radiologist's impression was mild pedicle spinal stenosis, otherwise unremarkable. The radiologist noted the absence of evidence of discrete disc herniation or nerve root impingement. (EE Ex. A-C.)

13. Claimant was seen by Dr. Gornet on 4/28/97. Dr. Gornet opined that Claimant had a herniated disc at L4-5 with right side encroachment on the neuro foramen, along with congenital stenosis of the spine. Dr. Gornet noted that Claimant's symptoms had improved significantly with the use of a Medrol Dosepak. Dr. Gornet recommended a walking regimen. (EE Ex. A-D.)

14. Claimant continued to treat with Dr. Gornet during 1997. On 10/17/97 Dr. Gornet noted that Claimant's symptoms were mostly in the low back and right thigh. Dr. Gornet imposed work restrictions of no significant standing or walking, and sitting 80% of the time. On 11/17/97 Dr. Gornet noted that Claimant was off work due to the restrictions he had imposed. Dr. Gornet recommended another MRI. (EE Ex. A-D.)

15. Claimant underwent a second lumbar spine MRI on 11/25/97 at Barnes-Jewish West County Hospital. The radiologist's impression was of moderate degenerative disc disease at L4-5 and L5-S1, with end plate changes at L5. A small right paracentral disc protrusion was seen at L4-5, along with a moderate central disc protrusion at L5-S1. No significant spinal stenosis was seen at either level, and no neural foraminal stenosis was evident. (EE Ex. A-D.)

16. Dr. Gornet saw Claimant on 12/8/97, at which time the doctor noted that Claimant's recent MRI was essentially unchanged from the one taken on 4/15/97. Dr. Gornet remarked that he did not feel Claimant was a candidate for surgery at that point. Dr. Gornet issued a letter for Claimant on 12/11/97, in which he restated his restrictions of 10/17/97. Dr. Gornet stated in this letter that he did not believe Claimant to be disabled, but that Claimant would require significant restrictions. (EE Ex. A-D.)

17. Claimant testified that he returned to work on light duty in 1998.

18. Claimant was seen by Dr. Gornet on 6/15/98. Dr. Gornet reiterated his position that surgery was not an initial option for Claimant. Dr. Gornet stated that based upon Claimant's reports, continued work at DaimlerChrysler

might not be possible given the doctor's restrictions. Dr. Gornet indicated that Claimant could continue to work if he could tolerate it, as in his opinion continued working would not cause Claimant any additional damage. (EE Ex. A-D.)

### ***Current Injury Claim***

19. Claimant was seen by Dr. Gornet on 8/30/01, on referral from Claimant's attorney. Dr. Gornet noted Claimant's report that the employer had "done away with restrictions while at work." Claimant reported an escalation of symptoms to Dr. Gornet that included right buttock, right groin and right upper leg pain. Dr. Gornet noted that Claimant's motor exam indicated 5/5 strength in all groups, with normal sensation and reflexes. Dr. Gornet noted that Claimant's radiographs indicated no significant interval changes compared to the 1997 studies. Dr. Gornet recommended another MRI to compare with the one taken in 11/97. (EE Ex. A-D.)

20. Claimant was seen by Dr. Gornet on 10/8/01. Dr. Gornet's notes indicate that Claimant's recent MRI revealed changes in disc hydration at L4-5 and L5-S1 with Modic changes at L5-S1. Dr. Gornet stated that Claimant had central disc herniations at L4-5 and L5-S1, and that the L4-5 disc caused moderate to significant stenosis. The radiologist's report from this latest MRI, however, was not offered into evidence by Claimant. Dr. Gornet stated that he believed that Claimant's increased buttock and leg pain was related to his increased activity. Dr. Gornet issued permanent restrictions, which added a 15 pound lifting restriction to the previously imposed restrictions referable to standing and walking (i.e., no standing for more than 20% of time, significant restriction on walking, should sit essentially 80% of the time). (EE Ex. A-D.)

