

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F212210**

**MARK H. GARLAND, EMPLOYEE**

**CLAIMANT**

**CITY OF LITTLE ROCK POLICE DEPT., EMPLOYER**

**RESPONDENT**

**RISK MANAGEMENT RESOURCES, TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 7, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on July 10, 2003, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JERRY W. STEWART, Attorney at Law, Benton, Arkansas.

Respondent represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits.

On March 11, 2003, a prehearing conference was conducted in this claim from which a prehearing order of March 13, 2003, was filed. The prehearing order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Mark Garland, the claimant, Jill Johnson, Dr. Kent Davidson, Dr. Earl Peeples, Halfred Miller and James Keathley, coupled with the deposition testimony of Dr. Sharon Meadow, along with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Mark Hampton Garland, the claimant, with a date of birth of December 30, 1963, has been employed by the City of Little Rock as a police officer for a period of six years. The claimant resides in Benton, Arkansas.

The testimony of the claimant reflects that prior to June 4, 2002, he had not suffered any restrictions or limitations on his physical activity in the discharge of his employment duties. The claimant acknowledged that he has suffered prior injuries, however denies that the same served as an impediment toward the discharge of his employment duties. Further, the claimant denies that he was under the care of a physician in close proximity to his June 4, 2002 compensable injury.

The claimant acknowledged that he suffers from sinus difficulties and may have obtained medical treatment relative to the afore complaint in close proximity to the June 2002 compensable injury. Additionally, used some sick days in 2002 prior to the June 4, 2002 accident. The testimony of the claimant reflects that he suffered a prior injury to his ankle while chasing a suspect within the course and scope of his employment with respondent. Additionally, the claimant acknowledged that in 1999 he was involved in a non-work-related motor vehicle accident and sustained injuries which required him to be off work for a period of four months. The medical in the record reflects that at the time of the claimant's August 17, 1999 office visit to Dr. Kevin Collins, relative to the 1999 motor vehicle accident, he was all ready doing full unrestricted duty at work. (CX1, p. 24) There are no medical reports in the record evidencing the claimant receiving medical treatment for neck, low back, upper or lower extremity complaints between the August 17, 1999 discharge from the care and treatment of Dr. Collins and the June 4, 2002 injury in the employment of respondent, which

serves as a basis of the present claim.

The record reflects that from the time of the claimant's 1997 employment as a police officer for the City of Little Rock, he worked the day shift, 5:30 a.m. through 1:00 p.m. In February 2002 the claimant requested assignment to the second shift. The claimant's second shift hours were from 2:30 p.m. through 10:30 p.m.

On June 4, 2002, the claimant was involved in a motor vehicle accident while in the course and scope of his employment:

I was responding to an alarm call and had turned off of Barrow Road. I don't really remember the street name, right now. I think it was Morris Manor Drive and had been flagged down by an individual passing the opposite direction in a car shortly after my turn. I – you never can tell what somebody is wanting but I activated my rear blue lights and this individual was telling me that it was a false alarm and that everything was okay and that I didn't need to – so, I was finding out information about who he was and, you know, I probably would have continued on to the alarm except for the fact to maybe find out what he was talking about, get some more information about him if something had happened. He relayed that he was the maintenance man, I believe, at that apartment complex where the alarm had gone off. I don't remember his name right now, I'm sure it's in the accident report. But, there were some kids that came out in the street behind him, was coming up to see the police officer or just either walk down the street so I was turning the car, activating my front blue lights just for other traffic coming the opposite direction. That's when I was impacted from the rear by another vehicle. I'm thinking that I must have hit my head a little bit on the back of the cage behind me. There was a second or so I remember them asking me if I was all right but I got out of the car and started just, after years of being a police officer just standard procedure, making sure that everybody was okay and

we didn't need an ambulance. I contacted my supervisor over the radio to come to the scene. (T. 25-26)

While the original estimates of the damage sustained by the vehicle operated by the claimant was \$5,000.00 the ultimate and actual cost to repair the vehicle was \$1,540.00. The claimant's testimony reflects that shortly after the occurrence of the accident he began to experience pain in his right leg, lower back, and neck:

After walking around for a few minutes I started noticing some sharp pains down my right leg and started getting some pain in my lower back. Nobody at the time needed an ambulance so I didn't call for an ambulance. I stayed on the scene long enough to give the information for the accident report and let the other officers arrive that work an accident and supervisors arrive and issue tickets. And, then we went to the substation where I explained to Sgt. Miller that I was beginning to get into a great deal of pain. (T. p. 26)

The claimant was seen at the emergency room at Baptist Medical Center on June 4, 2002, after reporting the injury to his supervisor, Sgt. Miller. Claimant maintains that he was provided medication by the attending emergency room physician and directed to follow-up with his primary care physician. Following his emergency room visit the claimant was directed by his supervisor to contact the city nurse. Thereafter, the claimant was referred by the city nurse to Dr. Sharon Meador, respondent's designated medical provider. The claimant initiated treatment under the care of Dr. Meador on June 5, 2002.

The testimony of the claimant reflects that during the initial visit with Dr. Meador on June 5, 2002, she conducted a physical examination and provided a prescription for steroids. The claimant was released by Dr. Meador to return to modified work. The claimant did not report for

modified work but rather took sick leave and vacation leave. The claimant was seen by Dr. Meador on four or five other occasions during which time additional diagnostic studies were performed, to include x-rays at Southwest Hospital, medication prescribed and physical therapy prescribed.

The claimant's testimony reflects that he continued to experience symptoms or complaints of pain in his lower back, numbness on occasion in the fingers of his right hand and numbness down his leg. The claimant's testimony reflects that his symptoms or complaints did not improve with treatment as provided by Dr. Meador. The claimant obtained an MRI on his own from Saline Memorial Hospital relative to his low back. Finally, the testimony of the claimant reflects that during his final visit to Dr. Meador on July 17, 2002, he was referred to an orthopedic physician. The claimant's testimony reflects that he was next seen for medical treatment relative to his June 4, 2002 injuries by Dr. Kent Davidson, whom he assumed was an orthopedic physician. Claimant received a telephone call from Ms. Melissa Morgan, the nurse for the City of Little Rock, who directed him to see Dr. Davidson.

The testimony of the claimant reflects that he was seen by Dr. Kent Davidson on three to four occasions following his initial visit of July 18, 2002. Dr. Davidson prescribed physical therapy at Touchtone Physical Therapy, and medication. The claimant acknowledged that he remained on modified duty restriction while under the care and treatment of Dr. Davidson. Further, the testimony of the claimant reflects that he continued to take strong medication in an effort to address his pain and symptoms attributable to the June 4, 2002 injury. Specifically, the claimant noted that he was taking Hydrocodone, Skelexin and Zanaflex.

On or about August 28, 2002, the claimant returned to the employment of respondent performing modified job duties. Following his final visit to Dr. Davidson in August 2002,

respondent notified the claimant that further medical treatment relative to the June 4, 2002 accident would not be deemed reasonably necessary, and, as such, the cost of same would not be paid by respondent.

The claimant maintains that he continued to experience residuals of the June 4, 2002 injury following his final visit to Dr. Davidson. The claimant sought follow-up treatment under the care of his personal physician, Dr. Evelyn Cathcart at the Benton Family Clinic. Thereafter, the claimant was referred by Dr. Cathcart to Dr. Thomas M. Hart, a Little Rock pain management specialist. The claimant maintains that after Dr. Hart reviewed the MRI further treatment was recommended and instituted, to include two percutaneous discectomies on his lower back. The claimant acknowledged that his symptoms did not improve after undergoing the procedures under the care of Dr. Hart. The testimony of the claimant reflects that his symptoms experienced subsequent to the percutaneous discectomies included low back pain, headaches, muscle spasms in his back, and pain radiating down his right leg and occasionally in the left leg.

The claimant acknowledged that upon securing the services of an attorney in December 2002 the same recommended that he see a neurosurgeon. Pursuant to the afore the claimant was seen by Dr. Zachary Mason. The claimant maintains that after being examined by Dr. Mason he underwent additional diagnostic studies to include an myelogram and a CT scan. Later the claimant underwent surgery under the care of Dr. Mason in February 2003.

There is not a dispute regarding the manner in which the claimant came under the care and treatment of Dr. Sharon Meador relative to the June 4, 2002 compensable injury. Ms. Jill Johnson, the senior claim adjuster with Risk Management Resources, a third party administrator for the City of Little Rock's self-insured workers' compensation program, noted that the City of Little Rock had

a City nurse, Ms. Melissa Morgan, who typically directs the care and treatment of injured employees.

Ms. Johnson testified:

The City will report it to Company Nurse. They will make the initial referral and then the City nurse typically directs the treatment. (T. 96)

Ms. Johnson does acknowledge that she's furnished copies of the claimant's records to Dr. Earl Peeples, a Little Rock orthopedic physician, and requested that he review the medical and author an opinion regarding whether or not the injury and subsequent surgery were related to the June 4, 2002 incident.

Dr. Ken Davidson, a family practice specialist, testified regarding his role at Arkansas Specialty Orthopedics:

Well, my title is, I'm the Director of Primary Care, sports medicine, so I see a lot of sports related injuries and do a lot of the initial evaluation of orthopedic problems at our clinic. My practice is about a third work comp, about a third sports medicine, about a third arthritis and related problems. But, I do a lot of the initial evaluation because the nature of the clinic is such that our orthopedists are performing surgery. Very few of them even see back patients, for example. And, so myself and another non-surgical, non-operative orthopedist sees most – many of the new patients that come into the clinic, particularly back patients in work comp. (T. 114)

Dr. Davidson is certified in family medicine and has a certificate of added qualifications in sports medicine.

The claimant was initially seen by Dr. Davidson on July 18, 2002 for treatment relative to the June 4, 2002 accident. Dr. Davidson's testimony reflects that while he did not see the actual MRI films, he did review the report generated by the radiologist relative to the claimant's MRI of

June 28, 2002. Dr. Davidson testified:

The lumbar, I don't remember the details, specifically, but the problems were degenerative in nature, with no problem that could be seen as related to a traumatic event. In other words, no fracture or acute herniated disc. The problems appeared to be more degenerative in nature. (T. 116)

Regarding the initial visit of the claimant of July 18, 2002, Dr. Davidson testified:

...Initially, the most bothersome complaint when I initially saw him was of neck pain. And, I think we spent most of the visit focused on that. I also, you know, evaluated his lower back, also. But, since the neck was a relatively vulnerable structure in an automobile accident as compared or opposed to say the lower back which is relatively protected, I, of course, was concerned about the injury to his neck. He has some hand numbness and some things that sounded like they could be related to an acute type injury, particularly in the neck. So, by the second visit the neck problem had improved significantly I think even the lower back problem had improved and even by the third visit I think I'm documenting gradual improvement and did not really see any reason to consider, particularly in view of the MRI findings, also I didn't think any reason to think that surgery was indicated at that point. (T. 117)

At the conclusion of the July 18, 2002 visit Dr. Davidson released the claimant to modified duty:

Right. Yeah, I say returned to modified duty, seated work only, frequent standing or walking to avoid stiffness. I don't remember specifically whether it was the first visit or the second visit, but I was kind of taken a little bit aback when I was informed that he had intended to take a year's leave of absence. (T. 118-119)

The claimant was last seen by Dr. Davidson on August 26, 2002. With respect to the August 26, 2002 physical examination, Dr. Davidson testified:

Well, he – his range of motion seemed to be improving and even some of the neurological findings that we had – that I had noted previously seemed to be improving. He wasn't well. I thought he still had a lumbar strain. I continued his physical therapy, recommended continuing his physical therapy. Put him on a non-steroid anti-inflammatory medication, continued his muscle relaxer, the modified duty and then asked to see him back in three weeks. (T. 120-121)

Dr. Davidson's assessment of the claimant's injury was that of a strain. Dr. Davidson indicated that the length of time to recover or heal from a strain varied tremendously from two weeks to two to three months. Dr. Davidson further noted that while he had requested that the claimant return in three weeks, the claimant did not return to him following the August 26, 2002 visit.

Dr. Earl Peeples, a Little Rock orthopedic physician, testified that he authored a report dated June 12, 2003, following his review of the claimant's medical records. Dr. Peeples testified that he does not use discography in that he does not think that it is a very reliable procedure. In the instant claim, under the care of Dr. Thomas Hart, the claimant underwent a percutaneous discectomy. Dr. Peeples testified, that in his opinion, a discograph was unwarranted in the instant claim:

. . . I would say no. I think Dr. Collins, excuse me, Dr. Davidson's comment of conservative care and that they were degenerative were sufficient treatment. I do not think further treatment on top of that in terms of invasive procedures would be of benefit in terms of discography or percutaneous discectomy. I don't think those were helpful. (T. 144)

The record also reflects the testimony of Dr. Sharon Meador, a general practitioner, testified regarding her contact with the claimant relative to the June 4, 2002 compensable injury. Dr. Meador noted that following her initial evaluation of the claimant on June 5, 2002, the claimant was released

to modified duty. Dr. Meador explained that due to the nature of the City's operation, she felt that there was work available for the claimant within the modified job duty restrictions. Dr. Meador acknowledged that the claimant was not released to return to his regular job duties as a patrol officer operating a vehicle. Dr. Meador further testified that she informed the claimant that if his condition did not improve she would consider an MRI of his lumbar spine. Dr. Meador said that at the next visit when discussion was had regarding the MRI the claimant informed her that he had all ready undergone one at his own expense. Dr. Meador's testimony reflects that at the time she last saw the claimant on July 17, 2002, she recommended that he be referred to an orthopedic physician. (JX1, p. 64-65) Finally, Dr. Meador testified with respect to the claimant's low back complaint:

I think they were genuine to begin with and then magnified way out of proportion. (RX1, p. 99)

Respondent controverted the claimant's entitlement to workers' compensation benefits relative to the June 4, 2002 accident subsequent to September 6, 2002 when liability was denied for further medical treatment relative to the claim. The claimant initiated treatment under the care of Dr. Thomas Hart, a Little Rock pain specialist, pursuant to a referral from his family physician. Dr. Hart took the claimant off work following a November 12, 2002 visit. (JX1, p. 99)

While the claimant underwent a discogram and two percutaneous discectomies under the care of Dr. Hart, he was not released to return to work by same. The claimant was later seen by Dr. Zachary Mason, a Little Rock neurosurgeon, and subsequently underwent surgery under the care of same in the form of a bilateral decompressive laminectomy.

The claimant asserts entitlement to medical benefits subsequent to September 6, 2002. Further, the claimant maintains that medical treatment received subsequent to said date was

reasonable, necessary, and causally related to the June 4, 2002 compensable injury. The claimant further asserts entitlement to temporary total disability benefits subsequent to November 13, 2002.

From all the evidence, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 4, 2002 the relationship of employee-employer existed between the parties.
3. On June 4, 2002 the claimant earned wages sufficient to entitle him to weekly compensation benefits at the maximum applicable rate.
4. On June 4, 2002 the claimant sustained an injury arising out of and in the course of his employment.
5. Subsequent to his June 4, 2002, compensable injury claimant was released to modified duty by his treating physicians and respondent had available for the claimant modified duty which claimant declined. Claimant is not entitled to temporary total disability for the period June 5, 2002 through August 27, 2002.
6. On September 6, 2002, respondent controverted claimant's entitlement to medical benefits relative to the compensable June 4, 2002 compensable injury.
7. Medical treatment rendered to the claimant under the care of Dr. Evelyn Cathcart on and after September 13, 2002, to include referrals therefrom, was reasonable necessary medical treatment and related to claimant's compensable injury of June 4, 2002.
8. Medical treatment rendered to the claimant under the care of Dr. Thomas Hart, to include the discogram and percutaneous discectomy, was reasonably necessary relative to claimant's June 4, 2002, compensable injury.

9. Medical treatment rendered to the claimant under the care of Dr. Zachary Mason, to include the bilateral decompression laminectomy, is reasonably necessary relative to claimant's June 4, 2002 compensable injury.

10. The claimant was temporarily totally disabled for the period November 13, 2002, and continuing through the end of his healing period, a date yet to be determined, as a result of the June 4, 2002, compensable injury.

11. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of June 4, 2002.

12. The respondent has controverted the payment of all benefits in this claim subsequent to September 6, 2002.

### **CONCLUSIONS**

The compensability of the claimant's June 4, 2002 injury in the employment of respondent is not disputed. The parties stipulated to the afore. The issue before the Commission at this juncture is the claimant's entitlement to additional workers' compensation benefits relative to the June 4, 2002 compensable injury, to include medical and indemnity benefits. The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant's injury was sustained subsequent to the affected date of the afore provision.

In the instant claim, the claimant who had been employed by respondent as a patrol officer for six years, suffered injuries to his back on June 4, 2002, as a result of a motor vehicle accident. While it is undisputed that the claimant had previously suffered injuries in an April 26, 1999 motor vehicle accident which required medical treatment and resulted in a 5% impairment on August 17, 1999, there is no evidence that the claimant was off work or received medical treatment for that

injury or any other injury prior to June 4, 2002.

Following the June 4, 2002 compensable injury the claimant received initial medical treatment at the emergency room at Baptist Medical Center. Thereafter, the claimant's treatment relative to the compensable injury was directed by respondent. The claimant received treatment under the care of Dr. Sharon Meador pursuant to the direction of respondent commencing June 5, 2002. Dr. Meador's assessment of the claimant's complaint relative to the June 4, 2002 compensable injury was that of lumbosacral and mild cervical strain. Dr. Meador prescribed physical therapy and medication relative to the claimant's injury. At the time of the claimant's final visit under the care and treatment of Dr. Meador on July 17, 2002, she recommended a referral to an orthopedic physician. (JX1, p. 64-65)

On July 18, 2002, the claimant was seen by Dr. Kent Davidson, a family practice specialist, pursuant to the direction of respondent. On June 28, 2002, the claimant underwent a MRI of his cervical and lumbar spine at Saline Memorial Hospital. The claimant paid for the cost of the afore diagnostic studies. (JX1, p. 58-59)

Under the care and treatment of Dr. Kent Davidson, the claimant underwent physical therapy, was prescribed medication in the form of anti-inflammatories and pain medication, and was released to modified duties.

A review of the medical in the record reflects that from the time the claimant first sought and obtained medical treatment for his June 4, 2002 compensable injury, he has registered complaints of low back pain attributable to the accident. There is no evidence in the record to reflect that the claimant had complaints of low back pain or sought treatment relative to his low back between August 1999 and June 4, 2002. The June 28, 2002 MRI of the claimant's lumbar spine reflects, in

pertinent part:

IMPRESSION: 1)Relatively mild multi-level and multi-factorial degenerative changes throughout the lumbar spine as discussed. These findings are a bit more prominent at L4-5, though no gross spinal stenosis is appreciated. (JX1, p. 59)

The claimant was last seen by Dr. Kent Davidson on August 26, 2002, relative to the June 4, 2002 compensable injury. Dr. Davidson's August 26, 2002, report reflects, in pertinent part:

OBJECTIVE: Back – there is moderate tenderness to palpation in the right lumbosacral region and more severe discomfort to palpation in the sciatic notch. Range of motion – 0 to 90 degrees of forward flexion with minimal discomfort. He has 10 degrees of back extension with discomfort. Straight leg raise results in lumbar discomfort without radiation. Neurologic – heel and toe walk is normal. There is subjective decreased sensation to light touch over the first dorsal web space of his foot. Otherwise sensation is normal. Deep tendon reflexes are 1 to 2+ and symmetrical.

ASSESSMENT:

1. DJD, lumbar spine.
2. Recent lumbar strain with slow improvement. (Jx1, p. 81)

The August 26, 2002 report of Dr. Davidson noted that the claimant was to return to be rechecked in three weeks. The respondents maintained that they notified the claimant on September 6, 2002, that additional treatment would be terminated after the medical records revealed no objective findings. As a consequence of the afore, the claimant was not again seen by Dr. Davidson, who had been selected by respondents.

The medical in the record reflects that the claimant was next seen by a physician following his August 26, 2002 visit to Dr. Davidson on September 3, 2002, when he was seen by his family

physician, Dr. Evelyn Cathcart. After noting the history of the claimant's injuries and medical treatment received relative to the same, the September 13, 2002 report of Dr. Cathcart reflects, in pertinent part:

O: Indeed he seems to be a bit stiff with both sitting and getting up. He has some tenderness over this right SI joint and just over his lower lumbar musculature in general he has some muscle spasms. He has decreased reflexes at both knees but strength is preserved bilaterally. He has pain with extension and external rotation of this right hip. He does much better with the left but has some pressure on the right side with extension of his left leg.

A: Pain of lumbar area with right radicular symptoms, consistent with sacroiliac sprain and some sciatic inflammation. However, it certainly has persisted longer than I would expect for this type of injury.

P: I would like to get him in to see Dr. Hart. I don't know if maybe he could also have a leaking disc in his back that could be contributing to this, or if it is all from the sciatic nerve. . . (JX1, p. 84)

On October 7, 2002, the claimant was initially evaluated by Dr. Thomas Hart, a Little Rock pain specialist pursuant to the above-cited referral of Dr. Cathcart. Following his examination of the claimant during the October 7, 2002 visit, Dr. Hart noted, in his report:

IMPRESSION: As I discussed with him the most common cause of neck pain after hyper-extension or flexion injury is usually the cervical facets, again according to the New England Journal of Medicine of December 1996. Nothing has been done. He has not had any type of interventional type procedure. As to the lower back the most common cause is discogenic, i.e. intervertebral disc disease or a torn disc. He does have some clues per her [his] MRI that he may have some intervertebral disc disease. I would recommend at this time, since his pain is now four months and not

getting any better, but worse in his lower back to proceed on with a discograph according to the North American Spine Society, International Spine Injection Society's protocol, with failure of conservative care, pain beyond four months, not delineated by other imaging studies that the gold standard would be discography, not a MRI or CT with myelogram. If, by properly performing the discography we determine that we have an abnormal disc both subjectively and objectively we will inject intradiscal steroids followed by post CT imaging. At that point if it shows contained herniation then consideration of a percutaneous discectomy. If it shows a surgical lesion we will get a surgical consultation. . . . (JX1, p. 88)

On October 9, 2002, the claimant underwent the discogram and thereafter a CT of his lumbar spine with contrast pursuant to the direction of Dr. Hart. Impression generated as a result of the procedure was that of a annular tears at L3-L4 and L4-L5. (JX1, p. 92-96) On November 12, 2002, Dr. Hart authored a release directing the claimant to remain off work. (JX1, p. 99) The claimant underwent percutaneous discectomy under the care of Dr. Hart on November 13, 2002 at L3-L4 and L4-L5. On November 27, 2002, the claimant underwent a percutaneous discectomy at the L5-S1 under the care of Dr. Hart. (JX1, p. 100-107)

On December 18, 2002, the claimant was evaluated by Dr. Zachary Mason, a Little Rock neurosurgeon for complaints attributable to the June 4, 2002 compensable injury. (JX1, p. 108-109) Under Dr. Mason's care and treatment, the claimant underwent additional diagnostic studies to include a myelogram and post-myelogram CT scan. The impression generated as a result of the afore diagnostic studies are as reflected in the December 27, 2002 radiology report of St. Vincent Infirmary Medical Center:

Impression:  
Diffuse mild narrowing of the spinal canal thought to

be on a congenital basis. The bony intervertebral foramina are adequately patent throughout. Minimal concentric disc bulge at L3-L4 and L4-L5. There appears to be a mild-to-moderate broad-based disc protrusion laterally superimposed on the concentric disc bulge at L4-L5 and this may impinge on the L4 nerve root in the lateral paraspinal space. (JX1, p. 110)

The myelogram obtained on December 27, 2002 reflects, in pertinent part:

Impression:

Mild extradural ventral impingements at L3/L4, L4/L5. See above report concerning L5-S1 which shows no thecal sac impingements on the myelogram. CT scan to follow. (JX1, p. 112)

Dr. Mason recommended surgery following the afore diagnostic studies. On February 13, 2003, the claimant underwent surgery under the care of Dr. Mason in the form of a bilateral decompressive laminectomy and medial discectomy at L4-5. (JX1, p. 118) The medical in the record reflects reports of claimant's visits to Dr. Mason post surgery.

The claimant was initially seen on March 5, 2003, following his February 13, 2003 surgery. During the March 5, 2003 visit, the claimant reported feeling satisfactory but continuing to have some shooting pain down his legs at times cold sensation to his toes. (JX1, p. 121) When seen in follow-up by Dr. Mason on April 9, 2003 the claimant continued to have some right foot and leg pain as well as some pain in the left buttock radiating into the posterior and lateral thigh. Dr. Mason recommended conservative treatment and sent the claimant for an evaluation for possible work hardening. (JX1, p. 122)

On May 8, 2003, the claimant was evaluated by Dr. Scott Archer at Arkansas Spine & Sports Institute, pursuant to referral of Dr. Thomas Hart. Following his evaluation of the claimant, Dr.

Archer's impression of the claimant's complaint was that of chronic back pain. Dr. Archer recommended that the claimant enroll in the lumbar rehabilitation program. (JX1, p. 129-131)

### **MEDICAL TREATMENT**

Respondent terminated the claimant's access to sanctioned medical treatment as of September 6, 2002, relative to the compensable June 4, 2002 injury. Nevertheless, the evidence reflects that when the claimant was last seen for medical treatment relative to his June 4, 2002 compensable injury on August 26, 2002, by Dr. Kent Davidson, a physician selected by respondents. Dr. Davidson had recommended that the claimant follow-up or return for treatment in three weeks.

Arkansas Code Annotated §11-9-508(a) mandates that an employer promptly provides for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. While it is undisputed that the claimant had degenerative disc disease prior to June 4, 2002, there is no evidence in the record to reflect that the same required medical treatment between August 1999 and June 4, 2002. An employer takes an employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable under workers' compensation law. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1998).

In the instant claim the evidence reflects that the claimant did in fact suffer a compensable injury on June 4, 2002. Further, the evidence reflects that the claimant remained symptomatic relative to the June 4, 2002 compensable injury subsequent to September 6, 2003. There is no requirement under the workers' compensation statutes or case law which mandates that objective findings be present for continuing medical treatment relative to a compensable injury. Indeed, the evidence in this record reflects that at the time the claimant was seen by a physician subsequent to

August 26, 2002, on September 13, 2002, the physical examination disclosed the presence of objective findings, muscles spasms.

The evidence reflects that at the time the claimant was last seen by Dr. Kent Davidson on August 26, 2002, he had been prescribed medication for complaints attributable to the June 4, 2002 compensable injury. Upon being seen by Dr. Evelyn Cathcart on September 13, 2002, the claimant continued to register complaints relative to his low back growing out of the June 4, 2002 compensable injury. As a consequence of the afore, Dr. Cathcart prescribed medication for the claimant and referred the claimant to Dr. Thomas Hart, a Little Rock pain specialist, for further treatment relative to the claimant's complaints.

The medical in the record reflects that additional diagnostic studies were performed by Dr. Thomas Hart and Dr. Zachary Mason subsequent to respondent's controversion of claimant's entitlement to medical benefits as of September 6, 2002. The evidence preponderates that the claimant's medical treatment received by physicians subsequent to August 26, 2002, to include the care and treatment under the care of Dr. Evelyn Cathcart, Dr. Thomas Hart, and Dr. Zachary Mason, was reasonably necessary relative to the claimant's June 4, 2002 compensable injury. Respondents controverted the claimant's entitlement to medical benefits subsequent to June 4, 2002. Respondent has controverted claimant's entitlement to medical benefits subsequent to September 6, 2002, as a result of the claimant's June 4, 2002 compensable injury.

#### **TEMPORARY TOTAL DISABILITY**

An injured employee is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway & Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing

period is defined as that period from healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12). When the underlying condition causing the disability becomes stable, and when nothing further in the way of treatment will improve the condition, the healing period is ended. The persistence of pain does not suffice to extend the healing period or to find that the claimant is totally incapacitated to earn wages. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 682 S.W.2d 582 (1982).

In the instant claim, subsequent to claimant's June 4, 2002 compensable injury, he was seen by Dr. Sharon Meador on June 5, 2002. Dr. Meador released the claimant to modified duty. The evidence in the record reflects that the respondent had available to the claimant modified duty on June 5, 2002. The evidence preponderates that at all times the claimant was released to modified duty, respondent had such duty available for the claimant. The claimant is not entitled to the payment of temporary total disability benefits during the period that he was released to modified duty following his June 4, 2002 compensable injury, and respondent made available for the claimant job duties within the restrictions. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he was entitled to the payment of temporary total disability benefits for the period June 5, 2002 through August 27, 2002.

On August 27, 2002, the claimant returned to the employment of respondent and discharged modified job duties. On November 12, 2002, claimant was directed to remain off work by Dr. Thomas Hart prior to undergoing treatment relative to his compensable injury of June 4, 2002. There is no evidence to reflect that the claimant has been released to return to work by a treating physician since being taken off work on November 12, 2002. Indeed, the evidence in the record discloses that the claimant initiated treatment under the care of Dr. Zachary Mason on or about December 18, 2002. Dr. Mason did not release the claimant to return to work. On February 13, 2003, the claimant

underwent surgery under the care of Dr. Mason.

The evidence preponderates that the claimant remained within his healing period as a result of the June 4, 2002 compensable injury and totally incapacitated from engaging in gainful employment commencing November 13, 2002. The claimant, as of the date of the hearing in this matter, had not reached maximum medical improvement nor had he been released to return to work. The evidence preponderates that the claimant is entitled to the payment of temporary total disability benefits from November 13, 2002, and continuing through the end of his healing period as a result of the June 4, 2002 compensable injury. Respondent has controverted the claimant's entitlement to temporary total disability benefits.

#### **AWARD**

Respondent is hereby ordered and directed to pay temporary total disability benefits at the maximum applicable rate relative to the claimant's June 4, 2002 compensable injury, commencing November 13, 2002, and continuing through the end of the claimant's healing period, or until released to return to modified or appropriate work. Said sums accrued shall be paid in a lump without discount.

Respondent is further ordered and directed to pay all reasonably related medical, hospital, nursing, and other apparatus expenses, growing out of the claimant's compensable injury of June 4, 2002, to include treatment rendered to the claimant under the care of Dr. Evelyn Cathcart subsequent to September 6, 2002 and authorized referrals therefrom to include Dr. Thomas Hart, and Dr. Zachary Mason.

The maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable Jerry W. Stewart, pursuant to Arkansas Code Annotated §11-9-715, and, in accordance with Holiday Inn-West v. Coleman, 31 Ark. App. 224, 792 S.W.2d 345 (1990).

This award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-

809, until paid. Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**ANDREW L. BLOOD**  
**Administrative Law Judge**