

ORDER
CORRECTING FINAL AWARD

Injury No.: 00-172368

Employee: Ray Vincent
Employer: Barton Lumber
Insurer: Indiana Lumbermens Mutual Insurance
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: November 14, 2000

On October 22, 2008, the Labor and Industrial Relations Commission issued a Final Award Allowing Compensation (Affirming Award and Decision of Administrative Law Judge).

The issue date incorrectly stated November 22, 2008. This is corrected to read:

Given at Jefferson City, State of Missouri, this 22nd day of October 2008.

Given at Jefferson City, State of Missouri, this 22nd day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

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

Injury No.: 00-172368

Employee: Ray Vincent
Employer: Barton Lumber
Insurer: Indiana Lumbermens Mutual Insurance
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: November 14, 2000
Place and County of Accident: Barry County, Missouri

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 Act. Pursuant to §286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 22, 2008, subject to the modification herein. The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued April 22, 2008, is attached and incorporated by this reference.

On page 17 of the administrative law judge award, under the heading "Settlement Hearing" the administrative law judge states that the settlement hearing was held on November 9, 2004. We modify the award to clarify that the settlement hearing to which the administrative law judge refers was held on September 9, 2004 (Tr. 2177 – 2180). In all other respects, the administrative law judge's award is affirmed.

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 22nd day of November 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Ray Vincent

Injury No. 00-172368

Dependents: N/A

Employer: Barton Lumber

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

Insurer: Indiana Lumbermens Mutual Ins.

Hearing Date: February 5, 2008

Checked by: LTW

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: NOVEMBER 14,2000
5. State location where accident occurred or occupational disease was contracted: BARRY 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
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:
LIFTING ROOFING MATERIALS
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: LOW BACK
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
14. Compensation paid to-date for temporary disability: \$3,138.89
16. Value necessary medical aid paid to date by employer/insurer? \$5,086.61
- Value necessary medical aid not furnished by employer/insurer? -0-
17. Employee's average weekly wages: \$387.77
18. Weekly compensation rate: \$258.51
20. Method wages computation: STIPULATION

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: -0-

N/A weeks of temporary total disability (or temporary partial disability)

N/A weeks of permanent partial disability from Employer

N/A weeks of disfigurement from Employer

22. Second Injury Fund liability: YES - PERMANENT TOTAL DISABILITY

The payment of permanent total disability compensation by the Second Injury Fund is effective as of October 8, 2002 (when Mr. Vincent terminated his employment with Barton Lumber Company and ceased to engage in any employment), and shall take into consideration 60 weeks of permanent partial disability, which is attributable to the employer and insurer

Total: UNKNOWN

23. Future requirements awarded: YES

Said payments to begin OCTOBER 8, 2002 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 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Attorney Frank Eppright

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ray Vincent

Injury No. 00-172368

Dependents: N/A

Employer: Barton Lumber

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

Insurer: Indiana Lumbermens Mutual Ins.

Hearing Date: February 5, 2008

AWARD ON HEARING

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on February 5, 2008. The parties were afforded an opportunity to submit briefs or proposed awards, resulting in the record being completed and submitted to the undersigned on or about March 7, 2008.

The employee appeared personally and through his attorney Frank Eppright, Esq. The Second Injury Fund appeared through its attorney, Christina Hammers, Assistant Attorney General. (The employer and insurer were not

part of this litigation, insofar as the employee and employer / insurer previously entered into a Stipulation for Compromise Settlement on or about May 14, 2003, which the Honorable Robert House approved on June 6, 2003.)

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about November 14, 2000 Barton Lumber was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Indiana Lumbermens Mutual Insurance Co.
- (2) On the alleged injury date of November 14, 2000 Ray Vincent was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about November 14, 2000 the employee sustained an accident, which arose out of and in the course and scope of his employment with Barton Lumber.
- (4) The above-referenced employment and accident occurred in Barry County, Missouri. The parties agree to venue lying in Newton County, Missouri. Venue is proper.
- (5) The employee notified the employer of his injury as required by Section, 287.420, RSMo.
- (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (7) At the time of the alleged accident the claimant's average weekly wage was \$387.77, which is sufficient to allow a compensation rate of \$258.51 for both temporary total disability compensation, and permanent disability compensation.
- (8) Temporary disability benefits have been provided to the claimant in the amount of \$3,138.89, representing 12 1/7 weeks in disability benefits. (The employee last engaged in employment on or about October 8, 2002.)
- (9) The employer and insurer have provided medical treatment to the employee, having paid \$5,086.61 in medical expenses.

The sole issues to be resolved by hearing include:

- (1) Whether the accident or incident of occupational disease of November 14, 2000 caused the injuries and disabilities for which benefits are now being claimed?
- (2) Whether the claimant sustained any permanent disability as a consequence of the claimed accident or occupational disease of November 14, 2000; and, if so, what is the nature and extent of the disability?
- (3) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?
- (4) Whether the employee and the Treasurer of Missouri, as the Custodian of the Second Injury Fund, previously entered into a Stipulation for Compromise Settlement Agreement; and, if so, whether the agreement is now binding on the parties and the employee is estopped from pursuing this action? (This issue appears to present as an underlying issue whether the Division of Workers' Compensation is without jurisdiction to adjudicate the substantive issues presented in the case, thus requiring the Second Injury Fund to seek enforcement of the settlement agreement in the applicable Circuit Court.)

EVIDENCE PRESENTED

The claimant testified at the hearing in support of his claim. In addition, the claimant offered for admission the following exhibits:

- Exhibit A Deposition of P. Brent Koprivica, M.D. (with attached exhibits to the deposition)
- Exhibit B Deposition of Mary Titterington, M.S., C.D.M.S., L.P.C. (with attached exhibits to the deposition)
- Exhibit C .Stipulation for Compromise Settlement (between employee and employer / insurer)

The exhibits were received and admitted into evidence.

The Second Injury Fund did not present any witnesses at the hearing of this case. The Second Injury Fund, however, offered for admission the following exhibits:

- Exhibit I Vocational Rehabilitation Evaluation Report from James M. England, Jr., Vocational Rehabilitation Counselor
- Exhibit II..... Division of Vocational Rehabilitation Records for Ray Vincent
- Exhibit III.....Transcript of Proceedings before the Honorable Karen Fisher (September 9, 2004)

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

- Minute Entries
- Notice of Hearing (February 5, 2008 Hearing before Judge Wilson)
- Order Sustaining Change of Administrative Law Judge
- Notice of Hearing
- Request for Hearing-Final Award
- Stipulation for Compromise Settlement (between employee and employer / insurer)
- Answer of Second Injury Fund to Third Amended Claim for Compensation (filed August 29, 2006)
- Third Amended Claim for Compensation (filed August 3, 2006)
- Answer of Second Injury Fund to Second Amended Claim for Compensation (filed August 27, 2002)
- Answer of Employer/Insurer to Second Amended Claim for Compensation (filed August 5, 2002)
- Second Amended Claim for Compensation (filed July 26, 2002)
- Answer of Second Injury Fund to First Amended Claim for Compensation (filed April 22, 2002)
- Answer of Employer / Insurer to First Amended Claim for Compensation (filed April 22, 2002)
- First Amended Claim for Compensation (filed April 10, 2002)
- Answer of Second Injury Fund to Original Claim for Compensation (filed June 15, 2001)
- Answer of Employer / Insurer to Original Claim for Compensation (filed June 7, 2001)
- Original Claim for Compensation (filed May 2, 2001)
- Assertion of Attorney's Lien (filed by John C. Banning, Esq., dated October 15, 2004)
- Assertion of Attorney's Lien (filed by William E. Lawrence, Esq., dated May 5, 2003)
- Notice of Hearing (September 9, 2004 Hearing before Judge Fisher)
- Report of Injury

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

DISCUSSION

The employee, Ray Vincent, is 63 years of age, having been born on February 11, 1944. Mr. Vincent is a widower residing in Joplin, Missouri. (Mr. Vincent's wife died in August 2007.) Additionally, Mr. Vincent has two adult children, who were financially independent of him at the time of the November 14, 2000 accident.

Prior Medical Condition

Prior to November 14, 2000, Mr. Vincent sustained several injuries or medical conditions of an industrially disabling nature. These conditions include injuries to the right ankle, right shoulder, and neck, and a disease in the

nature CMT.

Notably, in or around 1985 Mr. Vincent sustained an injury to his cervical spine when a hay bale fell on his head. During the subsequent years, Mr. Vincent treated with various chiropractors, but never with a medical doctor. According to Mr. Vincent, he suffers residual problems associated with neck pain, and his neck “grinds a lot.” Additionally, Mr. Vincent indicated that, following this injury, he has experienced chronic headaches and blurred vision. Mr. Vincent, however, is not governed by any permanent medical restrictions relative to the cervical spine.

In or around 1996 Mr. Vincent sustained an injury to his right ankle, when he tipped over a lawn mower he was riding after striking a propane tank. At the time of this injury, Mr. Vincent’s right leg became situated beneath the mower and the blades hit, but did not cut, his right foot. This incident resulted in Mr. Vincent sustaining torn ligaments, which necessitated reconstructive surgery of the right ankle, followed by casting and physical therapy. According to Mr. Vincent this injury resulted in him suffering permanent and residual weakness in his right ankle and problems walking on uneven terrain. Similarly, Mr. Vincent noted difficulty in climbing stairs.

In or around 1998 or 1999 Mr. Vincent sustained an injury to his right shoulder while unloading plywood. The injury did not necessitate surgery, but resulted in Mr. Vincent undergoing three cortisone injections. According to Mr. Vincent the treatment provided relief, but he continues to experience sharp pain and weakness in his right arm, and suffers residual and permanent loss in range of motion and difficulty with overhead lifting. In addition, Mr. Vincent noted that, in returning to his work, he had to make certain adjustments in order to engage in his employment.

Perhaps, the primary medical concern experienced by Mr. Vincent prior to November 14, 2000, involved a medical illness or disease in the nature of Charcot-Marie-Tooth disease (“CMT”). CMT is a heredity motor and sensory neuropathy and affects the peripheral nerves. The disease is gradual and progressive. According to Mr. Vincent, this disease affects his ankles and hands, which show wasting of the muscle. Notably, while on the witness stand, Mr. Vincent demonstrated his condition, revealing little muscle mass in his calves or his hands and forearms. Prior to the back injury, Mr. Vincent reported that he had problems with balance because his legs would just fade out if he stood too long. Additionally, because he has loss of strength and loss of feeling in his fingers, he experiences difficulty in picking up small items or grip tightly. Similarly, he reports having no feeling in his feet, which feels like a surface numbness. (The progressive nature of this illness makes it difficult to identify the full extent of Mr. Vincent’s condition immediately prior to November 14, 2000, from the condition existing at the time of the trial. In this regard, Mr. Vincent’s trial testimony differs slightly with his earlier deposition testimony.)

Employment & Occupational Injury

In March 1999, Mr. Vincent obtained employment with Barton Lumber Co., which involved working as a truck driver, yard worker, and sales clerk. Mr. Vincent described his employment primarily as heavy labor, insofar as it involved working as a truck driver and a yard worker. As a truck driver working for Barton Lumber Co., Mr. Vincent was responsible for transporting building materials within a 100-mile radius of the company, and unload the material, often by himself, at various work sites. Mr. Vincent noted that the material being transported and unloaded included 90 lbs. bags of concrete, 45 to 50 lbs. concrete blocks, sheetrock of various sizes, and 70 lbs. bundles of shingles. Additionally, Mr. Vincent noted that he often worked 45 hours or more per week.

Mr. Vincent asserts that, on or about November 14, 2000, he suffered a work-related incident, which caused him to sustain an injury to his low back. The injury occurred while at work, unloading shingles from the back of a truck onto an elevator. Notably, this activity involved cumulative twisting and lifting activity, and in the course of performing this activity, he began experiencing low back pain that radiated down both legs to his knees.

Initially, on or about November 16, 2000, Mr. Vincent presented to Kyle P. Smith, D.O., who his primary care provider, with complaints of low back pain occurring over the past 4-6 months; but the pain had reached a point of Mr. Vincent no longer being able to tolerate the pain. Notably, in recording a history from Mr. Vincent, Dr. Smith noted the following:

He [Mr. Vincent] said this has been going on for a number of months but has been worse recently because of unloading heavy concrete and shingles.

In light of his examination and findings, Dr. Smith provided Mr. Vincent with a prescription for medication and physical therapy. Additionally, in light of X-rays showing degenerative changes in the lumbar spine, Dr. Smith placed work restrictions on Mr. Vincent, limiting him to no lifting more than 10 lbs., and minimal bending or stooping. Dr. Smith provided follow-up care, resulting in Dr. Smith increasing lifting restrictions to 15 pounds on November 30, 2000, and further lifting the restrictions to no lifting greater than or equal to 25 pounds on December 20, 2000.

However, in January 2001 Mr. Vincent experienced a worsening of symptoms, which Mr. Vincent attributed to the employer requiring him to work over the weight limit restrictions. As a consequence, Dr. Smith referred Mr. Vincent for a surgical consultation involving an orthopedic surgeon.

On or about Jan. 23, 2001, Mr. Vincent presented to Robert E. Hufft, M.D., who is an orthopedic surgeon, for evaluation and treatment. Notably, in explaining to Dr. Hufft how he sustained an injury to his low back, Dr. Hufft records the following, “repeat lifting – shingles 80 pounds – bags of concrete 100 pounds – concrete blocks 40 pounds.” In light of his examination and findings, Dr. Hufft diagnosed Mr. Vincent with degenerative disk disease and degenerative joint disease of the lumbar spine, chronic back strain, Charcot-Marie-Tooth disease (peroneal muscular atrophy). Further, Dr. Hufft recommended that Mr. Vincent be afforded a diagnostic study in the nature of an MRI, which he did subsequently undergo.

On or about February 8, 2001, and subsequent to undergoing the MRI, Mr. Vincent returned to see Dr. Hufft. In light of his additional examination of Mr. Vincent, along with his review of the MRI study, Dr. Hufft opined that Mr. Vincent’s low back pain related to spinal stenosis referable to the lumbar spine at the levels of L3-L4 and L4-L5, and facet arthritis. Additionally, in light of evaluation of Mr. Vincent’s condition, Dr. Hufft recommended that Mr. Vincent proceed with epidural steroid injections. Apparently, Dr. Hufft did not change the work restrictions, insofar as Dr. Hufft states, “He [Mr. Vincent] declined me giving him a note to remain off work entirely.”

On or about April 2, 2001 Mr. Vincent presented to Jeffrey L. Woodward, M.D., who is a physician practicing in the specialty of physical medicine. (Notably, prior to the November 14, 2000 incident, Mr. Vincent treated with Dr. Woodward for a work-related injury involving his right shoulder.) In light of his April 2, 2001 examination, Dr. Woodward opined that Mr. Vincent appeared to present with L4-L5 or possibly L3-L4 lumbar pain with no objective neurologic deficit. Additionally, Dr. Woodward offered a possible medical cause for the pain to be a nonwork-related tumor, necessitating a bone scan, or work-related lumbar strain. Yet, Dr. Woodward acknowledged, a negative bone scan would indicate and support a work-related injury necessitating an epidural steroid injection of the lumbar spine at the level of L4-L5.

Subsequently, Mr. Vincent underwent a bone scan, which proved to be negative for any tumor. Accordingly, on or about April 25, 2001, Mr. Vincent underwent a translaminar epidural steroid injection procedure of the lumbar spine at the level of L4-L5. Unfortunately, Dr. Woodward could not complete the procedure, due to small translaminar space and possible calcified ligamentum flavum and vasovagal response from Mr. Vincent on repeated injection attempt. Thereafter, Dr. Woodward provided Mr. Vincent with Darvocet p.r.n. for one week, and referred Mr. Vincent to Mark Crabtree, M.D., who is a neurosurgeon practicing in the same office as that of Dr. Woodward.

On or about June 12, 2001, Mr. Vincent presented to Dr. Crabtree for a surgical consultation. Dr. Crabtree, however, did not consider Mr. Vincent to be a surgical candidate. Having examined Mr. Vincent and noting the negative MRI and bone scan, Dr. Crabtree diagnosed Mr. Vincent with musculoskeletal back pain appearing to be mechanical in nature. Dr. Crabtree thus recommended flexion extension lumbar spine films and non-surgical management. Thereafter, on or about June 26, 2001, Mr. Vincent underwent the Electrodiagnostic testing for Mr. Vincent’s presenting complaints of chronic lumbar pain and bilateral leg symptom, including leg weakness complaints. The electrodiagnostic studies were consistent with significant lower extremity peripheral neuropathy (Charcot-Marie-Tooth disease), and negative for lumbosacral radiculopathy.

In light of his findings and diagnosis, Dr. Woodward opined that Mr. Vincent had reached maximum medical improvement and released Mr. Vincent from his care for the work-related injury. Notably, in releasing Mr. Vincent from his care, Dr. Woodward stated, relative to the lumbar work injury, Mr. Vincent could “resume full-time regular work duty.” Further, relative to the work-related lumbar injury, Dr. Woodward opined that Mr. Vincent sustained a

permanent partial impairment of 6 percent to the body as a whole, referable to the “workrelated lumbosacral condition.”

