

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508670

GORDON HITE	CLAIMANT
J & J TRUCKING	NO. 1 RESPONDENT
TYSON FOODS	NO. 2 RESPONDENT
SECOND INJURY FUND	NO. 3 RESPONDENT

AMENDED OPINION FILED NOVEMBER 13, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondent No. 1 represented by THOMAS KIEKLAK, Attorney, Springdale, Arkansas.

Respondents No. 2 represented by MELISSA LEE, Attorney, Springdale, Arkansas.

Respondent No. 3 represented by DAVID PAKE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 8, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 14, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. Respondent No. 1 was under contract with Respondents No. 2 to haul products.

By agreement of the parties the issues to litigate are limited to the following:

1. Employment relationship (to determine if the claimant was an employee or contracted by Respondent No. 1).
2. Relationship between Respondents No. 2 and Respondent No. 1.
3. Compensability of claimant's multiple physical injuries.
4. Related medical.
5. Temporary total disability from April 22, 2005, to April 27, 2006.
6. Claimant's entitlement to an 8 percent impairment rating.
7. The appropriate compensation rate for this claimant.
8. Respondents No. 1's requirement under Arkansas law to carry workers' compensation insurance.
9. Attorney's fees.

The claimant reserves all other issues to include the claimant's right to wage loss.

In regard to the foregoing issues the claimant contends that the employee/employer relationship existed on or about April 21, 2005. On that date, claimant sustained an injury to his right shoulder, arm, ribs, neck and back. On that date, claimant was working for J & J Trucking when he was injured at Tyson Distribution Center in Rogers, Arkansas. J & J Trucking does not carry comp insurance. That Tyson Foods is the general contractor of J & J Trucking and is responsible for workers' comp since J & J did not cover.

In regard to the foregoing issues Respondent No. 1 contends that Gordon Hite was an independent contractor and not an employee of J & J Trucking. J & J Trucking is not required to carry compensation insurance. Injury is not compensable or was pre-existing. J & J Trucking is entitled to a credit as this respondent has paid claimant's medical expenses to date.

In regard to the foregoing issues Respondents No. 2 contend that the claimant did not suffer a compensable injury on their premises on or about April 21, 2005. That the claimant was an independent contractor and not an employee of J & J Trucking. That Tyson Foods, Inc. has no responsibility to pay for the claimant's workers' compensation related costs. The respondent reserves the right to supplement the contentions upon the completion of pre-trial discovery.

In regard to the foregoing issues Respondent No. 3 will state its contentions when discovery is complete.

The documentary evidence was entered submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and an additional packet of medical records marked Claimant's Exhibit No. 2. Respondents No. 1 submitted a packet of non medical records. Respondents No. 2 submitted a packet of information. All these exhibits were admitted without objection.

DISCUSSION

Darrell Ray Foulk testified that in April 2005 he was the owner of J & J Trucking but no longer is the owner. This witness testified that on October 14, 2005, he sold his trucks to another person and J & J Trucking no longer exists. Mr. Foulk testified that in April 2005 he did not have workers' compensation insurance and was under contract with Tyson Foods, Respondents No. 2 herein to haul product. Mr. Foulk agreed that the contract with Respondents NO. 2 was for trucking services explaining that they would receive a load number from Respondents No. 2, pick up the product and deliver it to the destination designated. This witness testified that every day they would receive different load numbers with different locations. Mr. Foulk testified that he would receive these load numbers usually around 8:00 every morning and before 5:00 in the evening. Mr. Foulk testified that when he would receive the load numbers he would give this information to his two truck drivers, Shane Lloyd and the claimant. Mr. Foulk testified that he and his wife both maintained offices at their home and that there have been times when his wife would answer the phone and take down load information. Mr. Foulk testified that his wife was not employed at J & J Trucking. Mr. Foulk testified that during this period of time J & J Trucking had three trucks, two of which the drivers worked with and a spare which was used to move empty trailers around. This witness testified that J & J Trucking had ten trailers. Mr. Foulk testified that they only hauled for

Respondent No. 2 and that the trailers were parked on Respondent No. 2's parking lots.

