

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511681

MICHAEL HARVEY,  
EMPLOYEE

CLAIMANT

STANLEY BROTHERS LOGGING, INC.,  
EMPLOYER

RESPONDENT

AMERICAN INTERSTATE INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED JUNE 2, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE CYNTHIA ESTES ROGERS, in Monticello, Drew County, Arkansas.

The claimant was represented by HONORABLE KENNETH HARPER, Attorney at Law, Monticello, Arkansas.

The respondents were represented by HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on March 17, 2006 in Monticello, Arkansas. A prehearing order was entered in this case on December 27, 2005. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

There were no stipulations submitted by the parties in the prehearing order.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited during the course of the hearing to the following:

1. Whether claimant was an employee of the respondent employer and the compensability of the claim.

The record consists of the March 17, 2006 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

Four men from Arkansas went to Louisiana after Hurricane Katrina with equipment to perform clean-up for payment. Mike McBarron owned one truck used in the operation. In addition to this work, Mr. McBarron is in the produce business. Mitch Stanley brought a second truck used in the operation. Mr. Stanley is a co-owner of Stanley Brothers Logging, Inc. Mr. Stanley participated in the Hurricane Katrina operation because the logging business was slow at that time. The foursome also included Michael Harvey, the claimant, who considers himself a mechanic by trade. The fourth member was Michael McCraw's son, whose name and normal occupation were not identified at the hearing on this claim.

The four worked together for approximately thirty days total. During one trip driving the trucks back to Arkansas

on September 22, 2005, the McBarron truck began losing power. Mr. Harvey climbed onto the truck to attempt repairs, but slipped and cut his leg trying to remove the fuel filter. When the four returned to Arkansas, Mr. Harvey presented to the Ashley County Medical Center where he incurred approximately \$1,100 in medical expenses to treat an objectively documented laceration to his inner thigh. When Mr. Harvey turned these expenses in to Stanley Brothers Logging for payment, Stanley Brothers and its workers' compensation insurer denied liability on the grounds that Mr. Harvey was not an employee of Stanley Brothers when the injury occurred. A hearing was held to resolve that issue on March 17, 2006. Mitch Stanley asserted at the hearing that Mr. Harvey was employed by Mike McBarron, not Stanley Brothers Logging, in the post-Katrina clean-up work, and that Mike McBarron paid Mr. Stanley as well.

Based on my review of the record, the record does not support Stanley Brothers' argument that Mr. Harvey was solely employed by Mike McBarron on September 22, 2005, as Stanley Brothers asserts. On the record before me, I conclude that Mr. Harvey was instead a joint employee of Mike McBarron and of Stanley Brothers Logging, Inc. I therefore conclude that Stanley Brothers Logging, Inc., and

its workers' compensation insurance carrier, the defendant parties in the present claim, are liable for the medical expenses at issue in this claim. See generally 3 Larson's Workers' Compensation Law, § 68.05 (2005). Accord Dillaha Fruit Co. v. LaTourrette, 262 Ark. 434, 557 S.W.2d 397 (1977) [Finding one joint-employer party liable for all medical expenses].

In Cook v. Recovery Corp., 322 Ark. 707, 911 S.W.2d 581 (1995) the Arkansas Supreme Court summarized the concept of joint employment as follows:

A definition of "joint employment" can be found in 1B Larson's Workmen's Compensation Law, § 48.41 at 8-553 (1995):

Joint employment occurs when a single employee, under contract with two employers, and under simultaneous control of both, simultaneously performs services for both employers, and when the service for each employer is the same as, or closely related to, that for the other.

If an employee is engaged in "joint employment," meaning performing for and under the control of two employers at the same time, the liability for workers' compensation benefits is joint. Dillaha Fruit Co. v. LaTourrette, 262 Ark. 434, 557 S.W.2d 397 (1977). See also Ridgeway Pulpwood v. Baker, 7 Ark. App. 214, 646 S.W.2d 711 (1983).

In the present case, Mr. Stanley testified that: (1) Mr. Harvey worked in Louisiana for Mr. McBarron, (2) Mr.

McBarron paid both Mr. Stanley & Mr. Harvey, and (3) Mr. McBarron was running the job in Louisiana, so that therefore Mr. McBarron was Mr. Harvey's sole employer.

However, the only documentary evidence of any payment record offered into evidence on this claim was a photocopy of an undated check in the amount of \$550 payable to "Bo" (i.e. Mr. Harvey), and that check was clearly drawn on the account of Stanley Brothers Logging, Inc., and not on any account of Mr. McBarron. In addition, this check indicates that the payment was for "LABOR FOR CLEN-UP" [sic]. Mr. Stanley testified that although he wrote the check at issue, he actually wrote the check for mechanic services performed before the foursome ever left for Louisiana the first time, and that someone else wrote in "LABOR FOR CLEN-UP" after Mr. Stanley gave the check to Mr. Harvey. I do not find this explanation of events persuasive for the several reasons discussed below.

First, I find persuasive Mr. McCraw's testimony that Mr. Harvey received a \$200 check (not a \$550 check) from Mr. Stanley for mechanic work before the foursome first went to Louisiana. Second, I find persuasive Mr. McCraw's testimony that he recalls that the check was written when the foursome were in Louisiana the last time. Third, I note that when

Mr. Harvey was requested by the respondents' attorney to spell the word "clean" at the hearing, Mr. Harvey was able to do so correctly, and did not spell "clean" as "c-l-e-n" as written on the check. Fourth, I note that Stanley Brothers Logging, Inc. had access to any additional business or financial records which might have corroborated Mr. Stanley's testimony regarding when the check was written, but produced no corroborative documentary evidence at the hearing. Fifth, in comparing the "B" and "O" in the name "BO" to the same letters in the word "LABOR" on the check, I am not persuaded that these portions of handwriting have different authors as Mr. Stanley asserts.

Not only does the preponderance of the credible evidence indicate that the Stanley Brothers Logging account paid some of Mr. Harvey's sporadic wages, the evidence also establishes that Mr. Stanley contributed the use of a log loader truck, as did Mr. McBarron, to the Louisiana operation. Mr. Harvey's testimony also persuades me that Mr. McBarron and Mr. Stanley each exercised control over the work being performed by Mr. Harvey and by Mr. McCraw's son at the work sites in Louisiana, and that Mr. McBarron conferred with Mr. Stanley as to what wage Mr. Harvey would be paid. Notably, Mr. Stanley presented no documentary or

other corroborative evidence to support Mr. Stanley's testimony that he was a mere employee himself on the job. These circumstances, particularly in light of the Stanley Brothers check in the record and the Stanley truck on the job, persuade me that the clean-up operation in Louisiana was a joint venture of Mike McBarron and of Stanley Brothers Logging, Inc., so that Mr. McBarron and Stanley Brothers Logging were joint employers of Mr. Harvey.

Because Mr. Harvey's injury also occurred at a time when Mr. Harvey was performing employment services while attempting to repair one of the joint venture's trucks, and since Mr. Harvey's laceration injury is documented by objective findings in the medical record, I also find that Mr. Harvey has established that he sustained a compensable injury.

Consequently, for all of the reasons discussed herein, I find that Stanley Brothers Logging, Inc. and its workers' compensation carrier are liable for the medical expenses incurred by Mr. Harvey at issue in this claim.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Stanley Brothers Logging, Inc. was a joint

employer of Michael Harvey on September 22, 2005.

Therefore, the employer-employee-carrier relationship existed between the parties on September 22, 2005.

2. Mr. Harvey sustained a compensable laceration injury to his thigh on September 22, 2005.

3. The respondents are liable for the medical expenses incurred by Mr. Harvey at issue in this claim.

**AWARD**

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998); reversed on other grounds 336 Ark. 515, 988 S.W.2d 3 (1999).

The claimant's attorney will be entitled to a 25% attorney's fee on any indemnity benefits to which the claimant may become entitled as a result of the findings set forth herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 and Death &

HARVEY - F511681

9

Permanent Total Disability Trust Fund v. Brewer, 76 Ark.  
App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

---

MARK CHURCHWELL  
Administrative Law Judge