

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210180

EMIL HUBIT

CLAIMANT

MALONE'S MECHANICAL, INC.

RESPONDENT

CNA INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 18, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith,  
Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by JAY KUTCKA, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 22, 2003, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on March 11, 2003. This pre-hearing order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties announced that the respondents had not only paid all medical expenses incurred through November 14, 2002, but now agree to accept liability for all reasonably necessary authorized medical expenses incurred for services rendered to the claimant or to be rendered to the claimant for his admittedly compensable lower back injury. As a result there was an amendment made to stipulation # 5 and issue #2. A copy of the pre-hearing order with these amendments noted thereon, was made Commission's Exhibit's No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:  
Commission for its consideration:

1. On August 19, 2002, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$425.00 for total disability

and \$318.00 for permanent partial disability.

3. On August 19, 2002, the claimant sustained a compensable injury to his low back.
4. Temporary total disability benefits have been paid through at least January 10, 2003, though they now deny the claimant's entitlement to such benefits after November 14, 2002.
5. All medical expenses have been paid through November 14, 2002. The respondents further agree to provide reasonably necessary authorized medical services for the claimant's compensable low back injury into the future.

By agreement of the parties the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained compensable injuries to his head and cervical spine in the employment related incident of August 19, 2002.
2. The claimant's entitlement to additional medical services for his head/cervical complaints.
3. The claimant's entitlement to temporary total disability benefits from November 14, 2002 through a date yet to be determined.
4. Attorney's fees.

In regard to these issues, the claimant contends as a result of the compensable injury he has sought additional medical treatment recommended by Dr. Jason D. Richey, the authorized treating physician. The respondents have refused to authorize physical therapy and the additional testing requested by Dr. Richey. The claimant is entitled to temporary total disability benefits from January 10, 2003 to a date yet to be determined. The claimant is entitled to attorney's fees on all indemnity benefits at the rate of 25%. The claimant reserves the issues of permanent impairment and wages loss disability.

In regard to these issues, the respondents contend that:

- (a) The claim was accepted as compensable for low back injury.
- (b) Claimant was examined by Dr. Standefer on October 31, 2002. Dr. Standefer gave his opinion that the claimant could return to work. On November 14, 2002, the claimant was treated by Dr. Richey who concurred that the claimant was able to return to work.
- (c) Transportation Insurance Company seeks reimbursement for overpayment of benefits which were paid through January 16, 2003. Benefits paid from November 15, 2002 through January 16, 2003, were an overpayment in the amount of \$3,764.26.
- (d) Transportation Insurance Company has not been contacted by the treating physician to seek authorization for physical therapy. The claimant was released to full duty work on November 14, 2002 by Dr. Richey.

### DISCUSSION

\_\_\_\_\_The central issue in this case is the question of whether the claimant also sustained “compensable” injuries to his head and cervical spine in the same employment related incident on August 19, 2002. The burden rests upon the claimant to prove the occurrence of these alleged compensable injuries. In order to meet this burden, the claimant must prove by the greater weight of the credible evidence that these alleged physical injuries satisfy all of the requirements for a “compensable injury” found in Ark. Code Ann. §11-9-102(4)(D) and §11-9-102(4)(A)(i).

To satisfy the requirements of Ark. Code Ann. §11-9-102(4)(D), the claimant must prove by the greater weight of the credible medical evidence, the actual existence of a physical injury to his head and cervical spine. In addition, the actual existence of these physical injuries must be supported by “objective findings”, as that term as defined in Ark. Code Ann. §11-9-102(16).

The claimant was undoubtedly struck on the head in the incident of August 19, 2002. However, he was wearing a hard hat. The medical evidence presented fails to support the existence of any actual physical injury to his head or brain.

None of the various physicians, who have seen and evaluated the claimant, have diagnosed any physical injury involving the claimant's head or brain. In the initial medical records there is also no mention of the observation of any lacerations, abrasions, contusions, swelling, or bruising involving the claimant's head. In fact, there is no mention of any subjective symptoms indicative of such an injury. Contrary to the claimant's testimony, the reports and records of Dr. Richey specifically note that the claimant consistently denied experiencing headaches, nausea or vomiting, or even blurred vision (through the visit on September 17, 2002).