Mr. Foulk testified that the claimant was a driver and would pick up and deliver loads as directed. Mr. Foulk indicated that he had no reason to question the claimant's credibility or honesty. Mr. Foulk testified that on April 21, 2005, he received a telephone call from Lloyd Shane, the other truck driver, and learned that the claimant was injured. Mr. Foulk testified that Mr. Shane was instructed to take the claimant to Washington Regional Hospital to be checked out. Mr. Foulk testified that it was his understanding that the claimant had slipped and fallen at a distribution center in Rogers. Mr. Foulk testified that he went to the hospital and when he arrived the claimant was having x-rays made. Mr. Foulk testified that he informed Washington Regional Medical Center that he would be responsible for the bill and not to bill the claimant. Mr. Foulk agreed that he in fact did pay the hospital bill as well as a bill from an orthopedic doctor which the claimant was sent to. Mr. Foulk stated that he did not provide income to the claimant for the period of time that he was taken off work by his doctor. This witness testified that the claimant was paid each week when he was working and his pay was determined based on 23 percent of each load which he delivered. This witness testified that the claimant would work five days a week and earned approximately \$500 each week. Mr. Foulk testified that he would go at times and move trailers but that he dispatched for J & J Trucking each morning and each evening. Mr. Foulk testified that he also did the payroll for J &

J Trucking and saw to the maintenance of the trucks. This witness again agreed that there were times when he would occasionally do hauling himself when they were short handed.

On cross examination by Respondent No. 1, Mr. Foulk testified that after the claimant's accident on April 21, 2005, he told the claimant not to worry about his job that he would not hire anyone else and that he would drive his truck which he did until August 2005. Mr. Foulk testified that around the first of August the claimant indicated that he would not be able to return to driving. This witness testified that he did not write himself a w2 from J & J Trucking but that he did take a draw from the company when it was possible. Mr. Foulk testified that this draw was transferred electronically into his wife's personal account so that they could pay bills. This witness agreed that he was president of J & J Trucking and that his wife was Vice President/Secretary of the corporation. Mr. Foulk testified that he never had more than two drivers at a time and that sometimes he would only have one driver if a driver quit. Mr. Foulk testified that it was his understanding from reading the workers' compensation literature that if you did not have more than two employees carrying workers' compensation insurance was not necessary. Mr. Foulk testified that he did purchase workers' compensation insurance after he spoke with an attorney following the claimant's accident. Mr. Foulk testified that he cancelled his policy after he sold the company. Mr. Foulk testified again that he paid the claimant's initial hospital bill and a follow up doctor's bill as well as assured him that his job

would be available for him when he was able to come back to work because he would drive the truck in his place. Mr. Foulk testified that he had hauled for Respondent No. 2 for almost twenty years before he was required to sign a contract of hire which he did without consulting anyone to go through the contract with him.

On cross examination by Respondent No. 2, Mr. Foulk testified that he has never signed a certificate of non-coverage for workers' compensation insurance. Mr. Foulk testified that he hired the claimant around April 7, 2004, and initially started paying the claimant 23 percent for each load and then in six months he started paying the claimant 25 percent of each load. Mr. Foulk testified that he considered the claimant to be an employee because he took taxes out of his pay. Mr. Foulk testified that the claimant did a good job and that they picked up the loads and delivered them as directed. Mr. Foulk testified that he communicated with the claimant by cell phone which had been placed in the trucks. Mr. Foulk testified that he paid the hospital bills for the claimant as well as the bill to Dr. Tom Coker. This witness testified that he was unaware that the claimant was being seen by Dr. Terry Sites until the deposition of the claimant.

On cross examination by Respondent No. 3, the Second Injury Fund, Mr. Foulk testified that he thought that he had paid all of the claimant's medical bills until he attended the deposition when he learned of more medical expenses. Mr. Foulk testified that he felt as though the additional medical bills had been withheld from him, therefore, he does not feel responsible for them.

