

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F206801**

<b>THOMAS TERRY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CONTINENTAL EXPRESS, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>GIBRALTOR NATIONAL INSURANCE COMPANY, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 2, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 9, 2003, at Texarkana, Miller County, Arkansas.

Claimant represented by the HONORABLE JOE ALFRED IZEN, JR., Attorney at Law, Bellaire, Texas.

Respondents represented by the HONORABLE MELISSA WHEETLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On March 18, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of March 20, 2003, was filed. The prehearing order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as the Commission's Exhibit No. 1.

The testimony of Thomas Terry, the claimant, coupled with the medical reports and other documents comprise the record in this claim. Subsequent to the hearing respondents submitted a letter brief of May 12, 2003, and claimant submitted a response brief of May 28, 2003. Both documents are herein designated a part of the records as the Commission's Exhibit No. 2.

## DISCUSSION

Terry J. Thomas, the claimant, with a date of birth of October 20, 1947, is a high school graduate. The claimant commenced his employment with respondent on March 13, 2001, as a truck driver. The claimant last discharged employment duties for respondent on May 7, 2002.

The claimant's testimony reflects that he has been a commercial truck driver since 1995, having completed a training program at Arkansas State University, Beebe, Arkansas. The claimant has a commercial driver's license and certification for driving trucks with Haz-Mat, doubles, triples, and tankers. The afore refers to the type of trailers hauled by tractor trailer rigs. The claimant noted that he has driven continuously since he began his career as a commercial truck driver in 1995, and estimates that he has logged over 500,000 miles.

The claimant testified that from time to time, as a commercial truck driver since 1995, he has assisted other truck drivers along the highways, and has been the recipient of help or assistance from other truck drivers. As a commercial truck driver the claimant testified that he recognized the concept or custom of "rules of the road". The claimant explained that the afore entailed obeying all traffic laws, being a courteous driver, obey the laws of each state, and rendering assistance. The claimant testified, regarding rendering assistance to drivers of other companies:

Help – if someone is broke down, it's – it's a common courtesy and it is almost a must that you help someone if they are broke down.

\* \* \*

Stranded drivers have been accosted on the highway and their loads looted and even their lives lost, from what I understand, from being out in the middle of nowhere on the side of the road. (T. 19)

The testimony of the claimant reflects that before he commenced his employment with respondent on March 13, 2001, he worked the harvest in Texas for an individual. The claimant noted that while his employment entailed local harvesting in Texas, he was still driving a truck and had a CDL. With respect to any orientation that he underwent at the time of his employment with respondent, the claimant testified:

I suppose I did but the only thing I remember is they gave me a driving test. (T. 30)

The claimant testified that the safety department of respondent was responsible for safety and instructions on what drivers could and could not do on March 22, 2002. Further, the claimant maintains that as of March 22, 2002, he did not think that he had received any safety training from respondent, to include instructions on assisting other drivers.

On March 22, 2002, the claimant was under a load from respondent-employer's yard in Little Rock to New Jersey. The claimant noted that during the entirety of his employment with respondent he had never received instructions that he was not to assist other drivers. While in Denmark, Tennessee, the claimant stopped at a truck stop where he fueled his vehicle and ate a meal. With respect to the injuries which the claimant sustained on said date and which serves as the basis for the present claim, the claimant testified:

Okay. I had stopped at this truck stop just to eat and then I was going to continue on because I hadn't driven very far and a certain amount of hours per day you need to drive to get to your destination. A driver approached me and asked me if I knew anything about 53 foot trailers because he said he had never pulled a 53 foot trailer. He had 20 bales of cotton on and they were real heavy and he need to know how to set the trailer to pass inspection, to make it legal. I told him that that was all I pulled was 53 foot trailers so I

agreed to help him. To move the tandems on a trailer you have to pull a bar which releases four pins, two on either side of the trailer, through holes. After we pulled the bar, only three of the pins released. So we were stuck , we couldn't move the tandems, we couldn't get it legal. So he handed me a hammer and I was going to hit the other pin after he held the trailer brakes and backed up on the trailer, to put pressure on the pin so that when I hit it, it would release the pin and then we could slide the tandem. But what happened is, when I hit the pin, the pressure from him backing up released the airbags on the trailer and I was reaching over the tandem, which are the tires, trying to hit that pin with the hammer. The trailer came down on my arm and my shoulder and part of my back. (T. 14-15)

The testimony of the claimant reflects that following the accident, he was transported to the emergency room of a local hospital by ambulance. The claimant was discharged after receiving initial medical treatment relative to his injuries to his right shoulder and arm. After his discharge following emergency medical treatment, the claimant returned to his truck and completed his load.

The claimant's testimony reflects that upon his return to Little Rock he requested access to the company doctor. The claimant was referred by the company doctor to a surgeon for his March 22, 2002 injuries. The claimant last discharged employment duties for respondent on May 7, 2002.

The claimant's testimony reflects that he filed for and received short-term disability benefits relative to the March 22, 2002 injury after he was unable to work. Further, the testimony of the claimant reflects that after he was released to return to work he did not return to the employment of respondent, but rather sought employment elsewhere. The claimant secured employment with Willis Shaw Express on September 23, 2002, as a truck driver. The claimant remains in the employment of Willis Shaw Express.