21. Dr. Gornet issued a letter for Claimant on 7/3/03, in which he restated the above-listed restrictions. Dr. Gornet indicated that Claimant should be restricted to a permanent sitting or desk job. Dr. Gornet indicated that Claimant's symptoms were permanent unless he elected to obtain further treatment, which would include a decompression and fusion. (EE Ex. A-D.)

22. Claimant testified that he was advised by the employer that there was no work available for him upon the employer's receipt of Dr. Gornet's restrictions of 10/8/01. Claimant testified that he applied for and received unemployment benefits from the State of Missouri until 6/02. Claimant testified that he might have received a nine month extension on his unemployment benefits from the State of Missouri upon the initial expiration of the benefits in 6/02.

23. Claimant conceded that he has never sought any alternate employment since last working for the employer in October 2001. Claimant stated that he was waiting for a recall from the employer during the period between the time he last worked for the employer and the time he received his termination letter from the employer.

24. Samuel Bernstein performed a vocational and psychological evaluation of Claimant on 9/24/03, at the request of Claimant's attorney. Dr. Bernstein noted that Claimant appeared to be of average intellect, and did not appear to have any serious psychological problems. Dr. Bernstein noted Claimant's history of low back problems dating to 1994 and continuing to 10/01. Dr. Bernstein concluded that Claimant was unemployable, although he noted that Claimant could possibly become employable were he to get training to enable him to work in a sedentary type of job. Dr. Bernstein noted that Claimant indicated an interest in training for some type of computer work if funds were available. (EE Ex. A-H.)

25. On November 1, 2005, Dr. Bernstein stated in a letter to Claimant's attorney that Claimant was unemployable not only for the reasons stated in his initial report, but also due to a right hip injury reported to him by Claimant. Therefore, Dr. Bernstein concluded, Claimant was unemployable in the open labor market due to a combination of back and hip impairments. In this letter, Dr. Bernstein also relies on an opinion that "Dr. Mathew Gornet, a treating physician, indicated he [Claimant] was unable to engage in any work due to DDD." (EE Ex. A-H.)

26. Joseph Hanaway, M.D. examined Claimant on 10/14/05 at the request of Claimant's attorney. Dr. Hanaway noted Claimant's history of low back pain, and Claimant's report of right hip problems. Dr. Hanaway noted Claimant's complaints of bilateral numbness in both hands and fingers. Dr. Hanaway did not review any of

Claimant's prior medical records or scans, but instead relied entirely on Claimant's history. Dr. Hanaway stated that Claimant had a known herniated disc and had an aggravation of his chronic diskogenic low back pain with spinal stenosis in 2001. Dr. Hanaway stated that Claimant had developed an acute and now chronic right hip joint symptom. Dr. Hanaway stated that Claimant also has chronic carpal tunnel syndrome. Dr. Hanaway stated that Claimant "really is disabled and has been disabled by these problems. He will never really work again." Dr. Hanaway then conceded, however, that he had no diagnosis of Claimant's low back problems as he had never seen any films, nor did he have any definite diagnosis regarding Claimant's right hip. Dr. Hanaway further noted that Claimant had never undergone any testing of his carpal tunnel syndrome. Dr. Hanaway's report contained no opinion as to whether Claimant's employment was a significant factor in the development of any of Claimant's alleged disabling conditions. (EE Ex. A-F.)

27. Robert P. Poetz, D.O., examined Claimant on 9/9/05 at the request of Claimant's attorney. Dr. Poetz's evaluation was directed towards the issue of SIF liability. Dr. Poetz noted that Claimant had settled two low back cases with the employer for 15% PPD each. Dr. Poetz reviewed the medical records of Drs. Pineda and Gornet, and radiology reports from Claimant's 1994 and 1996 lumbar spine x-rays and 4/15/97 lumbar spine MRI. Dr. Poetz noted Claimant's complaints of a right hip injury in 2001, but stated that any right hip problems, in his opinion, were radicular in nature and related to the Claimant's herniated disc. Dr. Poetz rated Claimant with a preexisting 15% PPD BAW- cardiovascular. Dr. Poetz's report contained no opinions as to the causation of any of Claimant's alleged disabilities, nor did it comment on Claimant's ability to work in the open labor market. (EE Ex. A-G.)