On redirect examination, Mr. Foulk testified that he prepared Exhibit No. 1 which outlines the claimant's wages.

The claimant testified that he was fifty-six years old and for the past thirty years has primarily done truck driving to earn a living. This witness testified that he had completed the eighth grade but has no other formal education. The claimant testified that his duties for Respondent No. 1 involved picking up and delivering loads of product for Respondent No. 2 to their different warehouses in Northwest Arkansas. The claimant testified that he did no out of state driving when he worked for Respondent No. 1. This witness testified that Mr. Foulk would call him and give him a load number and tell him where the warehouse was to pick up product and then would tell him where to deliver the product. The claimant testified that he spoke with Mr. Foulk on a daily basis as well as visited with his wife. The claimant testified that Mr. Foulk would give them the load numbers and tell them when the load would be ready and that he would try and be there when the load was ready to go. The claimant testified that there was no exact time for delivery of the load just so it was within a reasonable amount of time. The claimant agreed that the delivery would be made within the same day it was picked up. The claimant testified that sometimes he would take the truck home if a load was delivered late but that his truck was always parked at Respondent No. 1's lot on the weekends. The claimant testified that he was paid on a percentage of what the load was worth and that he averaged about \$550 a week after taxes. The claimant estimated that his gross pay

was approximately \$675 each week and he got paid every Friday. The claimant testified that the claimant's wife has dispatched him to pick up loads when her husband would be out moving trailers or was not available. The claimant indicated that no one other than Mr. Foulk and his wife had ever dispatched him. The claimant testified that besides picking up and delivering loads of product for Respondent No. 2, he would also move empty trailers from one warehouse to another. The claimant testified that he purchased gas for his truck on a Respondent No. 1's gas credit card. The claimant testified that his injury occurred on one of Respondent No. 2's distribution center parking lots. The claimant testified that he had delivered a load and had gone around to another area of the parking lot to pick up an empty trailer and as he was inspecting it before taking it to another location, he was stepping into the back of the trailer when his toes slipped off and he dropped leaving him hanging by his right arm. The claimant testified that all of his weight was put on his right arm and that initially his feet do not hit the ground. The claimant testified that when he released his grip and he dropped, he sat down on the ground and the pain in his right arm and shoulder was so bad he thought he would pass out. The claimant testified that he sat on the ground for five or ten minutes then was able to get into his truck and call Mr. Foulk. The claimant testified that he reported his injury to Mr. Foulk and Mr. Foulk asked him if he could possibly deliver the empty trailer to the Johnson warehouse. The claimant testified that he was able to shut the doors of the

trailer and drive with one arm to the Johnson destination but by the time he got there, his arm was hurting really bad. The claimant testified that he stopped Lloyd Shane, the other driver for Respondent No. 1, and asked him to back in his trailer. Mr. Shane helped the claimant with his tractor and trailer and then he called Mr. Foulk to tell him that the claimant needed to go to the doctor. The claimant testified that Mr. Shane took him to Washington Regional Medical Center where he had x-rays of his shoulder. The claimant testified that he was released from the hospital that afternoon and was given pain pills and told to see Dr. Coker. The claimant remembers that some three to four days after he was at the emergency room he was seen by Dr. Coker. The claimant testified that Dr. Coker examined him, gave him pain medications and recommended that he go home and see if it got better. The claimant testified that Dr. Coker took him off work and at a return visit with Dr. Coker, home exercises were recommended. The claimant testified that his shoulder was not getting any better and the exercises were actually aggravating his problems. The claimant agreed that at some point Dr. Coker had him undergo an MRI after which Dr. Coker indicated that he would have to undergo surgery to repair a tear. The claimant testified that he then was seen by Dr. Sites who ultimately operated on his shoulder. The claimant agreed that no doctor released him to return to work at this time. The claimant testified that he did medical follow up with Dr. Sites after his rotator cuff repair surgery. The claimant testified that Dr. Sites released him to

