

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

Injury No.: 04-143339

Employee: Howard Turner
Employer: Turnpike Transit, Inc.
Insurer: National Interstate Insurance
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. 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 21, 2013. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued May 21, 2013, 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 6th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Howard Turner Injury No. 04-143339
Dependents: N/A
Employer: Turnpike Transit Inc.
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
Insurer: National Interstate Insurance
Hearing Date: 2/14/13 Checked by: MEH

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: 8/3/2004
5. State location where accident occurred or occupational disease was contracted: OKLAHOMA
6. Was above employee in employ of above employer at the time of alleged accident or occupational disease?
YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted: A
FORKLIFT RAN OVER HIS LEFT FOOT CAUSING FRACTURES.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: LEFT ANKLE AND BODY AS A WHOLE
14. Nature and extent of any permanent disability: 90% 155-WEEK LEVEL AND 10% BODY AS A WHOLE
15. Compensation paid to-date for temporary disability: \$21,629.94
16. Value necessary medical aid paid to date by employer/insurer? \$38,964.12

Employee: Howard Turner

Injury No. 04-143339

- 17. Value necessary medical aid not furnished by employer/insurer? \$4,974.97
- 18. Employee's average weekly wages: \$564.93
- 19. Weekly compensation rate: \$376.04/\$354.05
- 20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: \$4,974.97

0 weeks of temporary total disability (or temporary partial disability)

179.5 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

- 22. Second Injury Fund liability: Yes No Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:
weekly differential (0) payable by SIF for 0weeks, beginning N/A
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

- 23. Future requirements awarded: FUTURE MEDICAL TREATMENT

Said payments to begin immediately 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:

JIM CORBETT AND DAVID TUNNELL

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Howard Turner Injury No. 04-143339

Dependents: N/A

Employer: Turnpike Transit Inc.

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

Insurer: National Interstate Insurance

Hearing Date: 2/14/13

Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 13, 2013, for a final hearing. The claimant appeared in person represented by James Corbett and David Tunnell. The employer and insurer appeared represented by Kevin Leahy. The Second Injury Fund appeared represented by Skyler Burks. Memorandums of law were filed by March 11, 2013.

The parties stipulated to the following facts: On or about August 3, 2004, Turnpike Transit Inc., was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by National Interstate Insurance. On the alleged injury date of August 3, 2004, Howard Turner was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about August 3, 2004, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in the state of Oklahoma. The parties agree that the employee's contract of employment was made in Missouri. The claimant notified the employer of his injury as required by Section 287.420 RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$564.93, which is sufficient to allow a compensation

rate of \$376.04 for temporary total disability compensation, and a compensation rate of \$354.05 for permanent partial disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$21,629.94, from August 4, 2004, to September 10, 2005. The employer and insurer have paid medical benefits in the amount of \$38,964.12. The parties agree that the claimant reached maximum medical improvement on September 10, 2005. The attorney fee being sought is 25%.

ISSUES:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed.
2. Whether the employer is obligated to pay past medical expenses, including a Medicaid lien.
3. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
4. The nature and extent of permanent disabilities.
5. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.
6. Whether the claimant is responsible for a missed doctor's appointment fee of \$600.

The following exhibits were entered into evidence:

Claimant's Exhibits:

- | | |
|---|---|
| A | Curriculum Vitae of Shane L. Bennoch, MD |
| B | Independent Medical Evaluation of Shane L. Bennoch, M.D, Dated October 27, 2005 |
| C | Independent Medical Evaluation of Shane L. Bennoch, M.D, Dated March 5, 2010 |
| D | Independent Medical Evaluation of Shane L. Bennoch, M.C., Dated January 9, 2013 |

E Medical Records of Howard Turner

Tab 1 Agape Primary Care 7/2/03; 7/11/03; 9/30/03

Tab 2 Murrell Counseling Service (Clayton Pettipiece, MD) 7/23/03-9/12/05

Tab 3 St. Johns Regional Health Center Ambulance 11/13/2003

Tab 4 Cox Health Systems
Emergency Room (Martin R. Jones MD) 11/13/03
Emergency Room (Mark Brady MD) 11/16/03
David Hicks, MD 8/20/04-9/17/04
Thomas Brooks, MD 3/22/05; 3/31/05; 4/08/05
William Sharpe, MD (stress test) 2/16/06
Stephen Holmes MD 2/20/06; 3/10/06
Emergency Room (R. Scott Kensel, MD) (SOB, dizzy) 5/10/06

Tab 5 Radiology
CT scan of head, 11/13/03
X-ray cervical spine, 11/16/03
MRI cervical spine, 7/29/04
MRI Left Foot, 8/19/04
CT left foot, 9/13/04
X ray L foot, 11/2/04, 11/30/04, 12/30/04, 4/26/05
X ray L foot 9/8/05
X ray L foot 12/20/05

Tab 6 St. John's Occupational Medicine 11/17/03-12/8/03

Tab 7 St. John's Outpatient Physical Therapy 11/19/03-12/8/03

Tab 8 Springfield Physical Medicine 6/23/04, 8/18/04

Tab 9 Hillcrest Medical Center (Tulsa OK) 8/3/04

Tab 10 Concentra Medical Centers 08/03/04

Tab 11 Orthopedic Specialists of Springfield (David Hicks MD) 08/10/04-05/05/05

Tab 12 Ozark Magnetic Imaging
MRI of cervical spine 07/29/04

Tab 13 MRI of Springfield
MRI of L foot 08/19/04

Tab 14 Litton and Giddings Radiological Associates
CT scan L foot 09/10/2004

Tab 15 Springfield Neurological and Spine Institute
Dr. Jeffrey Woodward 05/05/05-05/11/06

Tab 16 Peak Performance Physical Therapy & Rehab.
Jon Hathcock, PT 1/12/05-3/21/05

Tab 17 Neuropsychological Associates of SW Mo.
Dale A. Halfaker, Ph.D.
Shea Stillwell, Psy.D.
05/09/05-08/05/05

Tab 18 Ozark Prosthetics & Orthotics 02/21/05-6/8/05

Tab 19 Doctors Hospital—Nixa Clinic
Rana Mauldin, MD 10/24/06-8/22/07

Tab 20 Doctors Hospital of Springfield 11/3/06-6/14/07

Tab 21 St. John's Regional Health Center 9/12/07-8/19/10

Tab 22 St. John's Regional Health Center
Physical Therapy
1/17/08; 7/20/09-8/14/09; 2/15/10-3/18/10

Tab 24 Physical Therapy Clinic
Debbie Young-Tolliver, P.T.
Functional Capacity Evaluation 10/7/08

- F Medical Records
Ozarks Community Hospital
MRI Left foot 02/04/13
- G Medical Records
Ozarks Community Hospital 3/27/07-1/24/03
- I Notice of Amended Lien for Mo HealthNet Payments

October 10, 2012

- K Deposition of Rana Tenorio, M.D., October 5, 2010
- L Deposition of Jeff Woodward, M.D., July 27, 2006
- M Deposition of Dale Albert Halfaker, Ph.D., June 18, 2008
- N Deposition of James M. England, Jr., January 25, 2012
- O Deposition of Phillip Aaron Eldred, CRC, June 23, 2008
- P Notice of Commencement/Termination of Compensation
- Q Overpayment Notice
- S Deposition of June Blaine, January 31, 2013
- T Deposition of Dr. Craig Aubuchon, February 7, 2013
- V Deposition of Dr. Shane L. Bennoch, October 18, 2011
- W Four pictures of Howard Turner's left foot
Taken 3/31/05
- X Stipulation for Compromise Settlement in
Howard Turner v. Arnco Petroleum Transportation
Injury Date: November 13, 2003; Injury No. 03-115668

Employer and Insurer's Exhibits:

- 3 Deposition of Dr. Aubuchon (offered in duplicate)
- 4 Deposition of June Blaine (offered in duplicate)
- 5 Photo

Second Injury Fund's Exhibits:

- I Deposition of Howard Turner, August 31, 2006
- II Deposition of Howard Turner, January 4, 2007

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Turner; his fiancée, Tricia Callahan; and his mother, Patricia Davis, testified live at the hearing. Dr. Shane Bennoch, who did an independent medical evaluation, also testified live at the hearing on behalf of Mr. Turner.

Mr. Turner is 43 years old, and currently lives in Ozark, Missouri. He grew up in Michigan, and testified he did not do well in school. He quit in the 11th grade because he testified he was “no good at it.” He was having a hard time and was taking learning disability classes. He said he had trouble reading but was very good mechanically. He decided to just go to work. The claimant has worked since high school doing such things as delivering pizza and working at McDonalds. He next went to work for an electrical company handling heavy equipment. He worked for a mobile home business performing set up. Mr. Turner has had various jobs in his life.

Mr. Turner began his over-the-road trucking career at C.R. England, and he continued to be an over-the-road trucker most of his adult life. Mr. Turner was the owner of multiple semi-trucks at one point in his career, and had multiple drivers working for him. He kept the books for all the trucks including receipts, paperwork, and write-offs.

In 2003, Mr. Turner began working for Aruco Petroleum. He worked about 6-7 months hauling gas and delivering it to quick shops along routes in the Springfield area. He drove a tanker truck. He generally started his job at 5:00 a.m., and would usually go approximately twelve hours a day. He often worked weekends, and described the job as hard and heavy labor. He would do all the loading of the gasoline onto his truck at the Brookline station, and that required physically removing, and connecting, large hoses. When he arrived at the quick shops, he would then unload gasoline to the particular station going through the reverse procedure with

the hoses. Mr. Turner worked full time, full duty for Arnco Petroleum. Mr. Turner testified at hearing he did not have any limitations prior to 2003 driving a truck.

On November 13, 2003, Mr. Turner was involved in an auto accident while driving his tanker for Arnco Petroleum. The accident resulted in the death of the driver of the other vehicle. Mr. Turner was seen in the Cox Hospital ER. A CAT scan of the head was negative. He was diagnosed with a contusion to his head, and given Flexaril. He was then sent home. Mr. Turner returned to the ER three days later complaining of neck and head pain secondary to the motor vehicle accident. He was diagnosed with a cervical strain and sent home with Norflex and Vicodin.

