

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508670

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

OPINION FILED OCTOBER 9, 2007

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

Claimant represented by HONORABLE CONRAD ODOM, Attorney at Law, Fayetteville, Arkansas.

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

Respondent No. 2 represented by HONORABLE MELISSA LEE, Attorney at Law, Springdale, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed October 26, 2006, and as amended on November 13, 2006.

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

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

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

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

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.

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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.