

BEFORE THE WORKERS' COMPENSATION COURT OF THE STATE OF OKLAHOMA

FILED

**WORKERS' COMPENSATION COURT
STATE OF OKLAHOMA**

February 17, 2009

Robert L. Tharp
COURT CLERK

In re claim of:

[REDACTED]

Claimant

[REDACTED]

Respondent

COMPSOURCE OKLAHOMA

Ins. Carrier

)
)
) Court Number: 2001-06802X
) 2001-11701L,2004-03029A
)
) Claimant's Social Security
) Number: [REDACTED]

**ORDER DETERMINING COMPENSABILITY AND AWARDING
TEMPORARY TOTAL AND PERMANENT PARTIAL DISABILITY BENEFITS**

Now on this 10th day of FEBRUARY, 2009, this cause came on for consideration pursuant to regular assignment and hearing on JANUARY 20, 2009, before JUDGE WILLIAM R FOSTER, at Tulsa, Oklahoma, at which time claimant appeared in person and by counsel, M SCOTT ASH and respondent and insurance carrier appeared by counsel, KYMBERLY J WATT; and MID CONTINENT CONCRETE CO and insurance carrier AMERICAN INTERSTATE INSURANCE COMPANY appeared by counsel, PAUL V MCGIVERN JR.,; and LIBERTY MUTUAL INSURANCE COMPANY appeared by counsel, VICTOR R SEAGLE.

The Court having considered the evidence and records on file, and being well and fully advised in the premises FINDS AND ORDERS AS FOLLOWS:

- 1 -

THAT the first issue in this case is which employer is responsible for claimant's current injures. There is no dispute that claimant's injury was work-related but whether it was an aggravation of a pre-existing condition or a change of condition for the worse. The medical opinions establish that claimant's injuries were the result of an aggravation, as a result, VIKING CONCRETE is the responsible party.

- 2 -

THAT claimant was employed by the above named respondent and such employment was subject to and covered by the provisions of the Workers' Compensation Act of the State of Oklahoma; and as a result of cumulative trauma, claimant sustained accidental personal injury to the CERVICAL SPINE and RIGHT SHOULDER arising out of and in the course of claimant's employment. Claimant's last injurious exposure to said trauma was JUNE 1, 2003.

- 3 -

THAT at time of injury, claimant's wages were sufficient to establish the rates of compensation at \$354.74 per week for temporary total disability and \$264.00 per week for permanent partial disability.

- 4 -

THAT as a result of said injury, claimant was temporarily totally disabled from JUNE 4, 2003 to AUGUST 10, 2008, for which time claimant is entitled to compensation for 270 weeks and 4 days in the total amount of \$93,626.39 and from NOVEMBER 21, 2006 to FEBRUARY 4, 2008, for which claimant is entitled to compensation for 62 weeks 6 days in the total amount of \$22,348.62. Temporary total disability has been paid in part and the remaining temporary total disability should be paid at the correct rate. Moreover, any temporary total disability paid at the wrong rate needs to be paid in a lump sum. Claimant is entitled to temporary total disability based upon his credible testimony and the opinion of *DR. TRINIDAD*. **(\$115,975.01 TOTAL OF BOTH PERIODS OF TTD)**

- 5 -

THAT as a result of said injury, claimant sustained 35 percent permanent partial disability to the CERVICAL SPINE (OVER & ABOVE PRE-EXISTING 17%)(LOSS OF RANGE OF MOTION - SURGERIES - DISC ABNORMALITIES - CHRONIC PAIN - RIGHT SHOULDER RADICULOPATHY)(RIGHT SHOULDER INCORPORATED INTO CERVICAL RATING), for which claimant is entitled to compensation for 181 weeks at \$264.00 per week, or the total amount of \$47,784.00 of which 53 weeks have accrued and shall be paid in a lump sum of \$13,992.00.

- 6 -

THAT respondent and/or insurance carrier shall furnish claimant with a Vocational Rehabilitation in the form of job placement with C.A.R.E..

- 7 -

THAT respondent and/or insurance carrier shall provide the claimant with continuing medical care, in the nature of prescription medication and office visits with claimant's family physician.

- 8 -

THAT respondent and/or insurance carrier shall pay all reasonable and necessary medical expenses incurred by claimant as a result of said injury.

- 9 -

THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of **\$129,967.01 TOTAL OF BOTH PERIODS OF TEMPORARY TOTAL DISABILITY AND ACCRUED PERMANENT PARTIAL DISABILITY** and pay the balance of said award at the rate of \$264.00 per week until the total award of **\$163,759.00 TOTAL OF BOTH PERIODS OF TEMPORARY TOTAL DISABILITY AND PERMANENT PARTIAL DISABILITY** (less attorney fee) has been paid to claimant.

- 10 -

THAT respondent or insurance carrier shall pay court costs; Special Occupational Health and Safety Fund Tax shall be paid in the sum of \$358.38 representing three-fourths of one percent (0.75%).

- 11 -

THAT pursuant to Title 85 O.S. Section 93, a filing fee of seventy-five dollars (\$75.00) is taxed as a cost in this matter, and shall be paid by respondent to the Court Administrator unless a filing fee was previously paid, within twenty (20) days from the date this order becomes final.

- 12 -

THAT the sum of \$21,154.30 shall be deducted from the award herein and paid in lump sum to claimant's attorney as a fair and reasonable attorney fee; within twenty (20) days from the date of filing of this order, respondent or insurance carrier shall comply herewith.

BY ORDER OF:



WILLIAM R FOSTER, JUDGE

lm/CRichardson

A copy of the above and foregoing Court Order was mailed, by regular or Certified United States Mail, on this filed stamped date to:

Claimant's Attorney: M SCOTT ASH
401 S BOSTON AVE STE 2500
TULSA, OK 74103-4016

Respondent's Attorney: KYMBERLY J WATT
15 W 6TH ST STE 2066
TULSA, OK 74119-5409

BLAKE I WHITTEN
PO BOX 2875
TULSA, OK 74101-2875

VICTOR R SEAGLE
PO BOX 1710
TULSA, OK 74101-1710

I do hereby certify that the above and foregoing is a true and correct copy of the original order signed by the Judge herein. Witness by my hand and the official seal of this court on this date.

Robert J. Sharp



Court Clerk
February 17, 2009