Mr. Turner testified he believes he was off work a week before returning to his prior duties. He testified at hearing when he went back to work for Arnco Petroleum he was paranoid about other cars pulling out in front of him while he was driving. Mr. Turner testified at hearing he was not ready to get back into the truck, but felt pressured by his boss. When asked on direct examination at the hearing why he left employment at Arnco Petroleum, Mr. Turner testified he left because his boss was putting too much pressure on him. He testified he did not feel safe getting back in the truck. Mr. Turner did not say he left because of any physical limitations due to his neck or back. Mr. Turner was not taking any narcotic pain medication at this time. Mr. Turner testified he applied for a position at Turnpike Transit before quitting his job at Arnco Petroleum.

Mr. Turner then went to work for Airborne Express/DHL driving a delivery van for a short period of time. This job required him to load, unload, and deliver packages to multiple destinations a day. Mr. Turner worked full time, full duty for DHL. Mr. Turner was not taking any narcotic pain medication at this time.

In 2004, Mr. Turner began working for Turnpike Transit. Mr. Turner testified at hearing he was doing a good job at Turnpike Transit, so his employer gave him a route to Tulsa, Oklahoma. He delivered auto parts and general freight overnight for three or four months. Mr. Turner drove a 48' tractor-trailer. He would travel from Springfield, Missouri to Tulsa, Oklahoma and back. He would usually leave each evening around 9:00 p.m. and be back home around 7:00 a.m. He would then do a couple of local rounds, which would conclude around 9:00 a.m. In addition, he occasionally helped load and unload the truck using a forklift. He generally worked Monday through Friday. Mr. Turner worked full time, full duty for Turnpike Transit. He was not taking any narcotic pain medication at this time.

Mr. Turner testified at hearing his neck would occasionally give him discomfort. He stated he also could not turn his head to the left quite as far as he could before the 2003 auto accident. However, Mr. Turner testified at hearing his neck did not affect his ability to drive for Turnpike Transit or DHL. Mr. Turner testified he was able to complete every aspect of his jobs at DHL and Turnpike Transit. Mr. Turner testified at hearing he did not have any limitations with how long he could sit, stand, or walk while working for Turnpike Transit prior to August 3, 2004. Mr. Turner testified at hearing he was not accommodated while working for Turnpike Transit prior to August 3, 2004. He testified he was not seeking any medical treatment for his neck or back while working for Turnpike Transit leading up to August 3, 2004. Mr. Turner testified the auto accident in 2003 did not hinder or prevent him from completing his job duties at Turnpike Transit.

On August 3, 2004, Mr. Turner was in Tulsa, Oklahoma. He had delivered a load, and was helping other workers push a dolly that hooks up a set of double trailers. The dolly is very

heavy. As he was pushing it, the wheel caught the back of his heel and essentially crushed his left forefoot under his heel as it rolled over that area of the foot.

Mr. Turner was initially seen at the Hillcrest Medical Center ER in Tulsa. He was diagnosed with a contusion and strain. He was then seen at the Concentra Medical Center in Springfield where he was diagnosed with a fifth metatarsal fracture, and referred to the orthopedist.

On August 10, 2004, Dr. Hicks, an orthopedist, examined the claimant. He was immediately suspicious of a Lisfranc fracture. This was confirmed with an MRI and then a CT of the foot showing multiple fractures at the base of the 2nd and 3rd metatarsals and some dislocation of the 1st, 2nd, and 3rd metatarsals. A CT scan on September 10, 2004, confirmed a Lisfranc injury with probable subluxation of the metatarsals. Dr. Hicks performed surgery on September 17, 2004, consisting of an open reduction, internal fixation, of the 1st and 2nd tarsometatarsal joints. The claimant was casted and placed in an Unna boot. X-rays performed in March 2005 showed good alignment in the bones.

Post surgery, he did not do well. His pain seemed to be out of relation to everything else. Dr. Hicks suspected complex regional pain syndrome due to claimant's sensitivity in the dorsum of his foot. Dr. Hicks diagnosed complex regional pain syndrome of the left foot. Attempts were made at sympathetic blocks performed by Dr. Brooks. These were not successful.

The claimant was referred to Dr. Woodward. On September 9, 2005, Dr. Woodward rated claimant with 40% permanent partial disability at the 155-week level and recommended permanent restrictions of stationary lifting of 25 pounds; no lifting, carrying climbing, and balancing; sit and stand; cane for walking; and no more than 30 minutes continuous sitting or standing. He prescribed Hydrocodone and Lexapro for the next 12 months and also

recommended custom orthotics once a year. Dr. Woodward also prescribed Duragesic patch to be tapered and discontinued.

Claimant saw Dr. Halfaker, for a psychological evaluation. He found claimant was having problems attempting to deal with his pain and not working. Claimant also had treatment with Dr. Stillwell for pain management.

They were unsuccessful, and Mr. Turner continued to have pain to his left foot. As time progressed, Mr. Turner testified the pain in his foot has decreased. In his March 5, 2010 report, Dr. Bennoch even noted, "The patient had been hypersensitive before and now is not..."

Mr. Turner experienced a situational depressed mood previously when his father passed away. Mr. Turner testified he and his father were very close. Mr. Turner was placed on Lexapro and Xanax following the passing of his father. Mr. Turner testified at hearing his depression was situational, and because of his father's death. Mr. Turner testified he did not miss work due to his depressed mood, or change the way he did his job during this period. Mr. Turner testified he continued to work his job as he had always done.