return to work on April 27, 2006, with a restriction of no loading, unloading or lifting, just basic driving. The claimant testified that he is currently working for Smith Trucking in Springdale and that his wife is driving with him. The claimant testified that shifting with his right arm causes him some difficulty but with his wife's help he is able to get through the week. The claimant testified that he rests over the weekends so he is able to go back out at the beginning of each week. The claimant testified that he was last seen by Dr. Sites on June 26, 2006, at which time it was agreed that he would return to see the doctor in three months. The claimant testified that he currently is not taking any prescription drugs although he does take some over the counter pain relievers.

The claimant testified that in 1996 he was seen by the doctor for an injury to his right shoulder. The claimant agreed that Dr. Bailey did surgery on his right shoulder to repair a torn rotator cuff. The claimant testified that prior to his surgery he was experiencing shoulder pain as well as swelling. The claimant testified that following his surgery and his rehabilitation, he did real well. The claimant testified that by the time he was released by Dr. Bailey until he was seen for his shoulder injury in April 2005, he had not had any medical treatment for his right shoulder. The claimant agreed that his initial medical bills were paid by Mr. Foulk but when he needed to have an MRI done, Mr. Foulk told him that the bills were getting too high and he would have to do something else. The claimant testified that when surgery was recommended and he began to be seen by Dr. Sites he did not refer

the bills to Mr. Foulk because he had told him that the bills were too high and he could not afford to keep them up. The claimant agreed that he has a supplemental insurance with AARP which has paid a little on his medical bills but he has had to pay the remainder of the medical bills out of his pocket.

Respondent No. 1 had no questions of this claimant.

Respondent No. 2 cross examined the claimant and the claimant testified that in the 1970s he had a work related back injury for which he drew workers' compensation benefits. The claimant testified that this injury resolved in a joint petition settlement in the amount of \$10,000.00. The claimant agreed that he also had an injury to his right shoulder in 1995 for which he had surgery in 1996. The claimant testified that his right shoulder injury in 1995 was non work related. The claimant indicated that during the period of time he was being treated by Dr. Coker there was a period of time where the doctor thought he might be getting better and encouraged him to keep up with his home exercises. The claimant testified that the doctor kept him off work. The claimant testified that he refused an injection which Dr. Coker offered him because the doctor indicated that it would just dull the pain and not cure his problem. The claimant testified that he also did not want to continue with physical therapy because none of the therapy had done him any good.

On cross examination by Respondent No. 3, the claimant testified that the back injury which he sustained in 1975 or 1976 to his understanding was a back sprain. The claimant testified

that he did not have any surgery for this back problem and went back to work for his same employer until there was a general layoff. The claimant testified that at that time he began driving a truck and has been doing truck driving ever since. The claimant agreed that following his shoulder surgery in 1996 performed by Dr. Bailey, he was released with no physical restrictions. The claimant agreed that his two prior injuries, his back injury and his 1996 shoulder injury have never caused him any problems as to passing his Department of Transportation physicals and neither have these kept him from doing what was required of him on any of his truck driving jobs which he has had over the past thirty to thirty-five years. The claimant testified that he and his wife are driving for Smith trucking and he currently is making more money than he was when he was working for Respondent No. 1. The claimant testified that usually they will leave on a Monday and not get back to their home until Friday or Saturday. The claimant testified that he has been on this schedule since approximately May 2006 to date.

On recross examination by Respondent No. 2 the claimant agreed that Dr. Sites had recommended a permanent restriction for him of maintaining his right elbow close to his side for work activities and no repetitive lifting over twenty pounds on the right side. The claimant testified that some of his bills have been reimbursed by his AARP up until he reached a certain limit and then these benefits stopped. The claimant testified that he has not received any type of income benefits.