The claimant acknowledged that he was not working on a truck of respondent-employer at the time he suffered his March 22, 2002 injuries. The claimant noted that the medical bills incurred relative to the March 22, 2002 injury have remained unpaid. The claimant further asserts he is entitled to the payment of temporary total disability benefits during the time he was off work as a result of the injuries suffered on March 22, 2002.

Respondents deny that the claimant suffered an injury within the course and scope of his employment with same on March 22, 2002. Specifically, respondents contend that claimant's injuries are not compensable under the Arkansas Workers' Compensation statutes. Further, the respondent maintained that the claimant was not performing employment services on March 22, 2002, at the time his injuries were sustained.

In addition to the testimony of the claimant, the record in this claim consists of the Form AR-C, executed by the claimant on June 20, 2002, documentation relative to the short-term disability benefits received by the claimant, and a handwritten statement of the claimant. Further, the parties have submitted briefs on the question of the compensability of the present claim, with the same being designated a part of the record as Commission's Exhibit No. 2.

From all the evidence, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 22, 2002 the relationship of employee-employer-carrier existed among the parties.
3. On March 22, 2002 the claimant did not sustain an injury arising out of and in the course of his employment.

## CONCLUSIONS

The present claim is one for workers' compensation benefits growing out of injuries sustained by the claimant on March 22, 2002. On said date claimant, who was employed by respondent as a truck driver, was under a load from the Little Rock yard of respondent-employer to New Jersey. While en route with the load, the claimant stopped in Denmark, Tennessee, to fuel up and to eat a meal. Jay Hicks, a truck driver for Whittaker Transportation, out of Columbia, South Carolina, approached the claimant and requested assistance with his trailer. The injuries, which serve as the basis for the present claim, were sustained by the claimant while assisting Mr. Hicks with his trailer.

The claimant asserts that the injuries sustained on March 22, 2002, were within the course and scope of his employment with respondent, and that he is entitled to the payment of appropriate workers' compensation benefits, to include medical and indemnity benefits, relative to same. Respondents take the position that the injuries sustained by the claimant on March 22, 2002, were not sustained within the course and scope of his employment with same. Further, respondents maintain that the claimant was not performing employment services at the time he sustained his injuries of March 22, 2002.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries sustained subsequent to the effective date of the afore provision.

The claimant, who has been a commercial truck driver since 1995, maintains that at the time he commenced his employment with respondent on March 13, 2001, he was not told that assisting other drivers was prohibited as an employee of respondent. Likewise, claimant maintains that he was

never informed that he was prohibited from accepting assistance from other drivers by respondent.

Arkansas Code Annotated §11-9-102(4)(A) defines a compensable injury as an accidental injury causing internal physical harm to the body which arises out of and in the course of employment. Arkansas Code Annotated §11-9-102(4)(B)(iii) provides that a compensable injury does not include an injury that was inflicted upon the employee at a time when employment services were not being performed.

The Arkansas Supreme Court has held that the test to determine whether an employee was performing employment services is the same as used to determine whether an employee was acting within the course and scope of employment. Specifically, whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interests, directly or indirectly. Collins v. Excel Specialty Products, 347 Ark. 811, 69 S.W.3d 14 (2002); Pifer v. Single Source Transportation, 347 Ark. 815, 69 S.W.3d 1 (2002).

The claimant cites, as a basis for a finding of compensability of the present claim, the rules of the road among professional truck drivers which require the truck driver render assistance to each other so that they can expect same in the future. Additionally, the claimant maintains that the afore benefits the driver as well as the employer in the successful completion of a load their hauling when such aide becomes necessary. Specifically, the claimant asserts that the rendering of assistance to Jay Hicks on March 22, 2002, was advancing the employer's interests indirectly, and, as such, he was within the course and scope of his employment in providing employment services at the time.

Act 796 of 1993 mandates that strict construction apply to the Arkansas Workers' Compensation statutes. In the instant claim, it is undisputed that at the time of the claimant's March

22, 2002 injury, he was not working on a vehicle of respondent. While the claimant asserts that he had never been specifically prohibited from rendering assistance to other drivers by respondent-employer, there is no evidence to reflect that claimant's efforts at assisting Mr. Hicks directly or indirectly advanced the interests of the employer. Cases cited by the claimant in support of his claim for compensability involve the instances where it was expedient for the employee to render assistance in order to advance the interests of the employer. (COM. EX.#2) There is no evidence to reflect that the truck on which claimant was rendering assistance at the time of his injury, was impeding claimant's movement with respect to the delivery of the load under which he was working. Further, neither is there evidence of a commonality of purpose and interest between respondent and Whittaker Transportation, the employer of Mr. Hicks, as was the case in Spence v. Miller Trucking, Full Workers' Compensation Commission, opinion filed April 16, 1996, (Claim #E410594).

The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment with respondent on March 22, 2002, or that the injury sustained on March 22, 2002, was sustained at a time that he was performing employment services for respondent. Pursuant to Arkansas Workers' Compensation statute, this claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**ANDREW L. BLOOD**  
**Administrative Law Judge**