Yet, at the time of discharging Mr. Vincent from his care, Dr. Woodward acknowledged that Mr. Vincent presented with a significant medical concern unrelated to work, which warranted more medical care and treatment. In this regard, Dr. Woodward propounded the following comments:

I have indicated to the patient [Mr. Vincent] that he should follow up with his family doctor for evaluation of significant lower extremity peripheral neuropathy – he may need referral to neurologist. Lower extremity weakness complaints are related directly and completely to this peripheral neuropathy condition.

In light of continuing complaints of low back pain, on Nov. 26, 2001 and again on Feb. 8, 2002, Mr. Vincent sought and obtained treatment from his primary care physician Sergio Cruz, M.D. Mr. Vincent received conservative treatment that included prescriptions for Ultram and Darvocet, as well as physical therapy.

On March 1, 2002, Mr. Vincent underwent a functional capacity evaluation performed by physical therapist Debbie Tolliver. In light of her evaluation of Mr. Vincent, Ms. Tolliver opined that Mr. Vincent could return to work but be governed by limitations and restrictions. Notably, according to Ms. Tolliver, Mr. Vincent should not lift more than 20 lbs. from the floor and not carry more than 35 lbs., as well as be able to make postural changes every 30 minutes. In addition, while Ms. Tolliver opined that Mr. Vincent could continue to work full time, she suggested that he be moved from heavy work to light work or medium work.

Thereafter, Mr. Vincent received a referral to Missouri Division of Vocational Rehabilitation on July 16, 2002, for evaluation and consideration of utilization of their services in assisting Mr. Vincent with a career change. Following this evaluation, on or about July 18, 2002 the Missouri Division of Vocational Rehabilitation accepted Mr. Vincent into their program.

On or about July 31, 2002 Mr. Vincent underwent a vocational assessment conducted by John Brandt. In light of this assessment, Mr. Brandt recommended that Mr. Vincent consider going through a short-term vocational retraining program in order to find employment of a less strenuous nature. Subsequently, on July 31, 2002, Mr. Vincent signed an agreement with the Missouri Division of Vocational Rehabilitation, wherein he acknowledged his understanding of the plan and services offered by Vocational Rehabilitation (VR), and further acknowledged that it was his responsibility to implement the plan.

On Aug. 27, 2002, Mr. Vincent informed Mr. Brandt that, in light of financial constraints, he was unable to participate in the vocational rehabilitation services being offered by the State of Missouri. According to Mr. Vincent, he was told to contact Missouri Division of Vocational Rehabilitation in the subsequent months, if he wished to participate in the recommended training program.

Notably, during this period of June 29, 2001 (when he received a release from Dr. Woodward to return to work) to October 8, 2002, Mr. Vincent returned to work and continued to engage in his employment with Barton Lumber Company and performed the same job as before. Further, according to Mr. Vincent, during this period of employment he worked 45-50 hours per week, and engaged in heavy labor. Yet, Mr. Vincent noted, he experienced constant pain in his low back, and continued to take Ultram and Darvocet for his pain. Additionally, Mr. Vincent noted that he would occasionally miss a day of work, “here and there”, especially if he did heavy lifting the preceding day. Moreover, because of missing work, Mr. Vincent says he received a reprimand from his supervisor. Eventually, on October 8, 2002, according to Mr. Vincent, he quit his employment with Barton Lumber Company, stating that the heavy labor was bothering his back, and he desired a less physical job.

On October 28, 2002, Mr. Vincent again contacted the Missouri Division of Vocational Rehabilitation, and informed them of his desire to receive their services, but he was expecting a settlement of \$200,000 for his workers’ compensation claim and would contact them after the hearing. Subsequently, on or about April 7, 2003, and in light of not being in additional contact with Mr. Vincent, the Missouri Division of Vocational Rehabilitation communicated with Mr. Vincent by letter, requesting contact to determine if he was still interested in pursuing their services. Apparently, Mr. Vincent did not respond to the Missouri Division of Vocational Rehabilitation communication letter of

April 7, 2003. At the hearing, Mr. Vincent testified that, while the Missouri Division of Vocational Rehabilitation offered to him a retraining program; the services were later denied.

On or about May 14, 2003 Mr. Vincent entered into a Stipulation for Compromise Settlement with the employer Barton Lumber Co. and its insurer, Indiana Lumbermen's Mutual Insurance Co. According to this settlement agreement, the employee and the employer / insurer stipulated to the employee sustaining an occupational injury in his employment with Barton Lumber Co. on November 14, 2000. Further, the parties agreed to compromise and resolve all issues relating to the claim filed against the employer and insurer for \$16,000.00. The settlement agreement is based on approximately 15 percent of permanent partial disability, referable to the body as a whole, and received approval by the Honorable Robert House on June 6, 2003. The Claim for Compensation, as filed against the Treasurer, as custodian of the Second Injury Fund, remained open.

Subsequent to compromising and settling the claim filed against the employer and insurer, Mr. Vincent continued to receive treatment for his low back and other disabilities, receiving treatment from several different physicians, including Dr. Pierce, Dr. Olive, Dr. Otto and Dr. Mace. Notably, during this subsequent period of treatment, on September 30, 2003 Dr. Olive advised Mr. Vincent that he would not recommend surgery for his low back.

At the hearing in 2008, Mr. Vincent testified that he is in constant pain, and experiences soreness / pain in his low back. Additionally, Mr. Vincent noted that, if he bends or stoops over, he experiences a burning sensation in his legs and they go numb. Similarly, Mr. Vincent notes that he cannot twist without severe pain. In discussing the difficulties he is experiencing with regard to his low back, Mr. Vincent identified the following problems:

- chronic low back pain;
- sitting tolerance varies (less than one hour);
- had to miss time from work due to his back pain when he was at Barton Lumber Company;
- he's currently taking Ultram;
- when he did return to work, he could not do the work without pain pills;
- when he worked, he would have to work on his knees so he would not have to use his low back as much;
- when he was handling blocks and concrete, co-workers or people at construction sites would have to help him unload trucks;
- bundles of shingles would be a problem, he would use a conveyor belt when he had to;
- if he missed taking his pain pills then he could not unload the truck or do any kind of physical labor due to the pain in his back;
- his hips hurt, his legs bothered him, he lost mobility in his back and he lost the turning ability at his waist; and
- he tried to work for several months, but the pain got so bad that he could not work and ultimately he quit on October 8, 2002.

In addition, Mr. Vincent testified that, prior to November 14, 2000, he suffered from several preexisting injuries or conditions. These preexisting conditions discussed by Mr. Vincent included problems associated with his right ankle, right shoulder, neck, and CMT. In giving testimony relative to the CMT, Mr. Vincent identified visually his condition, which, upon observation by the undersigned, demonstrated a marked wasting away of his muscles, particularly in his legs. Additionally, by observation, the undersigned notes that Mr. Vincent demonstrated high arches, the severity of which causes only Mr. Vincent's toes and heels to touch the floor when he walks, and this condition causes Mr. Vincent to suffer instability in his gait. Further, Mr. Vincent testified that the CMT disease had not substantially changed since suffering the work-related injury of November 14, 2000.

Finally, Mr. Vincent testified that he previously operated a karate school, Vincent's Martial Arts School, in Monett, MO; but prior to the back injury he had turned over the teaching duties to two students with black belts. According to Mr. Vincent, he could not teach anymore because of balance issues that he attributes to the CMT. Yet, during the taking of his October 1, 2002, deposition, Mr. Vincent testified he had taught karate until in the previous year of 2001, when he was forced to quit teaching due to pain in his back and legs. Mr. Vincent made no mention of balance problems related to the CMT, nor did he mention turning over the teaching duties to his students.

Expert Opinions

Gary Lee, M.D., who is a physician practicing in the specialties of occupational medicine, family medicine and sports medicine, testified by deposition on behalf of Mr. Vincent. Dr. Lee performed an independent medical examination of Mr. Vincent on September 28, 2001, at the request of Mr. Vincent's former attorney William Lawrence, Esq. At the time of this examination, Dr. Lee took a history from Mr. Vincent, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Vincent, and in utilizing the Fourth Edition of the AMA Guides, Dr. Lee opined that the combined effects of the previous injuries and the injury of November 14, 2000 render Mr. Vincent "permanently totally disabled." Notably, in rendering this opinion, Dr. Lee propounded the following summary:

It is, therefore, my opinion Mr. Vincent is a gentleman who has had multiple injuries in the past and while in the employ of the Barton Lumber Company, sustained injury on November 14, 2000, sustained injury to his low back, aggravating a pre-existent condition. ...I find he has 17 percent whole man impairment above and beyond a pre-existent 7 percent impairment at the 400 week level as contributed by the lumbar spine. The 17 percent whole man impairment at the 400 week level would be directly related to his employment at the Barton Lumber Company. The claimant has sustained pre-existent conditions which did represent an obstacle and hindrance to employment at the time of his injury at the Barton Lumber Company. I find that the simple sum of these past and present injuries total 89 percent whole man impairment at the 400 week level. In my opinion, the claimant has suffered a combined effect from the past and present injuries resulting in an impairment which goes above and beyond the simple sum. I find that based on the combined effects of past and present injuries that the claimant is permanently totally disabled, though I would recommend a vocational assessment and a functional capacity evaluation for an opinion in that regard.

David Paff, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of Mr. Vincent. Dr. Paff performed an independent medical examination of Mr. Vincent on November 27, 2002 at the request of the Department of Family Services. At the time of this examination, Dr. Paff took a history from Mr. Vincent, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Vincent, Dr. Paff opined that, at the time of his examination, Mr. Vincent suffered from a November 2000 back injury, and a neurological disease in the nature of Charcot-Marie-Tooth disease ("CMT"). Dr. Paff identified this neurological disease as an inherited and progressive demyelinating disease. In explaining the nature of this disease, Dr. Paff propounded the following testimony:

[T]he nerve sheaths are formed of myelin and it's a kind of a protein, neuron-protein and demyelinating means that for some reason the myelin is going away and so the nerves don't work very well anymore and these people have sensory and motor deficits, particularly peripherally in their legs and arms.

Notably, at the time of his examination of Mr. Vincent, relative specifically to the CMT, Dr. Paff observed atrophy in Mr. Vincent's feet, with decreased sensation at pinprick, worst more distally in his legs or lower extremities. Additionally, Dr. Paff noted weakness in Mr. Vincent's extensor hallucis longus (the muscle that makes the big toe go backwards), and "decreased sensation in his hands and a lot of atrophy in his hands." Accordingly, Dr. Paff observed that the CMT disease was evident in both hands and feet.

In assessing the extent of Mr. Vincent's physical condition, considering the question of whether Mr. Vincent suffers from a disability and is able to do future physical work, Dr. Paff opined that the combination of the back injury and the CMT disease prevents Mr. Vincent from being able to perform physical work in the future. Relative to this concern, Dr. Paff propounded the following comment, "... it's a combination of both but perhaps the more important part is the neurological disease."

On cross-examination, however, Dr. Paff acknowledged that CMT is a progressive disease, and, in Mr. Vincent's case, Dr. Paff considered it a "good assumption" that the CMT disease progressed between November 2000 and the time Mr. Vincent stopped working in or around October 2002. Notably, in this context, Dr. Paff propounded the following testimony,

A. ... In fact, I think that it was progressing and that was – got to the point that he just couldn't do the work with his hands and feet anymore.

Q. Due to the progression of the Charcot-Marie-Tooth (sic)?

A. Yes, and possibly due to his back problems as well but I know one of the problems that he was complaining about was not being able to hold heavy things and so forth.

* * *

Q. Do you believe that the back problems by themselves would render Mr. Vincent unemployable?

A. I do believe that the back problem could have eventually rendered him [Mr. Vincent] not unemployable in the kind of work he was doing. I really don't have enough information to know whether the back problem at the time that I saw him would be enough not to work at all. My opinion is this. That the reason that he couldn't – that he had to stop working is a combination effect of the back and the Charcot-Marie-Tooth Disease.

Wilbur Swearingin, who is vocational rehabilitation counselor, testified by deposition on behalf of Mr. Vincent. Mr. Swearingin performed a vocational evaluation and examination of Mr. Vincent on January 31, 2003. At the time of this examination, Mr. Swearingin took a medical and work history from Mr. Vincent, reviewed various medical records, and performed a variety of vocational tests. The vocational tests included a Wide Range Achievement Test-Revision III and the Purdue Pegboard Test. In light of his examination and evaluation of Mr. Vincent, Mr. Swearingin opined that Mr. Vincent is unemployable in the open and competitive labor market. Notably, in rendering this opinion, Mr. Swearingin testified that the Charcot-Marie-Tooth disease presented Mr. Vincent with a hindrance and an obstacle to employment, restricted his employment opportunities, and in combination with the November 2000 occupational injury involving Mr. Vincent's low back, render Mr. Vincent unemployable in the open and competitive labor market.

James M. England, Jr., who is vocational rehabilitation counselor, testified on behalf of the Second Injury Fund through the submission of his vocational evaluation report. Mr. England did not perform a vocational evaluation and examination of Mr. Vincent, but reviewed pertinent information pertaining to Mr. Vincent and issued a report dated March 5, 2004. The records reviewed by Mr. England included the following: medical records, depositions of Drs. Lee and Paff, and the deposition of Wilbur Swearingin. In light of his evaluation of Mr. Vincent, Mr. England opined that Mr. Vincent is employable in the open and competitive labor market. Notably, in rendering this opinion, Mr. England testified that the restrictions imposed by Dr. Woodward and Dr. Lin do not prohibit Mr. England from employment. In this regard, Mr. England stated that, if he assumed the restrictions imposed by Dr. Lin, Mr. England could engage in employment involving courier delivery of small products, retail sales, some cashiering positions, security work, counter clerk positions, motel desk clerk, and even bail bondsman. Further, in addressing this issue, Mr. England propounded the following comments:

I have not seen any medical records which show a clear list of restrictions which would prevent this man [Mr. Vincent] from performing a variety of other employment opportunities. There simply does not appear to be medical evidence that this man is totally disabled. To the contrary, it would appear that he could choose a variety of alternative occupations or seek further retraining depending on his interests.

P. Brent Koprivica, M.D., who is a physician practicing in the specialties of occupational medicine and disability evaluations, testified by deposition on behalf of the employee. Dr. Koprivica performed an independent medical examination of Mr. Vincent on May 4, 2006. At the time of this examination, Dr. Koprivica took a history from Mr. Vincent, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Vincent, Dr. Koprivica opined that, on or about November 14, 2000, Mr. Vincent suffered an occupational injury, which involved an aggravation of underlying degenerative disease, and resulted in him sustaining a permanent partial disability of 15 percent to the body as a whole. Further, Dr. Koprivica opined that the November 14, 2000 occupational injury, considered alone, does not render Mr. Vincent permanently and totally disabled.

In addition, Dr. Koprivica testified that, prior to November 14, 2000, Mr. Vincent presented with certain injuries or conditions that were industrially disabling. More specifically, Dr. Koprivica opined that, prior to November 14, 2000, Mr. Vincent suffered from chronic right ankle pain, associated with history of deltoid reconstruction, which hindered his ability to work on uneven surfaces, and presented him with a permanent partial disability of 15 percent to

the right lower extremity at the 155-week level. Similarly, Dr. Koprivica opined that, prior to November 14, 2000, Mr. Vincent suffered from chronic impingement syndrome of the right shoulder, which restricted his ability to engage in repetitive or sustained activities above his right shoulder girdle level, and presented Mr. Vincent with a permanent partial disability of 15 percent to the right upper extremity at the 232-week level. Additionally, Dr. Koprivica opined that, prior to November 14, 2000, Mr. Vincent suffered from chronic neck pain associated with degenerative disease of the cervical spine, and presented Mr. Vincent with a permanent partial disability of 15 to the body as a whole.

Further, Dr. Koprivica opined that, prior to November 14, 2000, Mr. Vincent suffered from a significant disabling condition associated with the peripheral polyneuropathy, which involved both upper extremities and both lower extremities. According to Dr. Koprivica, this condition prevented Mr. Vincent from using his hands to grasp and to perform repetitive hand tasks, hindered Mr. Vincent's ability to lift and carrying items, and hindered Mr. Vincent's ability to stand and walk. Relative to this latter condition, Dr. Koprivica opined that the peripheral polyneuropathy condition caused Mr. Vincent to present with a permanent partial disability of 50 percent to the body as a whole.

In assessing the nature and extent of Mr. Vincent's permanent disability, Dr. Koprivica imposed several restrictions on Mr. Vincent. These restrictions include -- avoid working on uneven surfaces; no repetitive or sustained activities above shoulder girdle level on the right; avoid overhead lifting on the right; avoid sustained or awkward postures of the cervical spine; limit climbing types of activities; no repetitive hand tasks, such as pinching or grasping.

Finally, Dr. Koprivica opined that the November 14, 2000 occupational injury, in combination with the preexisting injuries or conditions, caused Mr. Vincent to sustain enhancement and additional permanent disability greater than the simple sum. In this regard, Dr. Koprivica opined that the combination of injuries and conditions render Mr. Vincent permanently and totally disabled.

On cross-examination, Dr. Koprivica acknowledged that, subsequent to being released to return to work by Dr. Woodward in June 2001, Mr. Vincent continued to engage in heavy physical labor, and continued to perform this heavy physical labor from June 29, 2001 through October 8, 2002. Similarly, Dr. Koprivica acknowledged that, subsequent to November 14, 2000, Mr. Vincent enjoyed the opportunity to participate in vocational retraining, but elected not to pursue it. Further, Dr. Koprivica acknowledged that, prior to November 14, 2000, Mr. Vincent did not have any permanent medical restrictions imposed on him, and he was not restricted in his opportunity to engage in employment.

Mary Titterington, M.S., C.D.M.S., L.P.C. who is vocational rehabilitation counselor, testified by deposition on behalf of Mr. Vincent. Ms. Titterington performed a vocational evaluation and examination of Mr. Vincent on October 20, 2006. At the time of this examination, Ms. Titterington took a medical and work history from Mr. Vincent, reviewed various medical records, and performed a variety of vocational tests. The vocational tests included Wide Range Intelligence Test, Wide Range Achievement Test-Revision III, and Adult Basic Learning Examination, Level III. In light of her examination and evaluation of Mr. Vincent, Ms. Titterington opined that Mr. Vincent is unemployable in the open and competitive labor market. Notably, in rendering this opinion, Ms. Titterington testified that Mr. Vincent is not a good candidate for vocational retraining, stating that,

There is no expectation that Mr. Vincent could perform the essential functions of work including:

- Stay on task consistent throughout the workday
- Meet production goals for quality or quantity of work

The Second Injury Fund notes that Ms. Titterington did not did not evaluate Mr. Vincent until nearly six years after he suffered the underlying primary injury. And, on cross-examination, during the taking of her deposition on August 6, 2007, Ms. Titterington admitted that Mr. Vincent had continued to engaged in full-time working involving a very heavy job without permanent restrictions. Similarly, Ms. Titterington agreed that Mr. Vincent had suffered significant deterioration in his condition over the past two to three years leading up to her evaluation.

FINDINGS AND CONCLUSIONS

The Workers' Compensation Law for the State of Missouri underwent substantial change on or about August 28, 2005. However, in light of the underlying workers' compensation case involving an accident occurring on November 14, 2000, the legislative changes occurring in August 2005 enjoy only limited application to this case. The legislation in effect on November 14, 2000, which is substantive in nature, and not procedural, governs the adjudication of this case. Accordingly, in this context, several familiar principles bear reprise.

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the employee's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the employee need not establish the elements of the case based on absolute certainty. It is sufficient if the employee shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation the employee has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575,577 (Mo. App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

I. Settlement Hearing

The Second Injury Fund argues that, on November 9, 2004, it entered into an oral agreement with Mr. Vincent to settle the claim filed against the Second Injury Fund for payment of permanent disability compensation in the amount of \$15,000.00. At the hearing held before the undersigned on February 5, 2008, Mr. Vincent acknowledged appearing personally, and by his former attorney John Banning, for the final hearing scheduled on November 9, 2004. Mr. Vincent further acknowledged that, rather than going forward with the November 9, 2004 hearing, he, at the insistence of Mr. Banning, agreed to settle the case for \$15,000.00.

Consequently, rather than going forward with the hearing for a final award, the parties appeared before the Honorable Karen Fisher, Administrative Law Judge, and on the record discussed the settlement process and apparent agreement. [1] Apparently, the parties did not intend to execute a settlement agreement on November 9, 2004. Instead, the parties indicated an intention to submit later a settlement agreement, and to incorporate into the agreement language designed to avoid a social security offset.

This hearing involved very limited testimony and discussions, with Mr. Vincent's attorney asking only four questions; while the Second Injury Fund and Judge Fisher did not ask any questions. According to Mr. Vincent's former attorney, John Banning, Esq., the purpose of this hearing was to confirm a settlement for \$15,000.00 The questions asked of Mr. Vincent by Mr. Banning are as follows:

Q. Mr. Vincent, earlier today we've had a meeting of well over an hour discussing the potential settlement of this claim. Is that correct?

A. Yes.

Q. And you and I talked about a lot of things in that hour including problems with social security offset, problems that could go on and we'd get less than 100 percent or less than a hundred total disability and we've discussed those at length, haven't we?

A. Yes.

Q. And after the discussions we've had, you've decided that you're willing to settle for the \$15,000 which is a net to you of about \$10,000?

A. Yes.

Q. And you understand that we are ready for hearing this morning and that we've got exhibits and if you want to have a hearing we could've had a hearing this morning?

A. Yes.

At the settlement hearing, the parties did not identify the specific terms of the settlement agreement, and did not ask Judge Fisher to approve the agreement. Further, the parties did not ask Mr. Vincent if he understood his rights and the consequences of entering into a settlement agreement; nor did Mr. Vincent proffer any statement or affirm he understood his rights and the consequences of entering into a settlement agreement. Similarly, Mr. Vincent did not acknowledge or affirm that he was entering into the settlement agreement without any undue influence.

At the hearing held before the undersigned on February 5, 2008, Mr. Vincent testified that, prior to this 2004 hearing, Mr. Banning told him his claim was worth \$240,000; but, immediately prior to the hearing, Mr. Banning encouraged him to accept the Second Injury Fund's offer of \$15,000. Further, according to Mr. Vincent, the change in the value of his case confused him, and Mr. Banning's insistence on settling the case resulted in him "getting into it" with Mr. Banning. Consequently, desiring to get away from Mr. Banning, he agreed to settle the case for \$15,000.00 and informed Judge Fisher of his intention.

Yet, according to Mr. Vincent, he got scared and the next day, upon preparation of the documents, he declined to sign the settlement documents. Additionally, Mr. Vincent noted, on September 10, 2004 he informed the Division of Workers' Compensation that he was not comfortable with the settlement agreement, and did not wish to sign the settlement papers. Thereafter, having refused to sign the settlement agreement, and after having terminated his relationship with Mr. Banning, Mr. Vincent secured other legal counsel and proceeded to hearing on February 5, 2008.

After consideration and review of the evidence, I find and conclude that Mr. Vincent and the Second Injury Fund did not enter into a settlement agreement approved by an administrative law judge. At most, Mr. Vincent and the Second Injury Fund entered into an agreement in principle to resolve the case for \$15,000.00, but said agreement was not reduced to writing, and was conditioned on the parties being able to agree to inclusion of language associated with a desire to achieve avoidance of a social security off-set and approval by an administrative law judge. The approval did not occur, and to date has not occurred. Further, even if Mr. Vincent and Second Injury Fund entered into a settlement agreement on November 9, 2004, the evidence is supportive of a finding that Mr. Vincent did not fully understand his rights or the consequences of entering into a settlement agreement. Further, there is concern that Mr. Vincent entered into the oral agreement under stress, and there is reasonable justification in not giving approval to the settlement agreement.

Therefore, as to this issue, I find in favor of the employee.

II. Accident & Injury

The evidence is supportive of a finding, and, I find and conclude, that, on or about November 14, 2000, the employee Ray Vincent sustained an occupational injury, which arose out of and in the course of her employment with Barton Lumber Company. The injury occurred while at work, unloading shingles from the back of a truck onto an elevator. Notably, this activity involved cumulative twisting and lifting activity, and in the course of performing this activity, Mr. Vincent began experiencing low back pain that radiated down both legs to his knees.

III. Nature & Extent of Permanent Disability

The occupational injury of November 14, 2000 caused Mr. Vincent to sustain an injury to his low back, which involved an aggravation of degenerative disease, and resulted in Mr. Vincent suffering residual and permanent disability associated with chronic low back pain. After consideration and review of the evidence, I find and conclude that, as a consequence of the occupational injury of November 14, 2000, Mr. Vincent sustained a permanent partial disability of 15 percent to the body as a whole or 60 weeks.

The accident of November 14, 2000, considered alone, does not render Mr. Vincent permanently and totally disabled. Yet, prior to November 14, 2000 Mr. Mitchell suffered from preexisting industrial disabilities, which constituted hindrances and obstacles to employment. These preexisting medical disabilities included injuries to the right ankle, right shoulder, and neck, and a serious disease in the nature of CMT. In particular, the CMT disease presented Mr. Vincent with a serious industrially disabling condition.

Having observed Mr. Vincent at the evidentiary hearing, I find Mr. Vincent to be credible and accept as true his testimony that he is in constant pain and not able to work. I particularly note atrophy and wasting of Mr. Vincent's upper and lower extremities, and the difficulties this condition causes Mr. Vincent in his attempt to engage in activities. I am without any doubt that Mr. Vincent is unemployable in the open and competitive labor market.

Notwithstanding, there is concern as to whether the cause of this permanent total disability is attributable to the November 14, 2000 occupational injury, in combination with the preexisting injuries and disabilities, without consideration of subsequent deterioration attributed to the CMT. Relative to this issue, the Second Injury Fund argues that, if Mr. Vincent is permanently and totally disabled, it is because of this subsequent deterioration without consideration of the November 14, 2000 injury. And, in support of their argument, the Second Injury Fund notes appropriately that Mr. Vincent continued to work following his release by Dr. Woodward, during the period of June 29, 2001 to October 8, 2002.

As to this latter issue, I resolve the issue in favor of the employee. Admittedly, Mr. Vincent worked for more than a year after suffering the injury and being released from medical care by Dr. Woodward, relative to the November 14, 2000 injury. Yet, I am persuaded that Mr. Vincent engaged in such work under severe and chronic pain, which is supportive of him possessing a strong work ethic and desire to work, and not as evidence of him being employable in the open and competitive labor market. Additionally, I note the medical opinions of both Dr. Lee and Dr. Paff, in September 2001 and November 2002 respectively, who found Mr. Vincent to be permanently and totally disabled because of the combination of the November 14, 2000 injury and the preexisting disability associated with the CMT disease. This finding is further supported by the medical opinion of Dr. Koprivica and the vocational opinions of Wilbur Swearingin and Mary Titterington.

Accordingly, after consideration and review of the evidence I find and conclude that, as a consequence of the occupational injury of November 14, 2000, in combination with the preexisting industrial disabilities, Mr. Vincent is permanently and totally disabled. Therefore, the Second Injury Fund is ordered to pay to the employee, Ray Vincent, the sum of \$258.51 per week for the employee's lifetime. The payment of permanent total disability compensation by the Second Injury Fund is effective as of October 8, 2002 (when Mr. Vincent terminated his employment with Barton Lumber Company and ceased to engage in any employment), and shall take into consideration 60 weeks of permanent partial disability, which is attributable to the employer and insurer.

The award is subject to modifications as provided by law.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable. Further, Attorney John Banning is entitled to payment of an attorney's lien in the amount of \$2,846.46, which shall be paid directly to him by the Second Injury Fund out of the attorney fees awarded in this case. Additionally, Attorney William Lawrence is entitled to payment of an attorney's lien in the amount of \$1657.19 which shall be paid directly to him by the Second Injury Fund out of the attorney fees awarded in this case.

Date: ____April 22, 2008____

Made by: ____/s/ L. Timothy Wilson____

L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation
Signed April 16, 2008

A true copy: Attest:

____/s/ Jeffrey W. Buker____

Jeffrey W. Buker

Director

Division of Workers' Compensation

[\[1\]](#) At this hearing, the employee appeared personally and with his former attorney, John Banning, Esq. The Second Injury Fund appeared through its attorneys, Cara Harris, Assistant Attorney General, and Laura Reineold, Assistant Attorney General.