The medical record set forth that the claimant was seen by the Washington Regional Medical Center on April 21, 2005, with complaints of shoulder pain. The medical history sets forth that the claimant reports that he slipped off the back of a trailer and he was holding on with his right arm to catch himself now complains of pain in his right upper arm and cannot raise his arm. X-rays of the claimant's arm revealed no fractures or dislocations. The claimant was discharged with a diagnosis of muscle strain or tendon strain and it was recommended to follow up with Dr. Matthew Coker. The claimant was discharged with instructions to wear a sling, medications were prescribed and to be followed up by Dr. Coker. The claimant was seen by Dr. Tom Patrick Coker on April 25, 2005, for complaints of his right arm. After taking the claimant's history and examination of the claimant, Dr. Coker recommended that he come back in three weeks for reexamination, noting that he hopes that it is a bicep injury more than a rotator cuff tear. Dr. Coker discontinued the claimant's use of a sling and recommended anti-inflammatory and work on flexibility for the next couple of weeks. On May 9, 2005, Dr. Coker writes that he has seen the claimant who is some bit better but not a lot and after examination, Dr. Coker opines that the claimant may have return his rotator cuff. Dr. Coker writes that the claimant does not want an arthrogram, noting that he has screws from his previous shoulder surgery. Dr. Coker further notes that the claimant does not want a shot or physical therapy and he will continue with physical therapy at home. On May 24, 2005, Dr. Coker writes that the

claimant started physical therapy and did fine in forward flexion but with abduction he had sharp pain that radiates down to the mid bicep area. The doctor notes that this pain is sharp and very painful. After examination, Dr. Coker opines that he thinks the claimant has torn his rotator cuff and recommended that he undergo an MRI. Dr. Coker writes on June 6, 2005, that the claimant has undergone an MRI which shows a tear of his rotator cuff. Dr. Coker notes that the claimant's tear is not complete but a portion of it has a full thickness tear. The doctor notes that the claimant has gotten a lot better in the last couple of weeks and again wishes to continue with conservative treatment to see if his condition will continue to improve. On September 19, 2005, Dr. Coker writes that the claimant has not gotten any better and physical therapy has failed as have anti-inflammatories, therefore, surgery was recommended. Dr. Terry Sites writes on September 29, 2005, that he has seen the claimant for his right shoulder and arm problems. After taking the claimant's history the doctor notes that Dr. Bailey had performed a right rotator cuff tear on the claimant on March 6, 1996, from which the claimant made an excellent recovery and was able to return to his truck driving duties. After physical examination and review of the claimant's x-rays and MRI, Dr. Sites diagnosed the claimant with having right shoulder pain with rotator cuff tear as well as right acromioclavicular joint arthropathy. Dr. Sites discussed surgery with the claimant and indicates that the claimant understands that his problem is career threatening and would involve a lengthy recovery period. It is further noted that

the claimant has been unable to work subsequent to his injury. The claimant opted to undergo outpatient arthroscopy with distal clavicle resection and repair. Dr. Sites, after surgery, followed the claimant noting that he is in therapy and his incision is healing nicely. Dr. Sites notes that on October 13, 2005, the claimant's staples were removed and sterile strips were placed on his right shoulder. On December 12, 2005, the claimant reports to Dr. Sites that his therapy has been slow and it is noted that the claimant has difficulty relaxing due to pain in his right shoulder. Dr. Sites writes that the claimant's incisions are nicely healed and there is no swelling or heat nor has he had any fever or chills. Dr. Sites notes that they will continue to treat his discomfort and that his work status remains unchanged in that he is to do single armed work only and will remain so for at least an additional four to six months. On January 30, 2006, Dr. Sites writes that the claimant has greatly improved and that he will continue to work on his shoulder exercises, noting that he is three and a half months out from his shoulder repair. Dr. Sites writes that he will see the claimant back in two months in anticipation of a return to truck driving activities as strength allows. Dr. Sites signed a return to work slip for the claimant noting that he was in the doctor's office on March 27, 2006, and can return to work on April 27, 2006, but not to do any loading. Dr. Sites writes on June 26, 2006, that the claimant was seen and reports that he is on the road driving with his wife with an automatic truck and is unable to load or unload. The doctor notes that the claimant has

significant continued weakness in his right shoulder and after a range of motion test, Dr. Sites notes that the claimant has no swelling, crepitation or tenderness. Dr. Sites writes that the claimant is permanent and stationary for purposes of rating and based on the A.M.A. Guides, Forth Edition, assesses the claimant with a right upper extremity of 8 percent which would be a 5 percent whole body impairment. Dr. Sites notes that he would recommend permanent restrictions of trying to maintain the right elbow close to his side for work activities with no repetitive lifting and no lifting over twenty pounds on the right side. Dr. Sites also encouraged the claimant to continue with his exercises.

All medical records dated January 30, 1996, through June 18, 1996, set forth that the claimant was being treated for right shoulder pain and eventually diagnosed as having a right rotator cuff tear. On February 6, 1996, his treating physician notes that the claimant does have a right rotator cuff tear documented on an arthrogram and surgery was recommended. The doctor writes that the claimant could have some impairment and if it were a workers' compensation case he would have an impairment of 10 to 15 percent even after a repair. These medical records indicate that the claimant underwent surgery on his arm on March 6, 2006, and continued to be followed by his treating physician through May 16, 1996, when it is noted that the doctor is releasing the claimant back to work on May 20, 1996, with no restrictions and to keep on his medication Lodine. On June 18, 1996, the doctor note that the

claimant is back to work and doing well driving again at which time the doctor released the claimant from his care.

After a review of Respondents' Exhibit No. 2, I find that Respondent No. 1 was performing contract labor for Respondent No. 2 at the time of the claimant's injury. This finding is based on the reading of the Motor Carrier Transportation Contract as well as the testimony of Mr. Foulk. It is noted that this contract specifically sets forth in Paragraph 14, Subsection D, that the carrier, Respondent No. 1 herein, was responsible for carrying workers' compensation insurance on their employees. Mr. Darrell Foulk testified that he signed this document and that his signature is found on Page 5. It is further found that Respondent No. 2 is not a prime contractor or a general contractor, therefore, would not be responsible for the payment of compensation due to work related injury from one of their contract laborers.

After a review of the testimony, I also find that the relationship between Respondent No. 1 and the claimant is one of employer/employee not that the claimant was an independent contractor. Respondent No. 1 furnished as well as maintained the trucks which the claimant drove as well as secured and notified the claimant as to where and when he was to pick up product and where and when he was to deliver said product. The claimant was paid on a contract of hire of 25 percent of each load he delivered and was paid each week by Respondent No. 1 with Respondent No. 1 withholding social security as well as taxes from his gross pay.

After a review of Mr. Foulk's testimony it is quite clear that at the time of the claimant's injury Respondent No. 1 had two hired truck drivers and Mr. Foulk himself was an employee of the company. Mr. Foulk has testified that he arranged for and secured load information from Respondent No. 2, dispatched this information to his drivers at least twice a day, that he would occasionally drive in order to fill in for a driver. Mr. Foulk stated that from the date of the claimant's injury he drove a truck until it was determined that the claimant was unable to return to work. Mr. Foulk, by his own testimony, has set forth that he was not covered by a certificate of non coverage for workers' comp purposes and that he also would regularly move empty trailers for Respondent No. 2 from one distribution center to the other. It is clear from Mr. Foulk's testimony that he was very actively involved in carrying out the business of Respondent No. 1 and was paid for his services by taking draws from Respondent No. 1's account and placing them into his personal account. Ark. Code Ann. §11-9-102(11) sets forth that employment means (A) every employment in the state in which three or more employees are regularly employed by the same employer in the course of business. I find, therefore, that Respondent No. 1 at the time of the claimant's injury employed the claimant, Mr. Foulk as well as Lloyd Shane. I further find that Respondent No. 1 was liable for carrying workers' compensation insurance on their employees at the time of this claimant's injury. See Ark. Code Ann. §11-9-401(a)(1).

Based on a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for Respondent No. 1 on April 21, 2005. The claimant has testified and his testimony has not been challenged by Respondent No. 1 that he sustained a compensable injury on April 21, 2005, while working for Respondent No. 1. The claimant has testified that while he was inspecting a trailer he slipped and fell causing himself to hang by his right arm thus injuring his right arm which required medical treatment. The medical information sets forth objective medical findings to establish injury requiring treatment and further sets forth that this claimant has been unable to work as a result of his right shoulder problems since the date of his injury until he returned to work for another company on April 22, 2006. It is further found that the claimant is entitled to an impairment rating of 5 percent to the body as a whole as a result of his right shoulder injury as assessed by Dr. Sites and based on the A.M.A. Guides, Forth Edition. After reviewing the wage records, it is found that the claimant worked fifty-three weeks for Respondent No. 1. The last week the claimant worked should be excluded since he was unable to work a full week. Therefore, he had a total earning of \$32,227.50 entitling him to an average weekly wage of \$619.75. This would entitle the claimant to a workers' compensation rate for temporary total disability of \$413.00 and for permanent partial disability \$310.00. It is found, therefore, that Respondent No. 1 should pay for the cost of this claimant's medical treatment being entitled to

a credit for payments which they have previously made for the early part of the claimant's care. Respondent No. 1 should pay temporary total disability to this claimant from April 22, 2005, to April 27, 2006, in the amount of \$413.00 per week. Respondent No. 1 should then pay permanent partial disability to this claimant for this claimant's 5 percent whole body impairment.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. Respondent No. 1 was under contract with Respondents No. 2 to haul products.

3. The claimant is found to be an employee of Respondent No. 1 as defined by Arkansas law. See discussion above.

4. Respondent No. 1 had contracted with Respondent No. 2 to haul product as stipulated above and was not a subcontractor. See discussion above.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right shoulder on April 21, 2005, while working for Respondent No. 1. See discussion above.

6. Respondent No. 1 should pay for all reasonable and necessary medical care for this claimant's compensable injury being entitled to credit for those payments which they had made initially in this matter.

7. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from April 22, 2005, until April 27, 2006. See discussion above.

8. The claimant is entitled to a 5 percent whole body impairment rating for his right shoulder injury. See discussion above.

9. The claimant is entitled to a compensation rate of \$413.00 for temporary total disability and \$310.00 for permanent partial disability. See discussion above.

10. Respondent No. 1 was required under Arkansas law to carry workers' compensation insurance for its employees at the time of the claimant's injury. It has been discussed above that Mr. Foulk was found to be an employee of Respondent No. 1 as were Lloyd Shane and the claimant.

11. Respondent No. 1 and Respondent No. 2 should share the cost of this transcript. Respondent No. 3 has not been found liable for any benefits at this time, therefore, should not share in the cost of this transcript.

12. Respondent No. 1 has controverted this claim in its entirety.

13. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on April 21, 2005.

That Respondent No. 1 should pay for all reasonable and necessary medical treatment for this claimant's compensable injuries.

It is further found that the claimant was not an independent contractor but was an employee of Respondent No. 1 and that Respondent No. 1 was contract labor to Respondent No. 2. It is further found that Respondent No. 1 should have been carrying workers' compensation insurance at the time of this claimant's compensable injury as set forth by Arkansas law.

The claimant is entitled to a whole body impairment rating of 5 percent which Respondent No. 1 should pay.

Respondent No. 1 shall pay to the claimant PPD in the amount of 5 percent to the body as a whole.

The claimant is entitled to a compensation rate of \$413.00 for temporary total disability and \$310.00 for permanent partial disability.

Respondent No. 1 shall pay the claimant TTD from April 22, 2005, until April 27, 2006.

Respondent No. 1 and Respondent No. 2 should share in the cost of this transcript.

The respondent No. 1 shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE