

**FINAL AWARD ALLOWING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
by Supplemental Opinion)

Injury No.: 00-039698

Employee: Jeffrey Ross  
Employer: Mike Brooke Drywall, Inc.  
Insurer: Truck Insurance Exchange  
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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 14, 2010, as supplemented herein. The award and decision of Administrative Law Judge David L. Zerrer is attached and incorporated by this reference to the extent it is not inconsistent with our findings, conclusions, decision and award.

We adopt the administrative law judge's conclusions regarding medical causation and future medical care. We also agree with administrative law judge's conclusion regarding the nature and extent of employee's permanent disability; specifically, the administrative law judge's conclusion that employee was rendered permanently and totally disabled by the April 17, 2000, work injury alone. We supplement the administrative law judge's award to fully articulate the findings underlying our conclusion that employee was rendered permanently and totally disabled as a result of the work injury.

As accurately summarized by the administrative law judge, Dr. Koprivica recommended that employee observe several physical restrictions as a result of the April 17, 2000, work injury and its sequela. Of particular note, Dr. Koprivica believes employee should avoid any activity that risks trauma to his left lower extremity due to employee's heightened risk of developing blood clots. In addition, Dr. Koprivica believes employee needs the freedom to alternate between standing and sitting and the ability to elevate his leg.

Dr. Koprivica deferred to a vocational expert on the issue of permanent total disability. He noted that if a vocational expert found employee to be unemployable in light of the restrictions Dr. Koprivica recommended as a result of the work injury, then it would be his opinion that the permanent total disability is the result of the April 17, 2000, work injury in isolation. On cross-examination by the Second Injury Fund, Dr. Koprivica reaffirmed his opinion that if a vocational expert finds employee is unemployable, Dr. Koprivica believes his unemployability is due to the disability and restrictions from the April 17, 2000, injury alone, without consideration of any prior conditions.

Employee: Jeffrey Ross

- 2 -

Mary Titterington is a vocational expert. Ms. Titterington carefully considered the restrictions imposed upon employee by the physicians who have treated and evaluated employee. Ms. Titterington believes that employee is not employable in the open labor market because there are no jobs that fit within the physical restrictions recommended as a result of the work injury. Ms. Titterington singled out employee's need to elevate his leg as a restriction an employer would not reasonably be expected to accommodate. We find the testimony of Ms. Titterington the most credible and persuasive testimony on the issue of employee's ability to compete in the open labor market.

We believe employee is unable to compete in the open labor market due to the restrictions imposed due to the April 17, 2000, work injury. We conclude that employee was rendered permanently and totally disabled by the last injury alone. Accordingly, we affirm the award and decision of the administrative law judge, as supplemented herein.

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 28<sup>th</sup> day of October 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

John J. Hickey, Member

Attest:

---

Secretary