

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

Injury No.: 01-071301

Employee: Michael W. Scott

Employer: Advance Logistics, LLC

Insurer: American Manufacturer's Mutual Insurance Company

Date of Accident: January 19, 2001

Place and County of Accident: Cape Girardeau 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 May 6, 2005. The award and decision of Chief Administrative Law Judge Jack H. Knowlan, Jr., issued May 6, 2005, 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.

This award also is subject to a lien in favor of the Division of Child Support Enforcement.

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

Given at Jefferson City, State of Missouri, this 1st day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Michael W. Scott

Injury No.: 01-071301

Dependents: N/A

Employer: Advance Logistics, LLC

Additional Party: N/A

Insurer: American Manufacturer's Mutual Insurance Company

Hearing Date: January 25, 2005 (Completed February 7, 2005)

Checked by: JK/sm

SUMMARY OF FINDINGS

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 19, 2001
5. State location where accident occurred or occupational disease contracted: Cape Girardeau County
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? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted: Employee injured his right shoulder while lifting a battery changer for his forklift.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Right shoulder
14. Nature and extent of any permanent disability: 10% of the right upper extremity at the 232 week level
15. Compensation paid to date for temporary total disability: \$4,745.85
16. Value necessary medical aid paid to date by employer-insurer: \$10,194.94
17. Value necessary medical aid not furnished by employer-insurer: None
18. Employee's average weekly wage: \$572.78
19. Weekly compensation rate: \$381.85 for temporary total disability and \$314.26 for permanent partial disability
20. Method wages computation: By agreement
21. Amount of compensation payable: 23.2 weeks of permanent partial disability (\$7,290.83)

TOTAL	\$ 7,290.83
Less Credit for amount advanced by employer-insurer	<u>(3,645.42)</u>
NET AMOUNT DUE TO EMPLOYEE	<u>\$ 3,645.41</u>

22. Second Injury Fund liability: N/A

23. Future requirements awarded: None

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Chris Weiss.

The compensation awarded to employee is also subject to a child support lien filed by the Missouri Division of Child Support Enforcement, Department of Social Services.

FINDINGS OF FACT AND RULINGS OF LAW

On January 25, 2005, the employee, Michael W. Scott, appeared in person and by his attorney, Mr. Chris Weiss, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Mr. Jim Kennedy. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. On or about January 19, 2001, Advance Logistics, LLC was an employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by American Manufacturer's Mutual Insurance Company.
2. On or about January 19, 2001, Michael W. Scott was an employee of Advance Logistics, LLC, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about January 19, 2001, the employee sustained an accident which arose out of and in the course of his employment.
4. The employer had notice of the employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was \$572.78 per week and his rate of compensation is \$381.85 for temporary total disability and \$314.26 for permanent partial disability.
7. The employer-insurer paid medical bills totaling \$10,194.94.
8. The employer-insurer paid temporary total disability benefits totaling \$4,745.85. These payments covered 12 3/7 weeks commencing on January 19, 2001 and ending on April 15, 2001.
9. The employer-insurer previously advanced the sum of \$3,645.42 to the employee, and is entitled to a credit for this amount against any award of permanent partial disability.
10. The amount awarded to the employee is subject to a child support lien filed by the Missouri Division of Child Support Enforcement.

ISSUES:

SUMMARY OF THE EVIDENCE:

At the time of his accident on January 19, 2001, Michael W. Scott was working as a forklift operator for Advance Logistics, LLC. Although the employer-insurer questioned the employee's version of the accident, the employee testified that his injury occurred when he was lifting a manual battery charger in order to change the battery in his forklift. The employee stated that when he lifted the battery charger, he felt pain shoot through his shoulder and arm. He stated that it felt like "someone had put a wedge in there and was trying to tear my arm off."

After reporting his accident, the employee was authorized by the employer to seek medical treatment. The medical records from Southeast Missouri Hospital, Occupational Medical Services, Southeast Patient Rehab, Cape Imaging, Mid-America Rehab and Dr. Herbert Haupt all confirm that both the employee and the health care providers believed the employee had suffered an injury to his right shoulder (Employee's Exhibit A, B, C, D, E, F and G and Employer-insurer's Exhibit 1).

The emergency room physician at Southeast Missouri Hospital diagnosed the employee as having an acute right shoulder and pectoralis strain. The employee told the emergency room doctor that he felt a pop and pain in his right shoulder. The emergency room physician ordered x-rays of the employee's right shoulder that were negative (Employee's Exhibit A). The employee was subsequently treated by Sarah Froemsdorf, who is a nurse practitioner with Occupational Medical Services. The employee gave a history of his right shoulder popping, with pain that ran into his arm. The employee was diagnosed as having a right shoulder strain. A subsequent MRI was negative for any rotator cuff or labrum tear (Employee's Exhibit E). None of the early medical records from Occupational Medical Services indicate the employee ever complained of neck pain or other symptoms that would typically be associated with a herniated disc in his cervical spine (Employee's Exhibit C).

The Cape Imaging MRI report dated March 13, 2001 also indicates both the employee and the health care providers believed the employee had injured his right shoulder. In his clinical history taken prior to the MRI of the employee's right shoulder, the radiologist recorded the employee's comments as follows:

The patient was injured on January 19, 2001. He states he was injured at work. He suggests that this represented a twisting and/or hypertension injury. He has not had any previous surgery or fracture involving this joint. He has multiple symptoms to include pain, swelling, limitation of motion, and a sensation that the joint gives out.

(Employee's Exhibit E.)

The physical therapy records from Southeast Outpatient Rehab indicate that in January and February of 2001, the employee received approximately ten sessions of occupational therapy and 20 sessions of physical therapy. These records also indicate that neither the employee nor the therapist felt the employee had suffered any injury to his neck or cervical spine. The employee's primary, recurring complaint was of pain, popping, soreness or aching in his right shoulder. The therapy records do note that on a few occasions, the employee experienced pain that went from his upper arm into his forearm and numbness in his right arm (Employee's Exhibit D).

When the conservative treatment from Nurse Practitioner Froemsdorf failed to resolve the employee's complaints of right shoulder pain, the employer authorized additional treatment with Dr. Herbert Haupt, who is an orthopedic surgeon in St. Louis, Missouri. Dr. Haupt first saw the employee on April 11, 2001, with a chief complaint of right shoulder discomfort. Based on his physical examination and his review of the MRI, Dr. Haupt concluded the employee had strained his right shoulder. Dr. Haupt felt that the employee had received appropriate rehabilitation, and recommended he be allowed to return to his functional activities at work while maintaining a home exercise program (Employer-insurer's Exhibit 1, page 7-9).

The employee saw Dr. Haupt again on May 2, 2001, with continued complaints of soreness in his right shoulder. The employee was maintaining his full work duties, but was experiencing discomfort at night while sleeping. Dr. Haupt then prescribed additional physical therapy at Mid America Rehab to strengthen the scapular stabilizers around his shoulder blade (Employer-insurer Exhibit 1, page 11).

The initial evaluation at Mid America Rehab on May 4, 2001, is consistent with the other medical records. The employee complained of right shoulder pain and weakness, and reported that he had injured his shoulder on January 18, 2001 while lifting a battery chain. The employee stated that he had a constant ache with occasional sharp pain in the posterior aspect of his right shoulder. Once again, the employee did not report any neck pain or other symptoms to indicate he might have been suffering from a herniated cervical disc (May 4, 2001 evaluation in Employee's Exhibit F).

On May 9, 2001, however, the employee reported that, in addition to soreness in his shoulder, he had "intermittent feeling of hitting my funny bone." He described this sensation as "pins and needles that comes and goes down into the hand" (Employee's Exhibit F). In his next therapy session on May 14, 2001, the record notes, "patient has intermittent tingling into ulnar three fingers of right hand." The employee had gone back to work on May 11, 2001, and stated he was feeling a lot stronger (Employee's Exhibit F).

In his last physical therapy visit prior to his discharge by Dr. Haupt, the employee reported, "only an occasional ache in his right shoulder." The therapist concluded the employee had made excellent progress (Employee's Exhibit F).

In his last visit with Dr. Haupt on May 30, 2001, the employee reported he was doing much better with his shoulder, but was concerned about discoloration in the anterior aspect of his biceps. Dr. Haupt concluded the employee was at MMI, and discharged him to return to full duty (Employer-insurer Exhibit 1, page 11 and 12). Dr. Haupt did not record any symptoms or complaints to indicate the employee might have been suffering from an injury to his cervical spine.

The employee's original complaint of a work-related injury to his right shoulder was complicated when the employee had a motor vehicle accident on June 14, 2001. Both the employee's testimony and the accident report indicate the employee was driving home after working all night when he fell asleep and drove his car into a concrete flood wall on Main Street in Cape Girardeau. A police officer reported that he was using his radar gun on the employee's car when he observed the employee's car drive into the flood wall at 32 miles per hour without slowing down. Both the accident report and the ambulance records confirm the employee struck his head on the steering wheel causing injuries to his head and neck (Employee's Exhibit G).

The ambulance report confirms that after his motor vehicle accident, the employee was complaining of severe neck pain. The employee was placed in a cervical collar, removed from the Isuzu Trooper that was "totaled," and placed on a long spine board with his head secured. The employee was then transported to the emergency room at Southeast Missouri Hospital in Cape Girardeau, Missouri (Employee's Exhibit H).

Although the emergency room records from the day of the motor vehicle accident were not offered by either party, subsequent hospital records and the testimony of Dr. Allan C. Gocio establish that after his motor vehicle accident, the

employee was diagnosed with a large herniated disc at the C5/6 level (Employee's Exhibit K and I). On August 7, 2001, Dr. Gocio performed an anterior cervical discectomy, decompression of the spinal cord and cervical nerve roots and a cervical fusion with bone graft and anterior plating.

After this surgery Dr. Gocio kept the employee off work until April 15, 2002. Dr. Gocio initially released the employee to "medium work activity" on April 5, 2002. On February 26, 2003, Dr. Gocio released the employee with a permanent 30 pound lifting restriction. Dr. Gocio felt the employee should not return to heavy work activity, but was capable of performing light to moderate duty (Employee's Exhibit I, page 10-12 and attached Deposition Exhibit Number 2).

The employee testified that after his motor vehicle accident, he was not able to find work until Dr. Gocio released him. At the time of the hearing, the employee was working as a mechanic. He noted that he still has problems bending over and using tools that vibrate. He is no longer able to drive a forklift or trucks that bounce or jar his neck.

The employee is requesting an award for temporary total disability from June 15, 2001 through February 26, 2003. He is also requesting unpaid medical expenses totaling \$9,268.36. These bills were admitted as Employee's Exhibit M and are all related to the treatment of his herniated cervical disc following his motor vehicle accident. The employee is also requesting an award for permanent partial disability for injuries to his neck and/or shoulder.

To support his position that his herniated cervical disc was caused by his January 19, 2001 accident at work, the employee offered the deposition testimony of Dr. Raymond Cohen and Dr. Allan Gocio.

Dr. Raymond Cohen is a neurologist in St. Louis, Missouri, who testifies frequently on behalf of claimants in workers' compensation cases. Dr. Cohen examined the employee on December 29, 2003, and his medical report was admitted as Deposition Exhibit 2 attached to Employee's Exhibit C. Based on his examination of the employee and his review of the medical records, Dr. Cohen diagnosed the employee as being "status post cervical surgery for disc herniation on the right at C5/6 and cervical myofascial disorder" (Employee's Exhibit L, page 11).

Dr. Cohen further testified that the "cause of that injury is from an injury he had at work on or about January 16, 2001" (Employee's Exhibit L, page 12). Dr. Cohen felt that the treatment the employee received from his neck condition was medically necessary and reasonable (Employee's Exhibit L, page 13), and gave the employee a disability rating of 45% of the body as a whole. Dr. Cohen attributed 40% of the total disability to the January 19, 2001 accident, and the remaining 5% to the motor vehicle accident (Employee's Exhibit L, page 14).

During cross-examination by the employer-insurer's attorney, Dr. Cohen acknowledged that the basis for his opinion on causation was the employee's statement that his symptoms after his motor vehicle accident in his right upper extremity and neck were basically the same as they were prior to the accident (Employee's Exhibit L, page 26). Dr. Cohen also agreed that a car striking a concrete wall at 32 miles per hour would not be a minor accident as suggested by Dr. Gocio (Employee's Exhibit L, page 19). He then admitted that hitting a flood wall at that speed would be more than sufficient to cause a herniated disc in the cervical spine (Employee's Exhibit L, page 20). Upon further questioning, Dr. Cohen acknowledged that no one had diagnosed a herniated cervical disc or suggested surgery prior to the motor vehicle accident (Employee's Exhibit A, page 21). He then agreed that the motor vehicle accident aggravated the employee's neck condition to the extent that the employee needed surgery (Employee's Exhibit L, page 27). Dr. Cohen also admitted that some patients have numbness or tingling in their shoulder, arm or hand, secondary to a shoulder injury (Employee's Exhibit L, page 29).

The employee also offered the deposition of Dr. Allan C. Gocio. Dr. Gocio is a neurosurgeon who was practicing in Cape Girardeau at the time of the employee's motor vehicle accident. After reviewing his treatment of the employee, Dr. Gocio diagnosed the employee as having a "cervical disc herniation with nerve root and spinal cord compression, and that condition had been aggravated by a recent motor vehicle accident" (Employee's Exhibit I, page 13).

On the issue of causation, Dr. Gocio stated, "I felt the cause of the disc herniation was the previously recorded industrial accident where the patient experienced a pop and onset of pain and numbness in the right upper extremity on/about January 16, 2001" (Employee's Exhibit I, page 13 and 14). Dr. Gocio therefore concluded that the January 16, 2001 incident was a substantial factor in causing the disc herniation (Employee's Exhibit I, page 14).

During his direct examination, Dr. Gocio gave no explanation as to why he felt the cervical disc herniation was caused by the January, 2001 work accident as opposed to the motor vehicle accident on June 14, 2001. During the employer-insurer's cross-examination, however, Dr. Gocio acknowledged that he had never examined the employee prior to the motor vehicle accident. He also agreed that he had never reviewed the medical records from the time period before the motor vehicle accident (Employee's Exhibit I, page 17 and 18). During additional questioning, Dr. Gocio admitted that his opinion was based on the employee's history that his symptoms following the lifting incident at work in January of 2001 were very similar to the symptoms he experienced after the motor vehicle accident (Employee's Exhibit I, page 26).

The employer-insurer medical evidence was offered through the deposition testimony of Dr. Herbert Haupt. After reviewing his treatment records, Dr. Haupt testified that he had examined the employee and had prepared a report on May 28, 2002. Based on this examination, Dr. Haupt diagnosed the employee as having suffered a shoulder strain as a result of his work injury in January of 2001 (Employer-insurer Exhibit 1, page 19). On the issue of causation, Dr. Haupt reached the

following conclusion:

Well, based upon review of history, examination, excellent response to conservative management regarding his shoulder complaints, it is my best medical opinion that there was no indication that the work-related injury of January 18, 2001 would have caused or resulted in a disc herniation at C5/6. I should also note that his examinations and symptoms were not consistent with findings associated with neurological involvement.

(Employer-insurer Exhibit 1, page 20).

Dr. Haupt did not believe that any of the treatment the employee received for his neck or the herniated disc at the C5/6 level was related to his work accident (Employer-insurer Exhibit 1, page 22). Dr. Haupt also confirmed that during his treatment of the employee, the employee did not describe any symptoms consistent with a herniated disc at the C5/6 level (Employer-insurer Exhibit 1, page 22).

After Dr. Haupt stated his opinion on the issue of causation, the employer-insurer's attorney advised Dr. Haupt of the instances where the employee had complained of numbness or tingling in his right arm and the ulnar three fingers of his right hand. When asked to assume these additional complaints, Dr. Haupt noted that it was not uncommon for patients with a shoulder injury to hold their arm in a flexed, dependent fashion, and consequently develop an irritation of the ulnar nerve (Employer-insurer Exhibit 1, page 23 and 24). Dr. Haupt therefore did not feel that this additional information regarding the employee's complaints of numbness and tingling would change his opinion on the issue of causation (Employer-insurer Exhibit 1, page 25).

During cross-examination by the employee's attorney, Dr. Haupt commented on the nerve distribution patterns for cervical discs. Before his motor vehicle accident, the employee was complaining of numbness and tingling in his ulnar three fingers. Dr. Haupt pointed out that compression of the ulnar nerve is associated with an acute disc herniation at C7/8 (Employer-insurer Exhibit 1, page 33 and 35). Dr. Haupt added that the employee's C5/6 herniation would cause tingling and numbness in the thumb and index finger rather than the three ulnar fingers described by the employee prior to the motor vehicle accident (Employer-insurer Exhibit 1, page 36).

At the conclusion of the hearing, the employer-insurer's attorney requested that the hearing be continued and the record left open to submit a videotape of other employees at Advanced Logistics using the manual battery changer. The employer-insurer's attorney also wanted to pursue the possibility of deposing other witnesses who were former employees of Advance Logistics. The videotape was subsequently received and admitted on February 7, 2005, as Employer-insurer Exhibit 2.

Although the employer-insurer's attorney initially requested additional time to locate other witness, after an objection by the employee's attorney, the employer-insurer's attorney agreed that the record could be closed as of February 7, 2005. The employee's attorney then filed his brief on March 4, 2005, and the employer-insurer's brief was received on March 18, 2005.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Wage statement
- B. Southeast Missouri Hospital records
- C. Records of Occupational Medicine Services
- D. Records of Southeast Patient Rehab
- E. Records of Cape Imaging
- F. Mid America Rehab records
- G. Accident report of June 14, 2001
- H. Cape County Ambulance records
- I. Deposition of Dr. Allan Gocio
- J. Records of Anesthesia Associates of Cape Girardeau
- K. Southeast Missouri Hospital records
- L. Deposition of Dr. Raymond Cohen
- M. Medical bills
- N. Not admitted
- O. Stipulation regarding advance to employee

(Employee's Exhibit N was not admitted, but was accepted as an offer of proof)

Employer-Insurer's Exhibits

1. Deposition of Dr. Herbert Haupt
2. Video tape of battery changer

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. Medical Causation

The employer-insurer has admitted that the employee's accident on January 19, 2001 caused an injury to the employee's right shoulder, but has denied that the work accident was a substantial factor in causing the employee's herniated cervical disc. Although the employee's attorney made a valiant effort, and came up with two medical opinions to support his client's position, the facts in this case do not support a finding that the January 19, 2001 accident caused the employee's C5/6 disc herniation.

To accept the employee's theory would require a finding that the emergency room physician, the nurse practitioner, the occupational therapist, the physical therapist and Dr. Haupt all misdiagnosed the employee's injury. It would also require the administrative law judge to ignore most of the employee's statements and symptoms as reflected in the medical records from the time period prior to his motor vehicle accident.

Although the employee told Dr. Cohen and Dr. Gocio that his symptoms before and after the motor vehicle accident were identical, the medical records do not support that history. After the motor vehicle accident, the employee was complaining of severe neck pain. Prior to that collision, the employee made no complaints of neck pain. Prior to his motor vehicle accident, the employee told everyone who treated him that when he was lifting the battery changer, he felt a pop in his shoulder. The focus of the doctors, nurses and therapists was the employee's right shoulder because that is what the employee told them he had injured. After his January 19, 2001 accident, the radiologist took an MRI of the employee's right shoulder because the employee was experiencing pain in his shoulder, and he told the radiologist that he had never experienced problems with that joint before. After the employee struck his head on the steering wheel in the motor vehicle accident, the emergency room physician and the radiologist ordered an MRI of his cervical spine because the employee was complaining of severe neck pain. After the employee's motor vehicle accident, he was demonstrating the classic symptoms of an acute cervical disc herniation. The medical records confirm that prior to that date he was demonstrating symptoms of a right shoulder injury.

Unfortunately for the employee, both the opinions of Dr. Gocio and Dr. Cohen were based on the employee's history that his symptoms after the motor vehicle accident were the same as the symptoms he had been experiencing after his work injury in January of 2001. Dr. Gocio admitted that he had never reviewed those prior records. Dr. Cohen thought the motor vehicle accident was "minor," and he was not aware that the employee's vehicle had been totaled after striking a concrete wall while traveling 32 miles an hour. When confronted with these facts, Dr. Cohen agreed that the motor vehicle accident was more than sufficient to cause a herniated disc. He also agreed that no doctor had recommended surgery prior to the motor vehicle accident, and acknowledged that the motor vehicle accident had aggravated the employee's condition to the extent that the employee needed surgery.

The employee's thin thread of compensability is based on three or four references in the therapy notes that indicate the employee was experiencing occasional numbness and tingling in his right hand. The therapist specifically refers to his ulnar three fingers (small, ring and middle) and quoted the employee as having stated it felt like he had hit his "funny bone." While this raises a concern that the employee might have had some ulnar nerve impingement or irritation prior to the motor vehicle accident, there is no credible evidence to support a conclusion that there was a herniated cervical disc prior to the motor vehicle accident.

Both Dr. Cohen and Dr. Haupt agreed that patients with shoulder injuries commonly experience pain that runs down the arm. Although the initial medical records indicate that the employee experienced pain in his right shoulder that occasionally ran down into his forearm, the early records make no reference to numbness and tingling. The references to numbness and tingling appear later when the employee was receiving therapy. Dr. Haupt explained this sensation by noting that in some cases involving shoulder injuries, patients hold their arms in a flexed, dependent fashion, and develop an irritation of the ulnar nerve at the level of the elbow. Therapy records confirm that the employee had been holding his right arm in a dependent manner.

The more damaging testimony from Dr. Haupt, however, relates to his explanation of the nerve dermatome patterns. Prior to his motor vehicle accident, the medical records indicate the employee's complaints of numbness and tingling matched the ulnar nerve, and a cervical impingement of the ulnar nerve would normally be associated with a C7/8 disc problem. The employee's C5/6 herniation would have caused numbness and tingling in the thumb and index fingers. Thus, the specific complaints of the employee prior to the motor vehicle accident do not support a finding that his C5/6 disc herniation was caused by his January 19, 2001 accident.

After reviewing all of the evidence, there is little doubt as to what caused the employee's herniated disc and his subsequent need for surgery. It was the June 14, 2001 motor vehicle accident. The opinions of Dr. Cohen and Dr. Gocio

were based on an inaccurate medical history, and are not credible. While the employee's accident on January 19, 2001 did cause an injury to his right shoulder, there is no credible evidence to support a finding that the employee's C5/6 herniated disc was a work-related injury.

I therefore find that the employee's January 19, 2001 accident was a substantial factor in causing his right shoulder injury, but was not a substantial factor in causing the employee's herniated cervical disc.

Issue 2. Additional Medical Aid

All of the bills submitted by the employee were related to the treatment he received for his neck after the motor vehicle accident. Based on the finding that his neck injury was not work related, the employee's request for an award of previously incurred medical expenses is hereby denied.

Issue 3. Nature and Extent of Disability

The employee has requested an award for additional temporary total disability during the time that he was off work after his neck surgery. Given the finding that his neck surgery was not causally related to his accident at Advance Logistics, the employee's claim for additional temporary total disability benefits must also be denied.

The employee has also requested an award for permanent partial disability. Although the employee is not entitled to any permanent partial disability for his neck injury, the evidence does support an award of permanent partial disability for the injury to his right shoulder. Based on the medical records submitted and the employee's testimony, I find that the January 19, 2001 accident caused a chronic sprain/strain of the employee's right shoulder that has resulted in a 10% permanent partial disability to his right upper extremity at the 232 week level. The employer-insurer is therefore directed to pay to the employee the sum of \$314.26 per week for 23.2 weeks for a total award of \$7,290.83. As stipulated by the parties, the employer-insurer is entitled to a credit for a previous advance paid to the employee in the amount of \$3,645.42. After deducting this credit, the employer-insurer shall pay to the employee the sum of \$3,645.41.

ATTORNEY'S FEE:

Chris Weiss, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

CHILD SUPPORT LIEN:

The compensation awarded to the employee is subject to a child support lien with the Missouri Division of Child Support Enforcement, Department of Social Services.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____

Made by:

Jack H. Knowlan, Jr.
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Pat Secrest
Director
Division of Workers' Compensation

