BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G900641

JAMES SHAVER, EMPLOYEE	**CLAIMANT**
JOHNNY DRAPER, d/b/a DRAPER TRANSPORT EMPLOYER	**RESPONDENT NO. 1**
UNINSURED, INS. CARRIER/TPA	**RESPONDENT NO. 1**
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND (THE TRUST FUND)	**RESPONDENT NO. 2**

OPINION AND ORDER FILED MARCH 10, 2021

Hearing conducted before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens on December 10, 2020, in El Dorado, Union County, Arkansas.

The claimant was represented by the Honorable Whitney James, Rainwater, Holt & Sexton, Little Rock, Pulaski County, Arkansas.

Respondent No. 1 was represented by the Honorable John Lightfoot, Lightfoot Law Firm, El Dorado, Union County, Arkansas.

Respondent No. 2, represented by the Honorable David L. Pake, waived appearance at the hearing.

INTRODUCTION

In the Prehearing Order filed June 26, 2020, which the attorneys affirmed as modified on the record, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction of this claim.
2. Respondent No. 1 has controverted this claim in its entirety.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 8-10; 131). Pursuant to the parties' mutual agreement, the issues litigated at the hearing were:

1. Whether the claimant was an "employee" or an "independent contractor" as of the date of his alleged injury, August 3, 2018.

2. If the claimant was an employee and not an independent contractor as of the date of his alleged injury, August 3, 2018, whether he sustained a "compensable

injury(ies)" to his left leg, both hips, neck and back within the meaning of the Arkansas Workers' Compensation Act (the Act); the amount of his average weekly wage (AWW), and whether and to what extent he is entitled to medical and indemnity benefits.

3. Whether the claimant's attorney is entitled to a controverted fee on these facts.

4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2; Id.).

The parties were unable to agree on the amount of the claimant's AWW since the claimant contends he was an "employee" on August 3, 2018, the date of the subject work-related incident, and the respondent contends he was an "independent contractor" on the day of the subject work incident. The record contains only one (1) check in the amount of $400 from M & A Wrecker Service, Inc. to the claimant. (Comms'n Ex. 1 at 2; Tr. 8-9; 21-23).

The claimant contends that on August 3, 2018, while in the course and scope of employment for Respondent No. 1, Johnny Draper, d/b/a Draper Transport, he was cutting a log and the log was in a bind. When he cut the log in half, it rolled into him, causing fractures to his left leg, and injuries to his bilateral hips, neck, and back. The claimant sought emergency treatment on the date of accident. He had surgery the day after the accident to repair his fractured left tibia. He later followed up with the doctor and underwent physical therapy (PT). The claimant contends he sustained compensable injuries to his left leg, bilateral hips, neck, and back. He contends he is entitled to TTD benefits from the date of the accident through a date yet to be determined, payment for his related, reasonably necessary medical treatment, and a controverted attorney's fee. The

claimant specifically reserves any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 2; Tr. 9-10; 131).

Respondent No. 1 contends the claimant was an "independent contractor," and not an "employee," on the date of the alleged work incident, August 3, 2018. Conforming its contentions with its arguments made and proof adduced at the hearing, Respondent No. 1 contends he hired the claimant for only the last couple of weeks in July 2018 as extra help on a specific hardwood cut, and he terminated the claimant when this project was completed – at least one (1) week before the August 3, 2018 work incident; and that the claimant was not hired for, nor was he authorized to be working, on the pine cut job on August 3, 2018. Respondent No. 1 contends the claimant showed up for the pine cut job on August 3, 2018 without either his permission or knowledge. Consequently, the claimant was not his "employee" at the time of the August 3, 2018 work incident. Respondent No. 1 further contends the claimant cannot meet his burden of proof in demonstrating he has sustained a "compensable injury(ies)" within the meaning of the Act. (Comms'n Ex. 1 at 3; Tr. at 9-10; 131-32).

Respondent No. 2 (the Trust Fund) contends the employee-employer-insurance carrier relationship existed on August 3, 2018. It acknowledges the claimant alleges he sustained injuries to his left leg, bilateral hips, neck and back on August 3, 2018. Respondent No. 2 is unable to determine the AWW until Respondent No. 1 has provided wage records, or filed a Form AR-W with the Commission. The Trust Fund requires Respondent No. 1's wage records or a filed Form AR-W to compute the AWW. The Trust Fund defers to the litigation on the compensability issue, and waived its appearance at the hearing. (Comms'n Ex. 1 at 3; Tr. at 9-10).

The record consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Mr. James Shaver (the claimant), was 38 years old on the date of the hearing, and 36 years old at the time of the work incident in question, which occurred on August 3, 2021. In August of 2018 the respondent-employer, Mr. Johnny Draper (Draper), owned and operated two (2) small businesses, M&A Wrecker Service (M & A), and Draper Transport (Draper Transport). M & A is a wrecker service. Draper Transport was a logging operation and gravel hauling business which is no longer in existence. Draper also owned three (3) gravel trucks. (Tr. 19; 63).

The claimant and his former fiancée, Ms. Annaliesa Casteel, "were both addicts," but "both cleaned up" in 2018. (Tr. 57). Though they were more acquaintances than friends, Draper and the claimant had known each other since the claimant was a child, as their mothers attended the same church and both would accompany their moms to church. (Tr. 65). Draper first hired the claimant and another man who was a friend of Ms. Casteel and the claimant, Patrick Lewis (Lewis), around "the end of 2017" before the claimant went to jail (which apparently was in early 2018 for stealing a Jeep). (Tr. 43; 89; 57). Draper testified he hired the claimant and Lewis as extra help, "but they showed up late three days in a row, and, I mean really late, so I run them off… ." (Tr. 89). Draper testified he told the claimant and Lewis, "You can't come to work anyway." (Tr. 89). It was soon after Draper "run off" the claimant and Lewis that the claimant went to jail because of "something about a stolen Jeep or something or other." (Tr. 65-66; 42).

After the claimant was released from jail in early 2018, and several months after he and Lewis had first worked with Draper in late 2017 and Draper had "run them off", Draper heard the claimant could use some work. While it is unclear whether the claimant's former fiancée, Ms. Casteel, mentioned this fact to Draper when he was in Auto Zone, or whether the claimant approached Draper himself to ask for work, or *vice versa*, Draper hired the claimant in mid-July 2018 to work as a "saw hand" on a tract of land that had a mixture of both hardwood (white oak) trees and pine trees (the white oak cut). (Tr. 17-18; 41; 68-69; 89-90). A saw hand is a person who works on the ground and cuts limbs off the hardwood trees since, unlike stripping the softer wood of the pine limbs, the de-limbing machine is not large enough to easily de-limb the hardwoods. Consequently, Draper hired the claimant as extra help to cut the limbs off the hardwood trees. (Tr. 17-18; 65-68). Draper explained he had no use for an extra man to work as a saw hand on jobs where all the trees were softwood trees such as pines. (Tr. 70-74).

Draper had a crew of three (3) employees who worked with him on a regular basis: Quinton Brown, Kolby Gay, and Gary Ruffins. (Tr. 37-39; 94; 106; and 115). Draper paid these three (3) men on a weekly basis, and gave them each an Internal Revenue Service (IRS) Form W-2 (W-2) at the end of each year. (Tr. 64; 86). Although none of these gentlemen was still employed by Draper at the time of the hearing, all three (3) men appeared without subpoenas to testify on his behalf at the hearing. (Tr. 94; 104; 106-07; 116; 124-25). Likewise, while Ms. Casteel and the claimant were no longer engaged or involved in a romantic relationship, she appeared to testify without a subpoena on his behalf because she "loves that man", and "… for the first time in his life that I know of…[h]e was trying to get better…The man has a past as I

do. We both were addicts, and we both cleaned up that year [2018]. (Tr. 57-58) (Bracketed material added).

The claimant testified he had worked off and on with Draper, and he was working for Draper on a consistent basis (apparently in 2018) and that in the week prior to the August 3, 2018 accident, he had been working with Draper on a daily basis. (Tr. 18-19). The claimant testified Draper had paid him $1,300 to $1,400 the week before the August 3, 2018 work incident. The record is completely devoid of any evidence corroborating the claimant's testimony in this regard. The only evidence in the record regarding payments Draper made to the claimant is a single check dated 7-27-18 from M & A Wrecker Service, Inc. to the claimant in the amount of $400. (Claimant's Exhibit 2). July 27, 2018 was a Friday.

Draper and his former employees testified the claimant worked with them only part of the last couple of weeks of July 2018 on the first job, the white oak cut; but not at all on the second job, the pine cut job which apparently began sometime the last week of July 2018 (July 30, 2018 was a Monday), or the beginning of August 2018 (August 1, 2018 was a Wednesday), and continued into August 2018. Other than to help move some equipment from the white oak cut job to the pine cut job, the claimant did not show up for work at the pine cut job – which Draper and his regular employees confirmed in their testimony – until the claimant showed up at the regular departure place from which the employees left for every job on August 3, 2018, which was a Friday, an entire week after the date Draper had cut the $400 check to the claimant. (Tr. 126; 110-11).

Draper adamantly denied the claimant was authorized or given permission to work on the

second job, the pine tree cut. He testified he terminated the claimant's employment at the conclusion of the first job, the white oak cut job, the same day he wrote him the $400 check, Friday, July 27, 2018. He said he clearly told the claimant he did not need a saw hand on the second job, the pine cut. (Tr. 67-72). Two (2) of Draper's former full-time employees Mr. Quinton Brown and Mr. Kolby Gay, credibly corroborated Draper's testimony in this regard. (Tr. 94-102; 106-16).

The claimant's attorney objected to the testimony of Draper's third witness, Mr. Gary Ruffins, because Respondent No. 1 had known about but had not disclosed his name and the substance of his testimony at least seven (7) days before the hearing. Pursuant to the applicable provisions of the prehearing order the ALJ excluded Mr. Ruffins's testimony, but did allow Respondent No. 1 to proffer this testimony since, if or when either/both party(ies) appeal this opinion and order, the Full Commission, who reviews cases *de novo* on appeal, may override the ALJ's ruling in this regard and include Mr. Ruffins's testimony in the hearing record. (Tr. 115-23). In his proffered testimony, Mr. Ruffins testified he had been in Draper's office on Friday, July 27, 2018 filling-out his time sheets. He said in no uncertain terms he heard Draper terminate the claimant, and tell him he no longer needed him as a saw hand on the pine tree cut. He described Draper as a man who "don't bite no bullets" when it comes to being straight-forward with a person. Mr. Ruffins further testified that, "Johnny fires folks all the time"; and he described the claimant as "…a guy who didn't actually work", and explained it was his understanding the claimant was only hired as a saw hand on the hardwood cut job. (Tr. at 120-22).

The claimant testified Draper told him he was expected to work on August 3, 2018, which was a Friday. (Tr. 22-23). He provided no explanation as to why he did not work on the pine tree cut job from Monday, July 30, 2018 through Thursday, August 2, 2018 of that week. The claimant's former full-time employees, Mr. Quinton Brown and Mr. Kolby Gay, both appeared without subpoena to testify on Draper's behalf. Both testified it was their understanding the claimant was not going to be working on the second job, the pine tree cut. Mr. Brown even testified Draper specifically told him not to take the claimant back "into the woods." (Tr. 94-103; 106-14).

Mr. Brown testified the claimant had started work "in the middle" on the first job, the white oak cut, and that on Friday, July 27, 2018 – the day Draper cut the claimant the $400 check and told him he no longer needed his services – Draper had specifically told him/Mr. Brown not to take the claimant out to any jobs. (Tr. 98-101). Mr. Brown said he had not seen the claimant for "like a week" until he showed unexpectedly at the employees' regular meeting place on Friday, August 3, 2018. (Tr. at 97). Mr. Brown said Draper had told both him and Mr. Gay him "not to take him [the claimant] back." (Tr. 98) (Bracketed material added). Mr. Brown said he did not double-check with Draper to see if Draper had authorized the claimant to work on the pine cut/the second job. He asked the claimant why he was there, and he told the claimant he needed to call Johnny (Draper) to see if the claimant was allowed to work; but the claimant said he himself had already talked to Draper "and everything is straightened out." He took the man/the claimant at his word. (Tr. 100).

Consistent with Mr. Brown's testimony, Mr. Gay testified the claimant had only worked

on the first job/white oak cut for only approximately one (1) week before that job ended. (Tr. 109). He testified further that Draper specifically told him the claimant would not be working on the second job/pine tree cut; but that a week later, while they were already about three (3) to four (4) days into the second job/pine tree cut, the claimant showed up at the regular meeting site, and got into the truck to go with them to the job, and got injured that same day. He said the day the claimant showed up and was injured [Friday, August 3, 2018], was the first time he had seen him all week, since the Friday before at the conclusion of the first job/the white oak cut, and that they were already some four (4) days into the second job/pine tree cut. (Tr. 11-12; 114).

On the first day he unexpectedly showed up for work after a week's absence, the claimant broke his left leg when he cut a log that was in a bind, and part of the log rolled back and hit him, pinning him. His co-employees called 911, but then decided to get the claimant to the hospital as quickly as possible, so they put him in the bed of the pick-up and took him to the ER in El Dorado. The claimant had sustained a broken left tibia, underwent surgery to repair it, then PT. (Claimant's Exhibit 1).

On the day of the work incident, Friday, August 3, 2018, Draper met the claimant outside the hospital ER as his full-time employees were arriving with the injured claimant in the truck. Draper testified the claimant was "freaking out" and saying he did not have any insurance and that Draper was going to have "to pay for this." Draper said that he, too, "was freaking out" because the claimant was "not even supposed to be working that job." In a candid statement against his own interest, Draper candidly admitted he told the claimant to be untruthful with the hospital personnel and to tell them he/the claimant had been injured while working at Draper's

shop, not in the logging woods, as Draper intended to file a claim for the claimant's injuries on his general liability policy. Draper further admitted he tried to file the claim, but it was denied. Draper said he also learned the claimant did in fact have insurance with BlueCross BlueShield (BCBS) that had paid all of his medical bills, except perhaps an ambulance bill. The claimant testified he "did not have insurance until he got to the hospital", but hospital personnel helped him complete some paperwork and he obtained insurance (presumably Medicaid). (Tr. 25; 80-81; 91-92; 127).

Although the claimant denied having done any work since his injury, his former fiancée admitted that both she and the claimant had helped their mutual friend, Patrick Lewis (who is already mentioned above) load about a cord of wood onto a an 18-foot trailer. (Tr. 50-51). Draper also testified he used his phone to make videos of the claimant in the months, and even as late as one (1) week before the subject hearing, before the hearing performing various types of manual labor including running a saw; cutting up big, long blocks of wood into splitting lengths, splitting wood with a hydraulic splitter, and splitting wood manually using a wedged maul, and loading wood on a trailer with no apparent visible signs of any disability(ies). (Tr. 76-77). Draper said he had the videos on his phone, which he had in his possession at the hearing, and he was happy to allow both the claimant's attorney and ALJ to see them. The claimant's attorney objected since the respondents' attorney had not supplied her copies of the videos in compliance with the terms of the governing prehearing order, and the ALJ sustained this objection but allowed Draper to testify concerning any work activities he had personally observed the claimant performing whether with his own eyes. (Tr. 76-77; 93-94). Draper has also proved the claimant

and his ex-fiancée, Ms. Casteel, some money since the August 3, 2018 accident to assist him in making ends meet since the incident. (Tr. 27-28).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2020 Lexis Supp.). The claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. ***Ark. Code Ann.*** § 11-9-704(c)(4) (2020 Supp..); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover,* 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's,* 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34

(Ark. App. 1989); *Farmers Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Independent Contractor v. Employee

The employment status of an individual is a question of fact. *Franklin v. Ark. Kraft*, *Inc.*, 12 Ark. App. 66, 68, 670 S.W.2d 815 (1984). The Commission is required to "follow a liberal approach resolving doubts in favor of employment status for the worker." *Id.*; *Silvicraft, Inc. v. Lambert*, 10 Ark. App. 28, 661 S.W.2d 403 (Ark. App. 1983). In 2019, the Arkansas General Assembly passed a law adopting the IRS's 20-factor test to determine employment status. *See* ***Ark. Code Ann*** § 11-1-204(1)-(20). This new law, known as "The Empower Independent Contractors Act of 2019," was not in effect at the time of the claimant's work incident herein, August 3, 2018; however, as the claimant's attorney points out in her well written post-hearing brief, there exists a long-standing body of Arkansas law concerning this issue which assists us in resolving the question of the claimant's employment status in this case. *And see, Davis v. Ed Hickman, P.A.,* 2020 Ark. App. 188 (Ark. App. 2020). ***Ark. Code Ann.*** § 11-9-102(9)(A) (2020 Lexis Supplement) currently defines an employee as, "an individual, including a minor, whether lawfully or unlawfully employed in the services of an employer under a contract of hire or apprenticeship, written or oral, expressed or implied, and the individual's employment status has been determined

by consideration of the 20-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-201, *et. seq*. Both now and at the time of the injury in this case, ***Ark. Code Ann.*** § 11-9-102(9)(A) stated that a person whose employment is casual *and* not in the course of the trade, business, profession, or occupation of his or her employer," is excluded from the definition of "employee." ***Ark. Code Ann.*** § 11-9-102(9)(B)(ii). Moreover, this statute, both then and now, provides that an individual who holds from the Commission a current certification of non-coverage is conclusively presumed *not* to be an employee. **Ark. Code Ann.** § 11- 9-102(9)(C).

In *Riddell Flying Service v. Callahan,* 90 Ark. App. 388, 206 S.W.3d 284 (Ark. App. 2005), our court of appeals enumerated the factors to consider when faced with the employee vs. independent contractor question. Those factors are:

1. The right to control the means and the method by which the work is done;
2. The right to terminate the employment without liability;
3. The method of payment, whether by time, job, piece or other unit of measurement;
4. The furnishing, or the obligation to furnish, the necessary tools, equipment, and materials;
5. Whether the person employed is engaged in a distinct occupation or business;
6. The skill required in a particular occupation;
7. Whether the employer is in business;
8. Whether the work is an integral part of the regular business of the employer; and
9. The length of time for which the person is employed.

Id. at 391-92, 206 S.W.3d at 287-88.

The ultimate question is not whether the employer actually exercises control over the work but whether the employer has the right to control the work. *See Irvan v.Bounds,* 205 Ark. 752, 170 S.W.2d 674 (1943); *Dairy Farmers of America v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905 (Ark. App. 2007); *Wright v. Tyson Foods*, *Inc.* 28 Ark. App. 261, 773 S.W.2d 110 (Ark. App. 1989).

When all of the aforementioned factors are applied to the facts of this case cited above, it is clear the claimant was an "employee" of Respondent No. 1; however, unlike the other gentlemen who testified at the hearing, the claimant was not a permanent employee, he was a temporary employee hired for a specific purpose and for a specific period of time. The preponderance of the credible evidence of record reveals that Draper was simply trying to help out a boyhood friend who had run into hard times, apparently due to his addiction and his having been in jail for a period of time. While the claimant's testimony would have us believe he and Draper had a long-standing "off-and-on" employment relationship, the objective evidence of record tells another story.

Indeed, the evidence of record reveals the claimant and his friend, Patrick Lewis, worked for Draper for a brief period of time in late 2017 before the claimant spent some time in jail. Draper had to "run them off" at that time because they would show up for work very late. Then, in mid-July 2018 Draper hired the claimant to work as a saw hand/limb cutter on the first job relevant to this case, the white oak/hardwood job. This job was not a particularly skilled job, and all of the aforementioned factors indicate the claimant was in fact an employee, and not an independent contractor.

However, the facts also conclusively demonstrate Draper hired the claimant for the white oak cut job and only the white oak cut job. Draper paid the claimant with a $400 check, and then terminated his employment effective Friday, July 27, 2018. As Mr. Brown and Mr. Gay very credibly and objectively testified at the hearing, the claimant "was missing in action and then he popped up," in Mr. Brown's words, one (1) full week after Draper had terminated his temporary employment status. (Tr. 100, Lines 4-11). The claimant lied to both Mr. Brown and Mr. Gay, telling them and leading them to believe that, contrary to what Draper told them one (1) week earlier, that he/the claimant was authorized to work on the pine cut job on August 3, 2018. If this were in fact the case, why was the claimant "missing in action" for the entire first four (4) days of that week when Draper's other employees had been working on the job? Why did the claimant not appear for work on Monday, July 30, 2018? Yet he suddenly appeared, to everyone's surprise, on pay day, Friday, August 3, 2018. The claimant's testimony simply is not supported by any other credible objective evidence of record, be it testimonial or documentary. I find the claimant's testimony to be incredible, and not supported by the other credible evidence of record. I find Draper's, Mr. Brown's, and Mr. Gay's testimony to be highly credible and consistent with the record – including but not limited to the single check the claimant introduced into the record dated July 27, 2018, the last day of his temporary employment with Draper.

This case could very well be entitled, "No Good Deed Goes Unpunished." While I am sympathetic to the claimant's struggle with addiction, and impressed with his efforts to seek and maintain gainful employment, the preponderance of the credible evidence of record in this case reveals that it was the claimant's own deception that led to his showing up unauthorized to work

on Friday, August 3, 2018 – and entire week after Draper had told him his job had been terminated – then misleading Mr. Brown and Mr. Gay into thinking he was in fact authorized to work. Draper was trying to help out a childhood acquaintance and family friend, and it appears the claimant attempted to take advantage of Draper's generosity.

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

2. The stipulations contained in the Prehearing Order filed June 20, 2020, which the parties affirmed as modified on the record at the hearing, are hereby accepted as facts.

3. The preponderance of the evidence demonstrates the claimant was an "employee" – albeit a temporary employee – of Respondent No. 1, and not an "independent contractor," from approximately July 15 through July 27, 2018. Respondent No. 1 hired the claimant for a specific job and for a specific purpose – to work as a saw hand/limb-cutter on the first job/white oak cut.

4. The preponderance of the evidence demonstrates Respondent No. 1 terminated the claimant's temporary employment effective Friday, July 27, 2018. Thereafter, without Respondent No. 1's knowledge or permission, the claimant appeared at the job pick-up area and, when asked about his termination, he told his co-worker's he and Respondent No. 1 had resolved their issue; that he was not terminated; and that Respondent No. 1 had authorized him to return to work. These statements were untrue, as was demonstrated by the overwhelming preponderance of the evidence including but not limited to, Respondent No. 1's candid and highly credible testimony, as well as the corroborating, objective, unbiased, disinterested testimony of Respondent No. 1's full-time employees.

5. Both Respondent No. 1 and the corroborating witnesses testified the claimant lied to his co-workers on the day of the August 3, 2018 work incident, deceiving and misleading them into believing he was no longer fired, and that he was authorized to be on the job site the day of the accident. This was untrue, as the claimant's temporary employment status ended as of Friday, July 27, 2018. It is the claimant's deception that led to his August 3, 2018 injuries.

6. Based on my personal observations of the claimant as he testified including but not limited to, his demeanor, reactions, manner of speech, and inability or unwillingness to make and/or maintain eye contact with either his attorney or the ALJ as he testified, as well as his responses to questions on both direct and cross-examination, I specifically find the claimant's testimony to lack credibility.

7. Based on my personal observations of Respondent No. 1 and his objective, unbiased, disinterested corroborating witnesses including, but not limited to all of the factors mentioned in Paragraph 6 of these "Findings of Fact and Conclusions of Law," I hereby specifically find the testimony of Respondent No. 1 and his witnesses to significantly outweigh and to be more credible than the claimant's own self-serving uncorroborated testimony.

Therefore, the Act compels me to deny and dismiss this claim. If he has not already done so, Respondent No. 1 will pay the court reporter's invoice in full within ten (10) days of his receipt of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp