

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

Injury No.: 09-053294

Employee: Raymond Nichols
Employer: ABC Moving and Storage
Insurer: Arch Insurance Company

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 23, 2011. The award and decision of Chief Administrative Law Judge Paula A. McKeon, issued August 23, 2011, 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 19th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD

Employee: Raymond Nichols Injury No.: 09-053294
Employer: ABC Moving and Storage
Insurer: Arch Insurance Company
Additional Party: N/A
Hearing Date: August 9, 2011 Checked by: PAM/cy

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the alleged 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 alleged accident or onset of occupational disease: May 29, 2009.
5. State location where alleged accident occurred or occupational disease was contracted: Jackson County, Missouri.
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 alleged 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? Yes.
11. Describe work employee was doing and how alleged accident occurred or occupational disease contracted: Raymond Nichols injured his shoulder while shifting gears of his truck.
12. Did accident or occupational disease cause death? No Date of death? N/A

13. Part(s) of body injured by accident or occupational disease: Right upper extremity.
14. Nature and extent of any permanent disability? 5% permanent partial disability to the right shoulder.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$4,566.57
17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$560.00
19. Weekly compensation rate: \$373.33
20. Method wage computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensable payable: 5% of 232 weeks equals 11.6 weeks at \$373.33 per week equals \$4,330.63.
22. Future medical care: None

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to Claimant: G. Winton Huston.

FINDINGS OF FACT and RULINGS OF LAW

Employee: Raymond Nichols Injury No.: 09-053294
Employer: ABC Moving and Storage
Insurer: Arch Insurance Company
Additional Party: N/A
Hearing Date: August 9, 2011 Checked by: PAM/cy

On August 9, 2011, the parties appeared for final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Raymond Nichols, appeared in person and with counsel, G. Winton Huston. The Employer/Insurer appeared by counsel, Brian Fowler, and Corporate Representative, Todd Reynolds.

STIPULATIONS

The parties stipulated to the following:

- 1) That both the Employer and Employee were operating under and subject to the Missouri workers' compensation law;
- 2) That the Employer was fully insured by Arch Insurance Company;
- 3) That Nichols' compensation rate is \$373.33 per week;
- 4) That a timely claim for compensation was filed;
- 5) That medical expenses totaling \$4,566.57 were paid. No temporary total disability was paid.

ISSUES

The issues to be resolved at this hearing are as follows:

- 1) Whether Raymond Nichols sustained an accident arising out of and in the course of his employment with ABC moving on May 29, 2009;
- 2) Whether Claimant is entitled to future medical care as necessary to cure and relieve the effects of a May 29, 2009 injury;
- 3) Whether the employer received notice of an injury of May 29, 2009;
- 4) What is the nature and extent of permanent disability.

On May 29, 2009, Raymond Nichols was employed as a truck driver with ABC Moving and Storage. It was Nichols' first day of employment with ABC. Nichols testified, while attempting to turn into a driveway, he experienced difficulty maneuvering the gear shift of the truck, which resulted in injury to his right shoulder.

Nichols continued to work the entire shift. Nichols was unable to report the injury that day because the office had closed for the weekend. Nichols did report the injury the following Monday, but continued to work and did not seek medical attention.

Nichols maintained concurrent employment with Penske. Nichols delivered newspaper bundles to newspaper carriers. In addition to driving the truck, Nichols was required to lift and move newspaper bundles.

On July 14, 2009, Nichols presented to the VA with right shoulder complaints of three weeks in duration. Records indicate the pain started when moving furniture. The record also indicates "no known specific injury to cause pain."

Nichols then went back to ABC Storage to request medical treatment. Nichols was referred for physical therapy and ultimately to Dr. Stechschulte. Dr. Stechschulte concluded that Nichols was a surgical candidate for right rotator cuff repair, but he could not attribute the problems to the gear shifting incident of May 29, 2009. Stechschulte does think the May 29, 2009 incident may have exacerbated a pre-existing shoulder condition.

Dr. Stuckmeyer evaluated Nichols and concludes that the injury of May 29, 2009 was the direct and proximate cause of Nichols' right shoulder injuries. Stuckmeyer recommends surgery or, alternatively, 35% permanent partial disability at the shoulder. Both Drs. Stuckmeyer and Stechschulte indicate in their reports that Nichols was completely asymptomatic prior to the May 29, 2009 incident. This is not accurate. Medical records from the VA in 2007 clearly note Nichols right arm symptoms and complaints. Additionally, neither Dr. Stuckmeyer nor Stechschulte was provided information regarding Nichols' job duties with Penske, which included repetitive lifting of newspaper bundles. The lack of Nichols' vocational history significantly affects the credibility of Dr. Stuckmeyers' findings.

Nichols continues to have shoulder complaints and pain. His right shoulder "pops". He uses his left arm to accommodate.

Todd Reynolds, Vice President of operations with ABC Moving and Storage acknowledges that the transmission in the truck was difficult to maneuver. He also acknowledged that he was aware of Nichols' injury. Reynolds confirmed the truck had clutch and gear problems which were subsequently repaired by a mechanic.

Based on the testimony of Nichols and Reynolds, medical records and reports, I find Raymond Nichols sustained an accident on May 29, 2009, arising out of and in the course of his

employment with ABC Moving and Storage. I further find that the employer had verbal notice of the injury and that the employer was not prejudiced by lack of written notice.

I do not find Nichols' May 29, 2009 injury was the prevailing factor in his need for medical treatment as consistent with the report of Dr. Stechschulte. While Dr. Stechschulte did not assess permanent disability attributable to this May 29, 2009 injury, he did acknowledge an exacerbation of a preexisting shoulder condition. Therefore, I find Nichols to have sustained 5% permanent partial disability as a result of continued weakness in his right shoulder attributable to his May 29, 2009 injury. The award of compensation is \$4,330.63 (11.6 weeks at \$373.33 per week.)

The above award of compensation is subject to a lien in the amount of 25% to G. Winton Huston for necessary legal services rendered to Claimant.

Made by: _____
Paula A. McKeon
Chief Administrative Law Judge
Division of Workers' Compensation