The first mention of any potential cerebral complaints is found in the report of Dr. Everett C. Moulton, III, dated September 30, 2002. At that time, the claimant voiced complaints of blurred vision. However, Dr. Moulton does not record any "objective findings" to substantiate this subjective complaint. He expressly interprets the results of the various tests he performed on the claimant as either "unremarkable" or "completely negative". Dr. Moulton does not expressly diagnose the existence of any physical injury to the claimant's head or brain, nor does he attribute the claimant's subjective complaints of blurred vision to such an injury. He simply notes that the claimant gave a history of blurry vision "following" the incident on August 19, 2002. Thus, the report of Dr. Moulton would not be sufficient to "establish" the actual existence of a physical injury to the claimant's head or brain and certainly not one that was supported by "objective findings".

Curiously, the report of Dr. Moulton was directed to a Dr. Dena Amerine-Harris. There have been no reports or records from Dr. Amerine-Harris introduced and the nature of her involvement in this case is unknown.

After consideration of the medical evidence presented, it is my opinion that the claimant has failed to "establish" by medical evidence supported by "objective findings", the actual existence of a physical injury or condition involving his head or brain. Thus, the claimant has failed to satisfy the requirements for proving a "compensable injury" to his

head or brain, as set out in Ark. Code Ann. §11-9-102(4)(D). The claimant's failure to satisfy the requirements for this subsection prevents an award of any benefits for the alleged employment related injury to his head or brain.

Next, it becomes necessary to address the claimant's alleged neck or cervical injury, in regard to the requirements of Ark. Code Ann. §11-9-102(4)(D). In this instance, the medical evidence does "establish" the existence of a physical injury involving the claimant's neck or cervical spine.

In his initial clinic note of August 26, 2002, Dr. Richey diagnoses the presence of a "cervical neck strain". The sole basis for the diagnosis of this musculoligamentous injury appears to be the claimant's subjective complaint of a "popping" sensation in his neck on movement. In his office notation, Dr. Richey states:

"Denies any type of neck pain however just states that ears (? hears) a popping sensation when he moves it."

The clinical examination of the claimant by Dr. Richey failed to reveal any "objective findings" to support this subjective complaint by the claimant. In particular, it is important to note that Dr. Richey specifically observed that the claimant had a full range of motion of his neck or cervical spine and made no mention of any "popping" or crepitus upon involvement. There is also no mention of any muscle spasms, tightness, abnormalities in cervical lordosis, edema, or any other objective findings to support the diagnosed condition. In his subsequent evaluations on September 3, 2002, September 17, 2002, October 24, 2002, and November 14, 2002, Dr. Richey again fails to note the observation of any abnormalities involving the claimant's neck or cervical spine. In fact, he does not even record any continuing subjective complaints by the claimant, in regard to his neck or cervical spine. Contrary to the claimant's testimony, Dr. Richey consistently observes that the claimant expressly denied any type of neck pain.

Also contrary to the claimant's testimony, the various physical therapy reports between September 4, 2002 and September 14, 2002, fails to record the observation of

any “objective findings”, or subjective complaints involving the claimant’s neck or cervical spine. There is also no indication in any of these reports that physical therapy modalities were employed to this portion of his anatomy. Finally, in his evaluation of October 31, 2002, Dr. Standefer fails to record any “objective findings” to support any injury of the claimant’s neck or cervical spine or even any subjective complaints of difficulties with this portion of the claimant’s body.

In summary, the initial diagnosis of Dr. Richey may be sufficient to “establish” the existence of a musculoligamentous injury to the claimant’s cervical spine, in the specific form of a cervical strain. However, the existence of this particular diagnosed condition is not supported by “objective findings”, as required by Ark. Code Ann. §11-9-102(4)(D). Therefore, this particular diagnosed injury (a cervical strain) would not represent a “compensable injury” within the meaning of the Act.

However, in January of 2003, the subsequent medical evidence “establishes” the existence of another type of physical injury or condition involving the claimant’s neck or cervical spine. This physical injury or condition is in the form of a small or mild central bulge or protrusion of the C4-5 intervertebral disc with degenerative changes at the levels of C2-3, C5-6 and C6-7. The expert medical opinion concerning the existence of these physical injuries or defects is clearly supported by abnormalities noted on purely objective radiographic studies. Thus, in regard to these specifically diagnosed physical injuries or conditions, the claimant has satisfied the requirements of Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove that these medically established and objectively documented physical injuries or conditions further satisfy the requirements of Ark. Code Ann. §11-9-102(4)(A)(i). These requirements are:

- (1) The physical injury or condition must arise out of and occur in the course of the employment;
- (2) The physical injury or condition must be causally related to a specific incident;

- (3) The physical injury or condition must be identifiable by time and place of occurrence;
- (4) The physical injury or condition must cause internal or external physical harm to the claimant's body;
- (5) The physical injury or condition must require medical services or result in disability.

In order to meet the first three of these requirements, the claimant must prove by the greater weight of the credible evidence the existence of a causal relationship between these medically established and objectively documented injuries or defects involving his cervical and the specific employment related incident on August 19, 2002. The claimant has offered no expert medical evidence addressing the existence of a causal relationship between these objectively documented defects involving his cervical spine and the employment related incident on August 19, 2003. However, such expert medical evidence is not an absolutely requirement. The claimant may also prove the existence of the required causal relationship by showing that these medically established and objectively documented physical injuries or defects occurred within a reasonable period of time following the employment related incident of August 19, 2002, are logically attributable to this incident, and that there is no other reasonable explanation for the presence of these physical injuries or defects, Eddington v. City Electric Company, 237 Ark. 804, 376 S.W. 2<sup>nd</sup> 550 (1964), Hall v. Pittman Construction Company, 235 Ark. 104, 357 S.W. 2<sup>nd</sup> 63(1962).

Clearly, the degenerative changes noted at multiple levels of the claimant's cervical spine likely pre-existed the employment related incident on August 19, 2002. It is also possible that the small or mild central bulge or protrusion of the C4-5 intervertebral disc pre-existed the employment related incident of August 19, 2002. Another possibility is that this defect could also have occurred after the employment related incident on August 19, 2002. Undoubtedly, the trauma produced by the employment related incident on August

19, 2002, could have logically caused the small or mild central bulge or protrusion of the claimant's C4-5 disc. This trauma would also be logically sufficient to have aggravated the claimant's pre-existing degenerative defects.

However, a multitude of relatively minor traumatic events could have logically produced the small or mild central disc bulge or protrusion and/or have aggravated the claimant's pre-existing degenerative changes. It is equally logical that this small or mild central disc bulge or protrusion may simply be the natural result of a progression of obvious degenerative disc disease without any specific precipitating event or incident. The same is true for the various other degenerative defects noted at multiple levels of the claimant's cervical spine.

The only evidence presented by the claimant to separate the employment related incident of August 19, 2002, from the other equally logical causes of the medically established and objectively documented physical injuries or defects involving his cervical spine is his own testimony. In this regard, the claimant testified that he had never experienced any symptoms or problems involving his neck or cervical spine, prior to this incident, but had experienced the onset of symptoms and difficulties involving this portion of his body immediately following the incident and has continuously experienced such symptoms thereafter.

While the testimony of a party is never considered uncontradicted, this does not mean that it could arbitrarily be disregarded or that it necessarily requires some type of independent substantiation by other evidence. If the testimony of a party is credible, it may be sufficient, in and of itself, to prove any fact that it is legally competent to address.

Clearly, the claimant's testimony would be legally competent to prove the existence of a reasonably close temporal relationship between the employment related incident of August 19, 2002, and the onset of symptoms indicative of the occurrence of the subsequently medically established and objectively documented physical injuries or defects

involving his cervical spine. However, after consideration of all the evidence presented, I simply do not find the claimant's testimony to be sufficiently credible to prove the existence of such a reasonably close temporal relationship between the employment related incident of August 19, 2002, and the onset of symptoms indicative of the subsequent medically established and objectively documented physical injuries or defects involving his cervical spine.

The claimant testified that prior to the employment related incident of August 19, 2002, he had experienced no difficulties or symptoms involving his neck or cervical spine. He testified that he had an immediate onset of pain in his neck at the time of the employment related incident on August 19, 2002, and that this pain had continued unabated thereafter (T.20). He stated that the day following the incident, his neck was hurting "bad" that he couldn't twist it and that it was "cracking" whenever he tried to turn it (T.10). He stated that when he initially saw Dr. Richey on August 26, 2002, he couldn't turn his neck "all the way" and that he told Dr Richey about the pain and that his neck "cracked" when moved (T.14 and 24). He testified that he also informed the physical therapist, who treated him in September of 2002, about these symptoms and actually received treatment from the physical therapist for his neck complaints (T.25). Finally, he stated that he informed Dr. Standefer on October 31, 2002, about the onset and continuation of the pain and other symptoms involving his neck or cervical spine (T.25).

This claimant's testimony, concerning the contemporaneous onset of symptoms involving the claimant's neck or cervical spine, is not supported by his subsequent actions. He failed to report to his employer on August 19, 2002, any injury and resulting difficulties involving his neck or cervical spine. In fact, he completed his regular shift on that date. The claimant also failed to report to his employer any injury or resulting difficulties to his neck or cervical spine on August 20, 2002. Again, he completed his assigned shift. The claimant had entered into a contract of employment with the respondent that called for a

specific limited period, which began on August 13, 2002, and was to end on August 20, 2002. The first report of any injury to his neck was not made by the claimant until August 23, 2002 (Respondent's Exhibit No. 2, page 1). This is also the date the claimant first sought medical treatment for his various complaints, including his neck or cervical spine (handwritten notation at the top of Claimant's Exhibit No. 1, page 1).

The claimant's testimony concerning the onset and progression of the symptoms involving his neck or cervical spine is also contradicted by the medical evidence presented. When the claimant initially obtained medical treatment on August 26, 2002, Dr. Richey records that he did report a "popping sensation" of his neck, upon movement. However, as previously noted, Dr. Richey also indicates that the claimant expressly denied "any type of neck pain". On clinical evaluation, Dr. Richey observed that the claimant exhibited a full range of motion of his neck or cervical spine. There is no mention of the observation of any crepitus or "popping" of the neck or cervical spine while performing the movement. Following this initial report, there is no mention in any of the subsequent reports of Dr. Richey (between August 26, 2002, and January 23, 2003), of any continuing symptoms involving the claimant's neck or cervical spine. In fact, Dr. Richey repeatedly notes that the claimant expressly denies any neck pain or continuing difficulties with movement of his neck. The physical therapy reports from September of 2002, do not record any symptoms or complaints involving the claimant's neck or cervical spine, observations of any abnormalities or impaired function of this anatomy, or any treatment rendered to this portion of his anatomy (Claimant's Exhibit No. 1, pages 15-23). The October 31, 2002 report of Dr. Standefer also fails to record any complaints of symptoms or difficulties involving the claimant's cervical spine or the observation of any abnormalities or impaired function of this portion of his anatomy.

The medical evidence further shows that the claimant was released to return to work by Dr. Richey on November 14, 2002. There is no evidence that the claimant attempted

to obtain any medical treatment for actual difficulties involving his neck or cervical spine until shortly after January 16, 2003, when the temporary total disability benefits for the claimant's admittedly compensable low back injury were terminated by the respondents. On January 23, 2003, the claimant returned to Dr. Richey with the heretofore unmentioned and, in fact, expressly denied complaint of pain in his neck or cervical spine. At that time, Dr. Richey recorded the following history of the onset and progression of the claimant's neck or cervical difficulties:

"He had had minimal neck pain for about a day that had resolved. Has been gone up until this point. States he has had this off and one for about a month."

Dr. Richey's physical examination of the claimant's neck or cervical spine on that date was essentially unremarkable. Again, it was noted that the claimant had full range of motion of his neck and there is no record of the observation of muscle spasms, splinting, or abnormality and cervical lordosis, edema, or any other objective findings. Dr. Richey's subsequent reports continued to note essentially normal physical examinations of claimant's neck or cervical spine.

In summary, I find that the claimant has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between his medically established and objectively documented injuries or defects involving his cervical spine, in the form of a small or mild central bulge or protrusion of the C4-5 intervertebral discs and various other degenerative changes involving multiple levels of his cervical spine and the specific employment related incident of August 19, 2002. Thus, the claimant has failed to prove that the medically established and objectively documented injuries or conditions meet the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i), so as to constitute a "compensable injury" under this subsection. The claimant will not be entitled to any benefits under the Act that would be attributable to his neck or cervical difficulties.

The remaining issue concerns the claimant's entitlement to additional temporary

total disability benefits for the period of November 14, 2002 through a date yet to be determined. As the claimant has failed to prove that he sustained any “compensable injuries” to his head and/or cervical spine, any difficulties or limitations which the claimant may be experiencing as a result of conditions or abnormalities involving these portions of his anatomy cannot be considered in resolving this issue. In order to prevail, the claimant must prove that he has continued temporarily totally disabled solely as a result of the effects of his admittedly compensable low back or lumbar injury. In order to meet this burden the claimant must show by the greater weight of the credible evidence that he has continued within his healing period from the effects of his compensable lumbar injury and has also been rendered totally disabled by the effects of this injury.

The duration of the healing period is a medical question, which must be resolved upon the greater weight of the greater evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the healing or resolution of the actual physical damage produced by the compensable injury. Once this underlying physical damage has resolved or at least stabilized at a permanent level, then the healing period has ended. The mere continuation of symptoms, after that time, is not sufficient to extend the healing period.

In his report of October 31, 2002, Dr. Standefer opines that the claimant’s compensable low back or lumbar spine injury does not merit surgical intervention. Thus, he released him “from the neurosurgery clinic.” He further indicated that, in his opinion, the claimant could return to work. However, he does not indicate that the compensable injury to the claimant’s lower back or lumbar spine has healed. He recommends continued use of anti-inflammatory medication and the institution of a program of exercise and walking. Finally, he directed the claimant to return for follow up with Dr. Richey.

The claimant then returned to Dr. Richey and was continued on conservative treatment modalities (oral medication and physical therapy) for his compensable low back

injury. The records of Dr. Richey show that there was substantial difficulty in obtaining authorization from the respondent for the recommended additional physical therapy (see notations of December 6, 2002, December 16, 2002, and January 23, 2003- Claimant's Exhibit No. 1, pages 29-30). Beginning with the January 23, 2003 visit, Dr. Richey again instituted treatment for the claimant's non compensable or cervical complaints, as well as continuing treatment for his compensable lower back or lumbar complaints. The treatment for the claimant's compensable lower back or lumbar complaints consisted of continuation of oral medication and a repeated recommendation for physical therapy. Ultimately, Dr. Richey has also recommended a consultation or evaluation by a chronic pain management specialist for both the claimant's lower back and cervical pain.

After consideration of the medical evidence presented, it is my opinion that this evidence is sufficient to prove that the claimant continued within his healing period from the effects of his compensable lower back or lumbar injury through February 17, 2003. Thus, he has proven the first requirement for entitlement to additional temporary total disability benefits. However, he must also prove by the greater weight of the credible evidence his compensable lower back or lumbar injury caused him to be rendered totally disabled from performing all forms of regular gainful employment during this same period, Arkansas State Highway and Transportation Department v. Breshears, 272 Ark 244, 613 S.W. 2<sup>nd</sup> 392(1981).

As previously indicated, the claimant has failed to prove the occurrence of compensable injuries to his head, or brain and cervical spine. Therefore, no consideration can be given to any limitations or restrictions placed upon the claimant's potential employment activities by these non compensable conditions. In determining whether the claimant has proven that he was actually totally disabled as November 14, 2002, only the disabling effects of his compensable lower back or lumbar injury can be considered.

The only evidence presented by the claimant to establish that his compensable low

back or lumbar injury has rendered him totally “disabled”, after November 14, 2002, is his own testimony. Both Dr. Standefer and Dr. Richey are of the opinion that the claimant’s compensable lower back or lumbar injury did not prevent him from performing regular employment as of August 31, 2002. Although Dr. Richey subsequently excused the claimant from regular employment for a brief period in January 2, 2002, this appears to be a precautionary measure attributable to the claimant’s neck or cervical complaints rather than his low back or lumbar complaints (Respondent’s Exhibit No. I, page 31). Dr. Richey has also indicated in a handwritten notation dated February 6, 2003:

“When patient feels he is able to return to work he can.”  
(Claimant’s Exhibit No. I, page 37)

However, this latter notation appears to be merely a concession to the claimant’s voiced belief that he cannot return to work, rather than any change in Dr. Richey’s previous opinion, concerning the claimant’s actual physical capabilities. It must also be noted that this latter notation also takes into consideration the claimant’s non compensable neck or cervical complaints, as well as his low back or lumbar complaints.

Again, the claimant’s own testimony is the only direct evidence to prove the claimant’s inability to perform gainful employment during the period in question. Certainly, the claimant’s testimony would be legally competent to prove physical restrictions and limitations resulting from his compensable lower back or lumbar injury and the effect of these limitations on his employability. However, after consideration of all the evidence presented, it is simply my opinion that the claimant’s testimony is not sufficiently credible to support a finding that his compensable lower back or lumbar injury has rendered him totally disabled from performing any regular gainful employment after November 14, 2002.

The claimant testified that he has experienced constant pain in his lower back since his compensable injury. He also testified that since this compensable injury he has been unable to bend, stoop, or lift. At the hearing, the claimant repeatedly moaned and groaned

when attempting to change positions.

However, as noted by Dr. Standefer and Dr. Richey, the claimant's extensive evaluations and testing have failed to disclose any physical abnormality that would be consistent with the substantial subjective complaints and physical limitations voiced by the claimant. Except for his verbal complaints of pain, the repeated examinations by Dr. Richey failed to show any objective findings of physical damage of the type and magnitude to explain the claimant's continued verbal complaints of significant pain in his low back. The claimant appears to have exhibited no limitations on range of motion, no positive straight leg raising, no muscle tightness, etc. Dr. Richey has also repeatedly noted that at the time of his various examinations the claimant appeared to be in no apparent "distress". This also appears to be the opinion formed by Dr. Standefer, at the time of his evaluation on October 31, 2002.

I would also note that the claimant had only been employed by the respondent to perform a specific limited job and commenced such employment on August 13, 2002, only six days prior to the incident giving rise to this claim. He further continued to perform his employment duties until the job was finished. By his admission, he has made no attempt to return to employment as a plumber/pipe fitter, or any other capacity.

The claimant has simply failed to prove by the greater weight of the credible evidence that his compensable low back or lumbar injury continued to render him totally disabled from performing any and all types of regular gainful employment for which he would otherwise be qualified, after November 14, 2002. The claimant's failure to prove this necessary fact prevents him from being entitled to the additional temporary total disability benefits he now seeks.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 19, 2002, the relationship of employee-employer-carrier existed

between the parties.

3. On August 19, 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$425.00 for total disability and \$318.00 for permanent partial disability.

4. On August 19, 2002, the claimant sustained a compensable injury to low back or lumbar spine.

5. There is no dispute, at the present time, over the claimant's entitlement to medical services at the respondents' expense for his compensable low back or lumbar injury.

6. The claimant has failed to prove that he sustained a "compensable injury to his head/brain in the employment related incident of August 19, 2002. Specifically, he has failed to establish by medical evidence, supported by objective findings, the existence of any physical injury to this portion of his body as required by Ark. Code Ann. §11-9-102(4)(D).

7. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a "compensable injury" to his neck or cervical spine in the employment related incident of August 19, 2002. Specifically, he has failed to prove the presence of a causal relationship between any medically established and objectively documented injury or defect involving his neck or cervical spine and the employment related incident of August 19, 2002, as required by Ark. Code Ann. §11-9-102(4)(A)(i).

8. There is no dispute over the claimant's entitlement to temporary total disability benefits through November 14, 2002 and all such benefits have been paid.

9. The claimant has failed to prove by the greater weight of the credible evidence that after November 14, 2002, he continued to be rendered temporarily totally disabled as a result of the effects of his compensable lower back or lumbar injury. Specifically, he has failed to prove by the greater weight of the credible evidence that such an injury continued

to produce actual total disability after November 14, 2002.

10. The respondents have controverted the claimant's entitlement to any benefits attributable to his alleged head/brain injury and his alleged cervical injury. The respondents also controvert the claimant's entitlement to any additional temporary total disability benefits, after November 14, 2002

ORDER

Based upon my foregoing findings and conclusion, I have no alternative to deny and dismiss all claims for benefits for alleged compensable injuries to the claimant's head/brain and neck or cervical spine.

Based upon my foregoing findings and conclusions, I have no alternative but to deny the claimant's request for additional temporary total disability benefits from November 15, 2002 through a date yet to be determined.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge