

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F700295 & F703322

TIMMY HENSLEY, EMPLOYEE CLAIMANT

COOPER TIRE & RUBBER COMPANY,
SELF-INSURED EMPLOYER RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND, CARRIER/TPA RESPONDENT NO. 2

OPINION FILED February 24, 2011

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at
Law, Little Rock, Arkansas.

Respondent No. 1 represented by the HONORABLE WILLIAM G. BULLOCK,
Attorney at Law, Texarkana, Texas.

Respondent No. 2 waived appearance at the hearing.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative
Law Judge filed October 6, 2010.

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

1. The claimant, Timmy Hensley, was an
employee of Cooper Tire & Rubber Company
on December 12, 2006.
2. The claimant, Timmy Hensley, was an employee of
Cooper Tire & Rubber Company on January 9, 2007.
3. Respondent No. 1 accepted the claimant's shoulder

claims and has paid, and continues to pay, extensive benefits in relation thereto.

4. Dr. Hasan determined that claimant was at MMI with regard to his left shoulder on August 25, 2008.
5. Dr. Hasan determined that claimant was at MMI with regard to his right shoulder on December 15, 2008.
6. The claimant has sustained a 38% impairment rated to the whole body.
7. Respondent No. 1 has controverted all permanent disability benefits in excess of the 38% rate to the whole body.
8. The claimant earned an average weekly wage at the time of his injury on December 12, 2006, sufficient to entitle him to the maximum compensation rates for 2006.
9. The claimant earned an average weekly wage at the time of his injury on December 12, 2006, sufficient to entitle him to the maximum compensation rates for 2007.
10. The claimant earned an average weekly wage at the time of his injury on January 9, 2007, sufficient to entitle him to the maximum compensation rates for 2007.
11. The claimant is entitled to benefits for a 30% decrease in his wage earning capacity attributable to his compensable bilateral shoulder injuries. Of that 30% decrease, 15% is hereby apportioned to the claimant's 2006 right shoulder injury and 15% is apportioned to the claimant's 2007 left shoulder injury for purposes of determining the appropriate compensation rate.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I concur in the finding that the claimant is not entitled to permanent and total disability benefits. I also concur in the award of 30% wage-loss disability. However, as the evidence of record clearly shows that the claimant is only capable of earning, at the high end, \$12 per hour or \$25,360 per year, the majority's award of 30%, is, under Taggart v. Mid-American Packaging, __ Ark. App. __, __ S.W.3d __ (April 29, 2009), insufficient. As the claimant was making \$85,000 when he was injured, it cannot be said that substantial evidence supports a limited award of 30% wage-loss disability. The

evidence of record calls for a wage-loss award in the amount of at least 60%. Therefore, in addition to the 30% wage-loss disability awarded by the majority, I would award an additional 30% wage-loss disability.

PHILIP A. HOOD, Commissioner