Following the auto-accident in 2003, Mr. Turner experienced another onset of brief situational depressed mood. He testified he was sad another driver died in the accident; however, Mr. Turner testified he returned to his prior mental state shortly after the auto-accident. Mr. Turner testified leading up to the injury in 2004 he was not altering the way he worked because of depression or anxiety. Mr. Turner testified any alleged depression or anxiety was not interfering with his ability to work for Turnpike Transit. Further, Mr. Turner testified he did not limit his personal activities because of any alleged depression, anxiety, or physical pain. While working for Turnpike Transit leading up to the 2004 injury, Mr. Turner was functioning without

limitations. He was working full-time, full-duty without any modifications in the way he performed his job.

Mr. Turner had a severe onset of depression following his left foot injury. Dr. Bennoch indicated Mr. Turner was "moderately to severely depressed" on October 20, 2005. Mr. Turner indicated the 2004 injury to his foot completely changed his life. Mr. Turner testified he has experienced depression because of his inability to work, and has become very reclusive in his personal life. Mr. Turner has been on narcotic pain medication since his left foot injury on August 3, 2004. The claimant testified that he has burning sensations on the top of his foot alternating between heat and cold. He has some sharp pain and is sensitive to touch. He swells at the site of the scar. He testified that he has skin discoloration. At the time of the hearing he took off his left shoe and sock. The scar was slightly discolored.

The claimant has not worked since 2004 and continues to take narcotic pain medication. He takes this for his foot, and said he would not need to take it for his back. He testified that he continues to use the cane when he is walking any long distance or over 30 minutes. He stays off of his foot as much as possible. Since 2004 he stays in bed most of the time because it is hard to get comfortable.

He uses a computer to surf the internet. He does not play games. He volunteers at his church to do paper work or whatever they need done. Since the injury he describes being unable to do activities such as skiing, sports, attending shows, and socializing with his friends due to anxiety, depression and pain. Claimant said that after 2004 his depression and anxiety worsened, and the medication has made it difficult for him to concentrate. His back feels worse since 2004 but has stabilized now. He wears tennis shoes and does not use orthotics. He was prescribed and used a rocking shoe at one time but it was uncomfortable so he stopped.

The claimant developed right knee pain in 2009 with a gradual onset. He had no acute injury. An MRI was performed which showed a medial meniscus tear. Dr. Wilson performed a medial meniscectomy on December 19, 2009. This did not improve claimant's knee complaints.

Medical Opinions

Dr. Bennoch

Mr. Turner was seen by Dr. Shane Bennoch for an independent medical evaluation on October 20, 2005. He issued three subsequent reports in October 2005, March 2010, and January 2013. He testified by deposition and at the hearing.

Dr. Bennoch found claimant sustained a Lisfranc fracture of the metatarsal bones of his left foot. He described this as a difficult type of fracture because it is problematical to heal because when you walk all the weight is placed on it. He found claimant to have two major complications: significant pain from the fractures and complex regional pain syndrome as a result of the foot injury. Dr. Bennoch testified that in his opinion, to a reasonable degree of medical certainty, the injury to the left foot was the prevailing factor in causing claimant's complex regional pain syndrome.

He also found preexisting conditions and resulting disability of depression, injury to his neck and low back from the 2003 motor vehicle accident, and a traumatic brain injury sustained in the 2003 motor vehicle accident. The traumatic brain injury he found resolved when he saw him in 2005 except for headaches which had resolved by the time he saw him in 2010.

Regarding claimant's prior injuries or conditions, Dr. Bennoch addressed these thoroughly. In his October 27, 2005, report, Dr. Bennoch noted Mr. Turner's neck was improving, but still had a little trouble looking to the left. Dr. Bennoch also reported Mr. Turner complained of some back pain. He noted Mr. Turner would be stiff in the morning, but improved

during the day as he became more mobile. Dr. Bennoch noted Mr. Turner's range of motion was pretty close to normal for both his cervical and lumbar spine. Some areas were reduced, but not by a lot. Dr. Bennoch also stated in his report, "As mentioned, he may have some improvements as time goes on in these complaints of both the neck and the lower back." Dr. Bennoch also noted Mr. Turner indicated his anxiety and depression did not particularly worsen after the motor vehicle accident.

Dr. Bennoch saw Mr. Turner for another evaluation on March 5, 2010. Dr. Bennoch stated in his March 5, 2010 report, "He feels his neck is not as bad as it was when I initially saw him, in fact, he feels it's a lot better, and he does not have any ongoing pain in his neck." Dr. Bennoch noted, as of March 5, 2010, "By his history to me, he now has pain all the time in his low back, but no radiation of the pain and it appears to be mainly to the low lumbar area. He notes that if he moves wrong his back will catch and if he bends over it causes pain." Ironically, Mr. Turner's range of motion in his lumbar spine had improved by 2010.

Dr. Bennoch testified in a deposition on October 18, 2011. Dr. Bennoch testified whatever depression Mr. Turner might have had prior to the 2004 injury, it "was well-controlled depression." Dr. Bennoch also testified Mr. Turner informed him his depression and anxiety did not particularly worsen after the 2003 auto accident. Dr. Bennoch testified Mr. Turner was on more depression medications after his 2004 injury than ever before it.

Dr. Bennoch testified Mr. Turner's cervical range of motion was relatively normal. On cross-examination, Dr. Bennoch testified Mr. Turner never had surgery on his neck, nor was surgery ever suggested. Dr. Bennoch testified Mr. Turner never had any permanent restrictions placed on him for his neck. Dr. Bennoch testified Mr. Turner was never hospitalized for any injury to his neck. Dr. Bennoch also testified Mr. Turner never had any diagnostic test ordered

for his neck. Dr. Bennoch testified any difficulty Mr. Turner had looking left due to his neck was not causing Mr. Turner difficulty being able to perform his job duties for Turnpike Transit. Dr. Bennoch indicated Mr. Turner was able to sit for long periods of time while working for Turnpike Transit prior to the 2004 injury. Dr. Bennoch also testified Mr. Turner was able to climb in and out of his truck while working for Turnpike Transit prior to the 2004 injury.

With regard to Mr. Turner's lumbar spine, Dr. Bennoch testified Mr. Turner had a relatively normal range of motion. Dr. Bennoch testified Mr. Turner never had surgery done on his back, nor was any surgery ever recommended. Dr. Bennoch testified he saw no reason for a doctor to order an MRI of Mr. Turner's back, or any reason why back surgery should be done. Dr. Bennoch testified Mr. Turner was never hospitalized for his back, nor was Mr. Turner ever given any permanent restrictions for his back. Dr. Bennoch did testify Mr. Turner's back seemed to get worse from 2005 to 2010. Dr. Bennoch testified Mr. Turner's altered gait due to his foot injury could cause increased problems with Mr. Turner's back.

Dr. Bennoch issued ratings and imposed physical restrictions on claimant. In October 2005 he found claimant had permanent partial disability of 10% of the body as a whole due to his 2003 neck injury; 10% permanent partial disability of the body as a whole due to his 2003 back injury; and 15% of the body as a whole due to his 2003 traumatic brain injury. He rated 5% of the body as a whole for pre-existing depression and 5% of the body as a whole due to the injury. He rated 40% of the left foot at the 155-week level due to the 2004 fracture, and 50% of the left foot at the 155-week level for the complex regional pain syndrome resulting from the 2004 foot injury. He did not mention the right knee in 2005. In his 2010 report he modified the left foot rating to a total of 50% of the left foot at the 155-week level, and eliminated the rating for the traumatic brain injury as those symptoms had resolved. The ratings to the neck and back

remained the same. In his 2013 report he again left the neck rating the same. He increased the back disability to 25% due to the 2003 injury. He increased the left foot disability to 90% at the 155-week level. He also added 25% permanent partial disability of the right knee at the 160-week level due to a change in claimant's gait. Dr. Bennoch testified claimant's neck improved between 2005 and 2010 while his back worsened during this time.

Dr. Bennoch testified Mr. Turner would have various restrictions. He testified Mr. Turner would have a 10-pound lifting restriction due to his left foot. He would have to restrict standing/walking to less than two hours in an eight-hour day due to his left foot. He would have to periodically alter standing to relieve pain or discomfort due to his left foot. Claimant would have to limit pushing and pulling due to his left foot. Mr. Turner would have to use a cane to walk due to his left foot. He also imposed restrictions on claimant to never climb ramps, poles, ladders or scaffolds due to the left foot; not balance; no crouching or crawling; occasionally climb stairs, kneel and stoop, and that he should not balance.

On cross-examination by the Second Injury Fund, Dr. Bennoch testified all the restrictions he gave to Mr. Turner would be there due to the left foot in and of itself.

Dr. Bennoch testified Mr. Turner was successfully able to work two different jobs after the 2003 auto-accident, and was working full time, full duty at the time of the 2004 injury. Dr. Bennoch testified his neck was not causing Mr. Turner any difficulty being able to perform his job duties at Turnpike Transit. Dr. Bennoch testified Mr. Turner was not on any pain medications prior to the 2004 injury, but began taking three different pain medications after the 2004 injury. Dr. Bennoch also testified that Mr. Turner did not need to alter sitting or standing because of pain prior to the 2004 injury. Dr. Bennoch testified Mr. Turner had no history of ongoing treatment for his neck, back, or depression during the time he worked for Turnpike Transit. Dr. Bennoch

testified Mr. Turner was not having any trouble doing his job for any reason at Turnpike Transit prior to the 2004 injury.

Dr. Bennoch testified the claimant was permanently and totally disabled due to the injury to his foot alone. He said that the pre-existing injuries would technically increase the amount of disability claimant has, but that the foot alone does not permit him to return to work.

In his 2013 report, Dr. Bennoch disagrees with the conclusions of Dr. Aubuchon and June Blaine that the claimant is employable. He states: "I have a great deal of difficulty believing that a patient who is on multiple high doses of narcotics and sleeps a lot during the day, would be able to perform the duties of a dispatcher in a truck company or for that matter as an office clerk in a truck company. Both of those jobs require very clear thinking and multiple decisions to be made hourly, that can affect the safety of other people. It is my opinion that any job requiring him to be there eight hours a day and with the necessity to have clear thinking to perform his job is not one that he could accomplish based on the multiple narcotic medications that he takes during the day. These have many side effects, including significant sleepiness and often confused thinking. For that reason, I would reaffirm that in my opinion the patient is permanently and totally disabled. (I would note that if in the unlikely event he was able to get off his narcotics then some of the sedentary jobs might be possible, but again in my opinion that scenario will not happen.)"

Dr. Rana Tenorio

Dr. Tenorio began treating the claimant on October 24, 2006. She testified by deposition. The claimant was tender over the left metatarsal heads, his left calf was smaller than the right, he had some cervical spine tenderness and some low back tenderness with some pain with forward lumbar flexion, lumbar extension and lateral bending. He had hyperesthesia to light touch over

the dorsum of his left foot. He had 4/5 weakness of his left ankle, and 0/5 weakness of his left great toe. He used a cane in his right hand, and leaned into it, and he had an antalgic gait.

Dr. Tenorio diagnosed claimant with a cervical sprain injury with left C5-6 disc extrusion with spondylosis but no radiculopathy; possible lumbar degenerative disc disease and degenerative joint disease with possible lumbar radiculopathy; and a crush injury to the left foot, status post open reduction internal fixation with nerve injury and neuropathic pain.

After an EMG nerve conduction study, she concluded the cause of Mr. Turner's left foot pain was the crush injury. She prescribed medications, and felt the neuropathic pain to be permanent. She believes he will require narcotic medication for the rest of his life.

Dr. Tenorio sent him for a neurosurgical consult with Dr. Sami Khoshyomn, but they elected not to do back surgery. Dr. Tenorio referred him to Dr. Baker, a pain specialist at Ozark Community Hospital, for pain management. Dr. Tenorio believes that, because of the left foot injury alone, claimant can stand and walk 15-30 minutes, limited climbing and limited squatting.

Dr. Tenorio testified regarding Mr. Turner's back condition since 2007. Dr. Tenorio notes Mr. Turner has two levels in his back where he has significant disc degeneration, and at one level even has a disc protrusion off to the left. Dr. Tenorio testified, "On July 11th (2007) my impression is lumbar degenerative disc disease, degenerative joint disease, left lower extremity neuropathic pain, recent trauma to the left foot with increased pain." Dr. Tenorio noted Mr. Turner had an exacerbation of his low back pain around September 22, 2008. Dr. Tenorio said, "...if you've got really bad disc degeneration, which Howard does, it's going to get worse over time." She also stated, "Howard is being more sedentary because of his foot hurting, so sitting, you know, can tend to exacerbate the back pain."

Dr. Woodward

Dr. Woodward has treated claimant for his left foot injury after his surgery by Dr. Hicks. He also testified by deposition. When he saw the claimant, claimant was complaining of severe constant left foot pain, intermittent swelling and discoloration of the left foot, and pain with weight bearing or significant walking. Dr. Woodward agreed claimant showed several signs of complex regional pain syndrome. On May 11, 2006, he found claimant had Stage III complex regional pain syndrome. Dr. Woodward testified that claimant's condition is permanent.

In his September 9, 2005, report, he recommended medications for 12 months and orthotics. He also imposed permanent restrictions of stationary lifting of 25 pounds; no lifting, carrying climbing, and balancing; sit and stand; cane for walking; and no more than 30 minutes continuous sitting or standing. He rated claimant with 40% permanent partial disability at the 155-week level as a result of the work injury. Dr. Woodward also prescribed a Duragesic patch to be tapered and discontinued.

Dr. Halfaker

Dr. Halfaker is a neuropsychologist. He performed a psychological evaluation of the claimant on May 9, 2005, at the referral of Dr. Woodward. Dr. Halfaker referred him to Dr. Stillwell for treatment. Dr. Halfaker testified by deposition taken on June 18, 2008.

As part of his evaluation, Dr. Halfaker interviewed and observed the claimant. He found no symptom magnification. Dr. Halfaker concluded the claimant "is struggling with adjustment related problems consistent with a depressive disorder with depressed mood. There is a context of longer-term problems that appeared to be consistent with a panic disorder with agoraphobia."

Dr. Halfaker testified, "Mr. Turner is struggling with adjustment related problems consistent with a depressive disorder with depressed mood." He said an adjustment disorder "can take many forms. It can have depression. It can have anxiety. It can change a person's behavior

or conduct, or it can be kind of just generally unspecified.” He felt the pain from the injury was the stressor that caused the claimant to have this. He said when individuals, like the employee, have pre-existing psychological problems; the complex regional pain syndrome can exacerbate these prior problems and can set them up to experience depression or other psychological problems.

Dr. Aubuchon

Dr. Aubuchon is an orthopedic surgeon with a subspecialty in the care of the foot and ankle. He performed an independent medical evaluation of Mr. Turner on May 31, 2012 on behalf of the Employer. He also testified by deposition.

Dr. Aubuchon diagnosed a Lisfranc fracture to his left midfoot. He said the claimant’s fractures were on the least severe end of the spectrum as they were not displaced. He did not find any severing of nerves in either the first or second metatarsal. He testified that claimant had true evidence of complex regional pain syndrome. Since the hardware had been removed and the claimant’s joints were stable, he thought most of claimant’s pain was coming from the complex regional pain syndrome. He did not believe any further surgery was in the claimant’s best interest.

Dr. Aubuchon found claimant to have a permanent partial disability of 15% of the left foot related to the complex regional pain syndrome. He would add another 10% due to the Lisfranc fractures for a total of 25%. He does not believe claimant is permanently and totally disabled. He testified “I think her has to have restrictions and he was given restrictions before with limited standing and walking, but certainly a sedentary work, I feel he could do that.” He does not believe it is medically necessary for Mr. Turner to have to lie down during the day, stating, “Why would he need to lie down? He’s got a healed fracture. It’s stable. He can

ambulate. I don't think he should need to lie down." He thought it is sufficient if he props his foot up. Dr. Aubuchon stated he did think it would be difficult for the claimant to compete in the open labor market.

Vocational Opinions

Phil Eldred

Mr. Eldred is a certified vocational evaluation counselor. He evaluated the claimant on August 17, 2006, at the request of claimant's attorney. He interviewed the claimant, reviewed medical records and performed vocational testing. He found claimant's restrictions placed him at the sedentary work level. He found claimant at the 7th grade level for reading, 4th grade spelling, and 4th grade math. He concluded claimant could not return to the heavy work level jobs he had in the past. He determined the claimant had no transferable skills that would apply to the sedentary level. He identified 56 sedentary jobs that the claimant could do if he could be retrained and perform sedentary work. Mr. Eldred concluded claimant could not ultimately do any of these jobs because he does not have a high school diploma or a GED.

Mr. Eldred concluded the claimant was unable to compete in the open labor market and that no employer would be expected to hire him given his physical limitations and his prescription drug use. In his report, he concluded that the claimant's psychological limitations kept him from competitive employment, and that he was permanently and totally disabled from competitive gainful employment as a result of a combination of his injury of August 3, 2004, and his pre-existing conditions. In his deposition, he further testified that Mr. Turner would be permanently and totally disabled as a result of the 2004 injury alone.

June Blaine

June Blaine is a certified vocational rehabilitation counselor who examined the claimant on March 30, 2012 at the request of the Employer and Insurer. She also testified by deposition. She concluded that while the claimant has no high school degree or GED, his vocational scores showed him in the 6th grade for reading and 2nd grade for math. She said, however, his history of working as an owner/operator, requiring him to keep records, demonstrates ability for entry level and computer work. She found his functional level to be at the sedentary level. She concluded, based on Dr. Aubuchon's findings that the claimant is not permanently disabled, and could work in such entry level jobs as dispatcher or fuel desk clerk. She recommended he obtain his GED and online/Webinar classes for computer skills.

In her deposition, she was asked on cross-examination about the medication claimant takes. When asked if he was employable in the open labor market she said, "My issue is the medication. The other issues I'm not – the other ones to me fall within things that you do when I look at jobs for individual. I think my concern is the medication." When asked to consider the medication, limitations, use of a cane, and chronic pain, she said it would be difficult to place him in the open labor market. She found before the work injury he was employable.

Jim England

Jim England, a rehabilitation counselor, did a records' review, and issued a report on August 8, 2011, at the request of the Second Injury Fund. He also testified by deposition which was taken on January 25, 2012. Mr. England found claimant to be a younger worker with a solid history of consistent work as a truck driver before his August 2004 injury. In his report he notes it has only been since the last injury that he has not been able to perform work activity. He also found that considering the restrictions placed by the physicians, and the fact the claimant does not have a GED and walks with a cane, he would be precluded from doing some entry level

work. He also finds more problematical the fact that he has to elevate his leg and needs to lie down. He concluded, “assuming that level of impairment, I believe that he would not likely be able to successfully compete for or sustain any type of employment.” He believes this is due to the effects of the last injury regardless of the 2003 injury.

On cross-examination, he testified, “I—I think if you assume what he indicated that he’s having that degree of –of functional difficulty. I think if you just look at what the doctors’ restrictions are, I don’t think that would preclude him from doing, you know, a number of different sedentary jobs, but I think if you look at the overall situation of somebody without a GED, walking with a cane, who’s indicating that he has to elevate his leg and sometimes has to lie down, assuming that level of impairment, then I don’t see how he would be able to last in a work setting, I guess.” He also said that if he had decent enough keyboarding skills with the knowledge that he has from trucking; he would be a good candidate for a dispatching-type job.

Lay Witnesses

Mr. Turner called his fiancée, Tricia Callahan, and mother, Patricia Davis, to testify at hearing. Both witnesses testified Mr. Turner did not have psychological issues other than situational depression associated with Mr. Turner's dad dying. They both testified even around the time Mr. Turner's dad died, he was still able to work without accommodations or interference. Ms. Callahan and Ms. Davis both testified Mr. Turner was a hard working individual right up until his injury in 2004. They both testified Mr. Turner did not have any issues that interfered with his ability to work before the 2004 injury.

Ms. Callahan and Ms. Davis both testified Mr. Turner is a completely different man after the 2004 injury. They both testified Mr. Turner does not do much of anything. They both testified he spends the majority of his time in his room, and does not like to socialize. They both testified

Mr. Turner did not have any of these depression or socialization issues prior to the 2004 left foot injury.

Missouri Health Net has asserted a lien against any settlement or judgment in this case for medical bills paid as of October 17, 2012, in the amount of \$4,974.97.

After carefully considering all of the evidence, I make the following rulings:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed.

The parties do not dispute that the claimant sustained a Lisfranc fracture to this left foot on August 3, 2004. Whether treating or performing evaluations, including Dr. Hicks, Dr. Woodward, Dr. Bennoch, and Dr. Aubuchon, generally agree that the claimant has developed complex regional pain syndrome as a result of his work injury. I find that these injuries are clearly caused by the accident of August 3, 2004.

The claimant is also alleging that he has suffered psychological issues, lower back pain and an injury to his right knee as a result of his August 3, 2004, injury.

Claimant had prior psychological problems in the form of depression following the death of his father, and anxiety following the 2003 motor vehicle accident. The claimant testified that these problems resolved and did not cause him any ongoing problems and did not interfere with his employment prior to the August 3, 2004 injury. I find that this is consistent with the remaining evidence. The psychological condition had resolved, and did not even reach the level of a hindrance or obstacle to employment on August 3, 2004.

Dr. Halfaker evaluated the claimant and concluded that Mr. Turner is struggling with adjustment related problems consistent with a depressive disorder with depressed mood, and that this disorder can take many forms such as depression or anxiety. He felt the pain from the injury was the stressor that caused the claimant to have this. He said when individuals, like the

employee, have pre-existing psychological problems, the complex regional pain syndrome can exacerbate these prior problems and can set them up to experience depression or other psychological problems. Based on Dr. Halfaker's opinion, I find that the accident of August 3, 2004, was the prevailing factor in causing the claimant's current psychological issues; namely, the adjustment disorder, which is taking the form of depression. Therefore, the depression is caused by the work injury of August 3, 2004.

The claimant is also claiming an injury to his back and to his right knee. I do not find sufficient evidence to conclude that the work injury of August 3, 2004, was a factor, much less the prevailing factor, in causing these conditions.

2. Whether the employer is obligated to pay past medical expenses, including a Medicaid lien.

Missouri Health Net has filed a lien for medical bills incurred at Doctor's Hospital between October 24, 2006, and November 6, 2007, totaling \$4,974.97. Medical records from Dr. Rana Mauldin, at Doctor's Hospital, who treated claimant between October 24, 2006, and into 2007, were admitted into evidence. There was no other evidence presented regarding these bills and records. Dr. Mauldin treated the claimant for a variety of conditions including back pain, pain in his left foot, hardware removal for the fracture, and left leg pain. Her treatment was at least in part to treat work-related conditions to his left foot. I am ordering the employer and insurer to pay the lien asserted by Missouri Health Net in the amount of \$4,974.97.

3. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

Dr. Woodward recommended tapering medications and ongoing orthotics. Dr. Bennoch recommended ongoing treatment and monitoring by a physician. The claimant has continued to

treat for the left foot and depression issues found to be work-related as well as the non compensable back and knee pain.

I find that the claimant will continue to require future medical treatment to cure and relieve the injuries to his left foot, including complex regional pain syndrome, as well as his adjustment disorder caused by the stress of the ankle pain. Therefore, the employer and insurer are ordered to provide medical treatment to cure and relieve the claimant of the effects of these work-related conditions.

4. The nature and extent of permanent disabilities.

This was a difficult decision in that there were many factors to consider in determining whether the claimant was capable of competing in the open labor market. There are two major factors that impacted the medical and vocational experts' opinions presented. One factor which was pivotal to many of the experts was his use of narcotic pain medication. He is using the narcotic pain medication for his back and knee pain. These conditions have both developed subsequent to the injury and have been found to be non-work related. Therefore, I have not included the use of medication in my analysis.

Another important factor contemplated by the vocational opinions, was the need to lie down. I do not find any medical basis to require the claimant to lie down as a result of his work injury on August 3, 2004. Therefore, I did not include this in my analysis of the various opinions offered into evidence. If these two factors are not considered, Dr. Aubuchon, Jim England, June Blaine, and Dr. Woodward find him capable of employment.

After carefully considering all of the medical and vocational opinions presented to me, I find that the claimant is not permanently and totally disabled. I find, based on Dr. Woodward, Dr. Aubuchon, Jim England, and June Blaine, that the claimant is capable of sedentary

employment. Nonetheless, I do find that the claimant has sustained substantial permanent partial disability.

The claimant suffered a serious fracture to his left foot. This resulted in him developing complex regional pain syndrome which in turn has caused him depression. Based on the evidence as a whole, with special attention given to the medical opinions as well as the ratings and restrictions imposed by the various physicians, most importantly Dr. Bennoch, Dr. Woodward, and Dr. Aubuchon, I find claimant has sustained significant permanent partial disability.

I find that the claimant has sustained a permanent partial disability of 90% of his left lower extremity at the 155- week level as a result of the work injury. I further find that the claimant has sustained psychological issues which have resulted in a 10% permanent partial disability to the body as a whole at the 400-week level.

5. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

The claimant testified that any psychological issues he had prior to August 3, 2004, had resolved and were not present at the time of the last injury. He further testified that the cervical strain/sprain he had sustained in the 2003 motor vehicle accident was not interfering with his work at the time of the last injury on August 3, 2004. Therefore, I find that the claimant had no prior condition which was a hindrance or obstacle to his employment at the time of the last injury on August 3, 2004. Therefore, I find no liability on the part of the Second Injury Fund.

6. Whether the claimant is responsible for a missed doctor's appointment fee of \$600.

This issue was raised, but insufficient evidence was submitted to support a finding that the claimant is responsible for a missed doctor's appointment fee of \$600.

Attorney for the claimant, Jim Corbett and David Tunnell, are awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Made by: _____
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation