

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300486 & F306740

MICHAEL MUGLEY, EMPLOYEE	CLAIMANT
QUALITY FOODS, EMPLOYER	RESPONDENT
CNA INSURANCE, CARRIER	RESPONDENT NO. 1
ROYAL & SUNALLIANCE, CARRIER	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 20, 2004

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE MARK VELASQUEZ, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 1 represented by HONORABLE LEE MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE RANDY MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondent No. 2 appeals from a decision of the Administrative Law Judge filed March 31, 2004.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims;
2. On December 26, 2002, the relationship of employee-employer-carrier existed between the

claimant, Quality Foods, and CNA Insurance Company. On December 26, 2002, the claimant earned an average weekly wage of \$607.50, which would entitle him to weekly compensation benefits of \$405.00 for total disability and \$304.00 for permanent partial disability.

3. On December 26, 2002, the claimant sustained a compensable injury to his right shoulder.

4. Respondent Carrier CNA Insurance Company has paid all appropriate medical expenses and temporary total disability benefits attributable to this compensable injury accruing to date.

5. On June 20, 2003, the relationship of employee-employer-carrier relationship existed between the claimant, Quality Foods, and Royal & SunAlliance.

6. On June 20, 2003, the claimant earned an average weekly wage of \$607.50, which would entitle him to weekly benefits for total disability in the amount of \$405.00 and weekly benefits for permanent partial disability in the amount of \$304.00.

7. On June 20, 2003, the claimant sustained a "new" compensable injury to his right shoulder. Specifically, on the date, he sustained a physical injury to his right shoulder that arose out of and occurred in the course of his employment with Quality Foods, that was caused by a specific incident, that is identifiable by time and place of occurrence, that caused internal physical harm to his body, and that required medical services and resulted in disability. The actual existence of this "new" physical injury is established by medical evidence, which is supported by objective findings.

8. The medical services provided to the claimant for his right shoulder difficulties by and at the direction of Dr. Mark Powell, beginning on

June 30, 2003, and continuing through at least the date of hearing, represent "reasonably necessary medical services" for the claimant's most recent compensable injury of June 20, 2003. Specifically, the greater weight of the evidence shows that these medical services were solely necessitated by the compensable injury of June 20, 2003, and that these services actually accomplished the purposes or goals for which they were intended. Pursuant to Ark. Code Ann. § 11-9-508, the expense of these services is solely the liability of the respondent Royal & SunAlliance. This liability is subject to the medical fee schedule established by this Commission.

9. The claimant was rendered temporary totally disabled by his most recent compensable injury on June 20, 2003, for the periods beginning June 28, 2003, through July 15, 2003, and beginning August 28, 2003, through October 7, 2003. Specifically, during these periods the claimant continued within his healing period from the effects of his compensable injury of June 20, 2003, and was totally disabled from performing all forms of regular gainful employment as a result of the disabling effects of this compensable injury.

10. The claimant was rendered temporarily partially disabled by his compensable injury of June 20, 2003, for the period of July 16, 2003, through August 27, 2003. Specifically, during this period he continued within his healing period from the effects of this compensable injury and had experienced a reduction in his earnings as a result of the temporarily disabling effects of this compensable injury.

11. The appropriate amount of weekly compensation for temporary partial disability benefits during the foregoing period is \$232.00

12. The claimant has failed to prove by the greater weight of the credible evidence that he was rendered temporarily partially disabled on and

after October 8, 2003. Specifically, he has failed to prove that on and after that date he has experienced any actual reduction in his earning capacity as a result of the temporarily disabling effects of either of his compensable injuries.

13. Respondent Carrier CNA Insurance Company, has controverted the claimant's entitlement to any medical expenses or temporary total disability benefits accruing after June 3, 2003.

14. Respondent Carrier Royal & SunAlliance, has controverted the claimant's entitlement to any and all benefits.

15. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted weekly indemnity benefits herein awarded from Royal & SunAlliance.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. All accrued benefits shall be paid in a lump sum

without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

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KAREN H. MCKINNEY, Commissioner