28. James M. England, Jr. performed a vocational rehabilitation evaluation of Claimant on July 14, 2006 at the request of the attorney for the SIF. While Mr. England was unable to interview Claimant directly, he had access to Claimant's medical records, doctor's reports, vocational evaluation report, and a copy of Claimant's deposition transcript. Mr. England noted that Claimant was a younger worker according to U.S. Department of Labor guidelines. Mr. England noted that Claimant had a high school education, an extremely steady work history and appeared to have academic abilities as evidenced by testing that would enable him to handle basic clerical functions found in a variety of entry level employment. Mr. England noted that assuming the restrictions of Dr. Gornet, Claimant would be able to handle entry-level positions such as sedentary cashier positions, motel night clerk, small parts or product assembler, security company alarm monitor and some sedentary guard positions. Mr. England noted that with some additional keyboarding training Claimant would be eligible for a wider variety of positions including general clerk jobs, customer service positions, and so on. Mr. England noted that Claimant would be eligible for a wide variety of additional skills training at no cost through the Missouri Department of Vocational Rehabilitation, which could be coordinated for him locally through the Illinois state agency near his residence. Mr. England concluded that only upon the assumption of Claimant's subjective complaints could he be considered disabled, but that these complaints do not appear to be supported by Claimant's medical evidence. (SIF Ex. II.)

29. Claimant settled both his 1994 and 2001 workers' compensation claims against his former employer simultaneously on 1/15/04. Each claim was settled based upon an approximate disability of 15% PPD-low back. Settlement documents indicate that the employer paid \$67.00 in medical benefits and 1 2/7 weeks of TTD benefits on Claimant's 1994 claim. Settlement documents indicate that the employer paid no medical or TTD benefits on Claimant's 2001 claim. Settlement documents indicate that as to the 2001 claim there were disputes between the Claimant and the employer as to: whether the employee sustained injury by accident, series of accidents or occupational disease; the nature and extent of PPD; and medical causation, among other issues. (SIF Ex. I.)

## RULINGS OF LAW

It is noteworthy that Claimant's Claim for Compensation alleges that he has sustained disability as a result of an occupational disease. Specifically, Claimant states that while in the course of his regular employment he performed duties that caused repetitive trauma to his back, which were substantial contributing factors to his injuries from approximately 1980 through 10/12/01. That notwithstanding, Claimant alleges at hearing that he has sustained disability either as a result of an occupational disease or, in the alternative, as a result of an injury from an industrial accident. Claimant has not, however, met his burden of proving either alternate theory.

## ***Occupational Disease***

To support a finding of occupational disease, a Claimant must provide substantial and competent evidence that he contracted an occupationally induced disease rather than an ordinary disease of life. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App. 1991). The Claimant must also establish through expert testimony the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson v. Associated Electric*, 885 S.W. 2d 712, 716 (Mo.App. 1994). The Claimant must prove "direct causal connections between the conditions under which the work is performed and the occupational disease." *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992).

Claimant here has provided no evidence to support a theory that he has sustained a disability as a result of an occupational disease such as could form a valid basis for recovery from the SIF on this claim. No medical expert who treated or evaluated Claimant has offered any opinion to the effect that he has contracted an occupationally induced disease rather than an ordinary disease of life. No expert has testified that Claimant's claimed occupational disease was caused by conditions in the work place. Thus, Claimant's claim for compensation based upon disability from occupational disease must fail.

## ***Accident***

Nor has Claimant met his burden of proving disability as a result of an industrial accident. Claimant testified that in 10/01 he injured his right hip and had to be taken away from the job in the employer's ambulance. He states that he subsequently received injection therapy for his right hip condition. These claims, however, are not supported by any medical treatment records. Further, it is significant to note that nowhere in the records of Dr. Gornet is there any mention of any report from Claimant as to a traumatic injury to the right hip in or around 10/01. Rather, to the contrary, there is mention in Dr. Gornet's records as early as 10/97 of Claimant's complaints of persistent pain in the right thigh. Last, Dr. Poetz stated that in his opinion that Claimant's complaints referable to his right hip were related to his lumbar spine pathology, rather than a separate pathology.

The record contains insufficient evidence here to establish that Claimant sustained a separate, distinct disability as a result of his instant claim that combines with his disability from his 1994 claim to cause SIF liability. Rather, it appears that Claimant's ongoing disability referable to his low back was set in motion either by his 1994 injury or otherwise, and continued to progress with no subsequent workplace injury or onset of occupational disease as a substantial contributing factor. Claimant may well point to the fact that he received a settlement from his employer on the instant claim based upon an approximate disability of 15% PPD referable to the low back. However, it is well settled that a settlement of a claim between an employee and employer is not binding upon the SIF, nor is it dispositive as to the issue of SIF liability. *Totten v. Treasurer*, 116 S.W.3d 624, 628 (Mo.App.2003).

Further, it is noted here that Claimant settled both of his outstanding claims against the employer in January, 2004, well over nine years after the alleged date of the first of Claimant's two alleged injuries. Unlike most settlements, the figures reflected are unsupported by details of medical expense and lost time. Each contains (identical) percentages of disability even though liability was disputed and no interim WC benefits were paid. Settlement certainly does not excuse the burden of proof of liability issues here. Here, the SIF clearly places liability under Chapter 287 in issue. Insufficient factual medical evidence cannot support an award of compensation against the SIF. *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658- 659 (Mo.App. 1995).

## ***Nature and Extent of Permanent Disability***

Although moot, the PTD allegation appears unfounded. Claimant identified no labor or strength deficits that remove

him from the labor market and his tasks of daily living are apparently accomplished. PTD cases typically manifest as the inability to ambulate and the inability to engage in basic living activities. Claimant does each of these freely. Such cases are usually earmarked with severe ambulation deficits or unabated clinical signs such as serious swelling and severe pain. PTD usually entails involuntary sedentariness; it is this quality that constrains employability so significantly.

Claimant failed to meet his burden of proving that he is permanently and totally disabled and unable to compete in the open labor market. It is well settled that permanent total disability means the inability to return to any gainful employment, rather than merely the inability to return to one's former employment.

Claimant has submitted no competent and substantial evidence to establish an inability to return to any form of gainful employment. The absence of a surgery record is noteworthy. Dr. Gornet issued restrictions on several occasions that indicated that Claimant could work in a sedentary type of employment. Dr. Bernstein's initial report included an opinion to the effect that Claimant was unemployable, but included a qualification that Claimant could possibly be employable in a sedentary occupation were he to undergo vocational training. Dr. Bernstein's analysis lacks detail inasmuch as Dr. Bernstein's opinions are not adequately supported by treatment records and daily lifestyle limitations.

Dr. Bernstein's supplemental report, in which he states that Claimant is unemployable based upon a combination of his back and hip problems, is flawed in that it appears to rely on a misstatement of Dr. Gornet's restrictions on Claimant's ability to work. Further, Dr. Bernstein ignores the option of additional vocational training that might be available to Claimant, as noted in Mr. England's report. The evidence compels the conclusion that, based upon the opinions of Dr. Gornet and Mr. England, that Claimant remains employable in the open labor market.

## Conclusion

Accordingly, on the basis of the substantial competent evidence contained in the whole record, Claimant is found to have failed to sustain his burden of proof on the threshold issue of liability under Chapter 287. In addition, Claimant failed to sustain his burden of proof of liability against the SIF. Further, Claimant has failed to prove he is unemployable in the open labor market. Claimant's claim against the SIF is therefore denied. The remaining issues are moot.

Claimant's failure to offer opinion evidence from any proffered expert on the issue of occupational disease, or medical records supporting an accident, is noteworthy and makes the Claim appear frivolous under Section 287.560 RSMo (2000).

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

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

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

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*

*Division of Workers' Compensation*

Employee:

Gene Lilley

Injury No.:

01-169238