

TEMPORARY OR PARTIAL AWARD  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 08-024683

Employee: Melvin Shomaker  
Employer: Home Service Oil Company  
Insurer: AIG Domestic Claims, Inc.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated March 6, 2009.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued March 6, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 21st day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

John J. Hickey, Member

Attest:

---

Secretary

## TEMPORARY OR PARTIAL AWARD

Employee:	Melvin Shomaker	Injury No.:	08-024683
Dependents:	N/A		Before the
Employer:	Home Service Oil Company		<b>Division of Workers'</b>
			<b>Compensation</b>
Additional Party:	Second Injury Fund (open)		Department of Labor and Industrial
			Relations of Missouri
Insurer:	AIG Domestic Claims Inc.		Jefferson City, Missouri
Hearing Date:	February 4, 2009	Checked by:	MDV:cw

### 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: February 2008
5. State location where accident occurred or occupational disease contracted: City of St. Louis, 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 accident or occupational disease arise out of and in the course of the employment? Yes
11. 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: Injured right shoulder dragging and pulling gasoline hoses, valves and couplings
12. Did accident or occupational disease cause death? Date of death?
13. Parts of body injured by accident or occupational disease: Right Shoulder
14. Compensation paid to-date for temporary disability: -0-
15. Value necessary medical aid paid to date by employer/insurer? -0-
16. Value necessary medical aid not furnished by employer/insurer? \$20,568.29

Employee: Melvin Shomaker

Injury No.: 08-024683

- 17. Employee's average weekly wages: \$889.57
- 18. Weekly compensation rate: \$591.65/\$389.04
- 19. Method wages computation: Agreed

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

Unpaid medical expenses:	\$20,568.29
48 weeks of temporary total disability benefits	\$28,399.20
Future Medical Care	*

(Use of an asterisk (\*) denotes an uncertain, open and contingent future benefit)

21. Second Injury Fund liability: Open

TOTAL: \$48,967.49\*

22. Future requirements awarded: See Award

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

**IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.**

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: Mark Bahn

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Melvin Shomaker	Injury No.: 08-024683
Dependents:	N/A	Before the <b>Division of Workers'</b> <b>Compensation</b>
Employer:	Home Service Oil Company	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (open)	Jefferson City, Missouri
Insurer:	AIG Domestic Claims Inc.	Checked by: MDV:cw

**ISSUES PRESENTED**

The issues presented for resolution by way of this hearing were: accident and/or occupational disease, medical

causation, past and future medical care, past and future temporary total disability benefits from 03/08 until the date of the hearing and continuing thereafter until such time as Claimant achieves maximum medical improvement.

### **FINDINGS OF FACT**

1. Claimant is a 54-year-old male born October 5, 1954. Claimant is right handed, 5'2" tall and last worked for Home Service Oil on March 6, 2008. Claimant worked for Home Service Oil for 1-½ years prior to the events surrounding the claim described herein.
2. Claimant's work history consists of past work as a delivery driver for Concrete Resources. Claimant would deliver concrete to job sites which did not involve any lifting, dragging, pulling, etc.
3. Claimant also worked as a driver for Star Truck performing over the road delivery in 48 states, which also involved no lifting, pulling or dragging.
4. Claimant was self-employed as a used machinery dealer for 11 years that required no lifting, pulling or dragging.
5. Claimant worked for 7 years with the City of St. Louis in the trash department from 1992 to 1999. Claimant was a driver and was not required to lift, pull or drag.
6. As a delivery driver for Home Service Oil, Claimant worked 40 to 50 hours a week delivering gas or diesel fuel without the help of any co-employees or assistance. Claimant's job duties involved getting a 42 ft. tanker truck ready to leave the Home Service Oil truck lot, obtaining fuel from a depot and delivering it to local distributors and filling stations.
7. After inspecting and preparing his truck, Claimant would drive his tanker to a gasoline terminal, usually near Wood River, Illinois to fill up the tanker truck. Claimant would then drive 50 to 100 miles and drop off gasoline or diesel fuel at different depots or gas stations.
8. This involved Claimant pulling into the Fuel terminal and getting the truck ready for hookup and transfer of fuel. Claimant would pull into a stall and hook up "risers" to the belly valves of the truck. Claimant would slip the risers on to the valve, push the lever forward and lock the valve. The riser weighed 50lbs. and there were four belly valves. Claimant had to push extremely hard with the right hand so the connections were secure and had to use force to attach and disconnect hoses, connections and valves to and from the truck. Claimant would go into the depot shack and program the volume that was required for transfer. Claimant would then go back and unhook the risers and perform the same procedures in reverse. Claimant would then have to place 20lb. caps on the belly valves. During the entire transfer process at the terminal, Claimant had to utilize the vapor hose at the end of the truck so the vapors would go into the hose rather than in the atmosphere. This had to be hooked overhead by lifting the hose about 4 ½ft into the air using claimant's upper extremities.
9. Claimant would then prepare the truck for and leave the terminal and proceed to the local gas stations where he would line up the truck with underground reservoirs or pits to make a drop. To make a drop Claimant had to utilize an "F" channel. This was a 50lb. attachment to the truck shaped like an "F" that would allow the gas to flow out of the truck through the "F" channel through a connection and into a hose that was dragged 12 to 20 ft. to the gasoline pit where the fuel would discharge. The hoses were enormous, weighing 200 to 250lbs empty. Claimant had to lift the hose up and down 5ft over the tanker's wheel walls. Claimant was constantly pulling and jerking on hoses, hooking them up to the "F" channel and taking them off and placing them back on the truck. Each truck utilized four hoses. One hose could weight 500lbs if it has gasoline in it. Claimant was required to jerk on levers and after filling up, unhook the hoses and stow them away. To stop the flow required reversal of the process, but, in addition, Claimant would also have to drain the fuel in the lines.
10. In order to drain a hose, Claimant would have to lift up the partially filled hose at the "F" channel and walk the hose overhead little by little so that it would drain fuel into the pit. Then, after it was drained and disconnected, Claimant would have to pick up the "F" channels and place them back in the truck compartments. Claimant did this

four or five times per day, four days per week, working 10 to 12 hour days, sometimes five nights.

11. This work caused Claimant's shoulder to be sore on several occasions. Claimant complained to his primary care physician Dr. Mary Mason beginning in 2007 that his work was causing his shoulders to become problematic.

12. One night in January or February of 2008, Claimant was at the J.D. Street Fuel Terminal, on First Street in the City of St. Louis when one of his risers became stuck and Claimant could not get it off. Claimant was pushing and pulling to loosen the riser when his right arm or shoulder socket felt pain and he thought he dislocated his shoulder. No one was around so Claimant continued working until he reported his sore shoulder to his boss Brian Goforth. Claimant said that his shoulder was very sore and he had been experiencing a lot of problems with his shoulders and arms within the last couple of months. Brian Goforth told Claimant that it sounded like he had a personal problem and did not provide any medical care or assistance.

13. Claimant was able to work the night of the above-described incident but continued to complain to his primary care physician Dr. Mason. She eventually sent Claimant to Dr. Rothkamel, an orthopedic surgeon for evaluation of the on-going shoulder complaints.

14. On March 6, Claimant told Brian Goforth that he could no longer work due to the pain in his shoulder. Claimant had no prior injuries to his left or right shoulders although medical records disclose that Claimant had a series of shoulder complaints and some minor treatment in 2002 and 2003. Those complaints resolved and the medical records are silent regarding shoulder complaints until 2008 while Claimant was working for Home Service Oil performing the duties described above and involving the incident at the J.D. Street Terminal.

15. Dr. Rothkamel performed examination and diagnostic tests, performed surgery and found a small but full rotator cuff tear and repaired it. Claimant continues to treat with Dr. Rothkamel and is currently temporary and totally disabled from working while under his care.

16. Dr. Rothkamel is considering performing future surgery but needs the shoulder to "cool down" from the first surgery before he goes ahead with further procedures.

17. Dr. Rothkamel does not think Claimant's injury was related to his work because it occurred over time and because Claimant did not describe to him any specific traumatic injury. Nevertheless, Dr. Mason, Claimant's primary physician was aware of Claimant's chronic complaints of work related shoulder pain in late 2007 and early 2008 and she testified to an incident of specific increase in pain in January or February in 2008 which prompted her to send Claimant to Dr. Rothkamel. Her notes and recollection corroborate the work relatedness of Claimant's shoulder complaints and specifically document a contemporaneous increase in pain. Her notes reflect an intense increase in pain and Dr. Mason's opinion is that the shoulder condition is work related. More specifically, Dr. Mason believes that Claimant's need for right shoulder surgery was and continues to be work related.

18. Dr. Mason knew that claimant did a lot of overhead work whereas Dr. Rothkamel did not know that Claimant was working overhead. Dr. Rothkamel was not aware that Claimant had on-going work related shoulder complaints in the months prior to his examination, but thought Claimant had unexplained increasing pain for several months.

19. Dr. Rothkamel provided the expert opinion that Claimant's work was not the prevailing factor causing his shoulder injury. Dr. Mason testified that Claimant's work was the prevailing factor in causing his work related injury.

20. I find Dr. Mason's understanding of events to be more credible. She was aware of the on-going relationship of Claimant's work to his shoulder pain. She was simply more aware than Dr. Rothkamel as to what was going on in Claimant's life because she was his ongoing physician. Dr. Rothkamel only saw Claimant for this surgery and it was not very crucial to his treatment that he understand what was the genesis of the pain. The history here was not crucial to the treatment and I don't think Dr. Rothkamel took the time to sort it out. This is not a criticism, I just don't think he needed to be aware of the circumstances, so he never really inquired far enough to make a sound judgement. In fact, I find both physician's to be totally qualified, dis-interested experts who do not frequently get involved in medical-legal determinations, so this is not a question or a hint of bias. Rather, I simply believe Dr. Mason was in that

long-term on-going physician-patient relationship that puts her into a better position to know the full story than the specialist called in for a surgery.

### **RULINGS OF LAW**

1. Claimant sustained an accident and/or occupational disease while working for Home Service Oil Company. The occupational disease accruing due to his pushing, pulling, and lifting of heavy hoses for 1 ½ years and then exacerbated by an acute episode of pain somewhere in January or February of 2008, when the risers stuck at the J.D. Street Fuel Terminal and Claimant had an intense increase of shoulder pain.
2. As a result of that accident and the occupational disease, Claimant was temporarily and totally disabled from March 8, 2008 until the date of the hearing which constitutes 48 weeks of permanent total disability at the rate of \$591.65 for \$28,390.20 in past temporary total disability benefits.
3. Claimant is not at maximum medical improvement therefore he is entitled to \$591.65 per week from the date of the hearing and into the future until Dr. Rothkamel decides that Claimant is at maximum medical improvement and fit to return to work.
4. Claimant has incurred \$20,568.29 in past medical benefits that were reasonable and necessary to cure and relieve him of the accident and occupational disease that arose on or about February 2008. Barnes Jewish Christian has apparently made an application for direct payment. No information regarding this request or support therefore has been presented to me, but to the extent possible, payment should be made to the health care providers providing covered services. Any disputes regarding the same should be called for hearing in the manner provided for by law.
5. Claimant is entitled to future medical care to include surgery, physical therapy, prescription medicine, and any other form of medical care necessary to cure and relieve him of the effects of the work related shoulder injury to include all of the current symptomology in his right shoulder.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Matthew D. Vacca  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
*Peter Lyskowski*  
*Director*  
*Division of Workers' Compensation*