

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-014447

Employee: Jerry Johnson
Employer: Skipco
Insurer: Uninsured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: January 31, 2005

Place and County of Accident: Jasper County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 23, 2008. The award and decision of Administrative Law Judge Karen Wells Fisher, issued April 23, 2008, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 9th day of September 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Jerry Johnson

Injury No. 05-014447

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Employer: Skipco

Additional Party: Second Injury Fund

Insurer: Uninsured

Hearing Date: January 16, 2008

Checked by:

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? YES
2. Was the injury or occupational disease compensable under Chapter 287? YES
3. Was there an accident or incident of occupational disease under the Law? YES
4. Date of accident or onset of occupational disease: JANUARY 31, 2005
5. State location where accident occurred or occupational disease was contracted: JASPER COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? UNINSURED
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
PAINTING AND DUSTING CEILINGS
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: LUNGS
14. Nature and extent of any permanent disability: 10 PERCENT BODY AS A WHOLE
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? \$400.00
18. Employee's average weekly wages: \$400.00
19. Weekly compensation rate: \$266.67

20. Method wages computation: STATUTORY

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$400.00

4 weeks of temporary total disability (or temporary partial disability) (1,066.68)

40 weeks of permanent partial disability from Employer (10,666.80)

0 weeks of disfigurement from Employer

22. Second Injury Fund liability: YES - payment of medical due to uninsured employer

Total: \$400.00

23. Future requirements awarded: none

Said payments to begin IMMEDIATELY and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

THOMAS P. CARLTON

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jerry Johnson

Injury No. 05-014447

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Skipco

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Uninsured

Hearing Date: January 16, 2008

Checked by:

AWARD ON HEARING

A hearing was held in the above-referenced injury before Administrative Law Judge, Karen Fisher, on January 16, 2008. Attorney Tom Carlton appeared on behalf of the claimant and Assistant Attorney General Barbara Bean appeared on behalf of the Second Injury Fund. The purpose of the hearing was to determine compensability and benefits on behalf of a claimant who was employed by an uninsured employer.

ISSUES

The issues to be determined as a result of this hearing are as follows:

1. Whether the claimant was an employee of Lowell Skip Hargrave and Skipco, Incorporated.

2. Whether the employer was required to have workers' compensation insurance as required by §287.030, RSMo.

3. Whether or not the employer, Lowell Skip Hargrave and Skipco, Incorporated are, in fact, covered by workers' compensation as required by the laws in the state of Missouri.

4. Whether or not the employee was exposed during his employment with Lowell Skip Hargrave and Skipco, Incorporated to that which would have led to his symptoms of which he complains which are respiratory in nature.

5. The compensation rate for purposes of temporary total disability and permanent partial disability.

6. Whether the employee was entitled to temporary total disability benefits.

7. Whether the past medical that employee incurred is reasonable and necessary and as a result of the work-related condition.

8. The nature and extent of permanent partial disability that the employee may have suffered.

EVIDENCE SUBMITTED

Claimant testified on his own behalf as well as offering the following exhibits which were admitted into evidence.

Exhibit A	Division of Workers' Compensation file printout
Exhibit B	Dr. Paul's Notice of Intent
Exhibit C	St. John's records
Exhibit D	Midwest Orthopedic records
Exhibit E	Community Clinic records
Exhibit F	Dr. Paul's bill
Exhibit G	Correspondence 1/3/05
Exhibit H	Affidavit from Proof of Coverage Section

The Second Injury Fund offered into evidence the following exhibit which was admitted into evidence:

Roman Numeral I	Correspondence 05/03/06
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FACTS

Claimant testified that at the time of hearing he was 44 years of age and had attended two years of college and earned an Associate's Degree. During his life he had held mostly construction jobs. On January 31, 2005, he was hired at the Career Center in Joplin and was employed by Lowell Skip Hargrave and Skipco Company, Incorporated, which is a construction business. The job on which the claimant worked was painting the Tamko building in Joplin, Missouri. The claimant was paid weekly by check from Mr. Hargrave. He testified that his employment was directed and controlled by Mr. Hargrave in terms of how, when, and where he worked throughout the day. Additionally, the employer provided all the supplies necessary to complete the job. The claimant only worked for Mr. Hargrave in the state of Missouri during his employment. Claimant also testified that there were probably six people who worked there at the time he was employed. He earned \$10.00 an hour and worked 40 hours per week. This resulted in a gross average weekly wage of \$400.00.

The claimant worked from January 31, 2005, to February 14, 2005, which is a period of two weeks. During that time he was cleaning and preparing the ceilings of the Tamko building in Joplin to be painted. This included dusting the ceiling with a broom. During the time he was painting he was also off and on mixing the paint with a half-inch drill and a mixer. He began having problems with his lungs and ask his employer to provide a respirator. This

was not provided. He noticed that he was light-headed a few minutes after he started mixing. He was told there were respirators, but the only one he found had no filters.

He worked for two weeks with no respirator in the paint fumes and dust. As a result the employee suffered injury to his lungs. He had no prior lung or respiratory problems. Claimant testified that he felt like his lungs were on fire when he went home after the second day and tried to sleep. He reported his problem to Lance Martin on the third day. He was never provided any medical attention. He later requested treatment through his attorney. The claimant testified that he did not work from February 14th through March 14th as a result of his shortness of breath and headaches. This is a period of four weeks. The claimant testified that he continues to suffer from fatigue, shortness of breath, and burning in his lungs.

Currently the claimant wakes up with burning sensation in his chest and experiences shortness of breath throughout the day. He can no longer run or play basketball. He is able to do some yardwork and basic maintenance of his home.

The sole medical evidence in this case is the report of Dr. Paul, an occupational medicine physician from Tulsa, Oklahoma, who evaluated claimant on July 27, 2005. Dr. Paul ordered a pulmonary test which showed he had diminished lung capacity due to chemical exposure. Dr. Paul concluded that the claimant had developed an acute chemical pneumonitis as a result of exposure to volatile organic compounds at work. It was his opinion that the claimant's was the proximate cause and the substantial factor of his lung complaints. He further indicated that although the claimant was a smoker that this history was noncontributory in the current symptoms as claimant had stopped smoking in 2002 or before.

Dr. Paul ordered the pulmonary function test on August 17, 2005, and issued a report on October 5, 2005, regarding that test. According to Dr. Paul the pulmonary function test indicated that the claimant was suffering from mild pulmonary function loss. He, at that time, had a problem indicative of small airway disease. Dr. Paul states that it is his opinion that the claimant has a, "10 percent whole-man impairment due the on-the-job injury of February 14, 2005, due to cumulative trauma of exposure to the volatile organic compounds involved in the Tamko roofing plant exposure."

FINDINGS

I find the claimant's testimony to be believable and credible and that there is no evidence to dispute claimant's testimony. Therefore, I find that the claimant was, at a minimum, a statutory employee of Lowell Skip Hargrave and Skipco, Inc. under Missouri law. I find that Lowell Skip Hargrave and Skipco Incorporated had at least one employee as required by Missouri state law to be required to carry workers' compensation insurance. I also find that neither entity was insured by workers' compensation as required by law. I find that claimant was exposed to paint fumes and dust during his employment with Skipco Incorporated. I therefore find that the exposure arose out of and the course and scope of his employment. I find that the employee's average weekly wage was \$400.00 per week resulting in a compensation rate for purposes of this case of \$266.67.

Dr. Paul, in his report, believed that the claimant should have received temporary total disability benefits from the time that he was taken off work for the injury until he had a pulmonary workup. Claimant's testimony indicated that he began to work after a four-week period. Dr. Paul's report stated that employee should not have been working. I therefore order four weeks of temporary total disability benefits be paid to employee at a rate of \$266.67 per week (\$1066.68).

I find that the initial evaluation by Dr. Paul was reasonable and necessary in light of the employee's symptoms and exposure at work. The bill of Dr. Paul for the July 27, 2005, evaluation for \$400.00 was incurred by claimant in an attempt to seek medical treatment and evaluation. I find that employee made reasonable attempts to obtain treatment from the employer. I order that employee be reimbursed \$400.00 for this medical expense. However, the later report issued on October 5, 2005, was primarily a rating report and not one incurred as a result of seeking medical treatment. I do not award payment for this later report. I order the Second Injury Fund to pay \$400.00 to claimant for reimbursement of his medical expense as the employer was not insured as required by Missouri law.

The report of Dr. Paul is the only medical report offered in this case. There is no evidence to contradict it. I find Dr. Paul's opinion to be credible and as a result I find that the employee's exposure to volatile organic compounds at work caused his diminished pulmonary function. I find that the nature and extent of the permanent partial disability resulting from that loss of pulmonary function would be 10 percent of the body as a whole. This would entitle employee to \$10,666.80.

Claimant's attorney, Thomas P. Carlton, has requested an attorney's fee of 25 percent of all amounts awarded herein. I find that request to be reasonable and allow Thomas P. Carlton an attorney's fee of 25 percent of all amounts awarded here to be paid and which shall constitute a lien upon this award.

Date: April 23, 2008

Made by: /s/ Karen Wells Fisher

Karen Wells Fisher
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Jeffrey W. Buker

Jeffrey W. Buker

Director

Division of Workers' Compensation