

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E908257**

**DAVID L. NORMAN**

**CLAIMANT**

**M & C ELECTRIC, INC.**

**RESPONDENT EMPLOYER**

**CGU INSURANCE CO.  
SECOND INJURY FUND**

**RESPONDENT CARRIER NO. 1  
RESPONDENT NO. 2**

**ORDER AND OPINION FILED JULY 17, 2003**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE KEITH BLACKMAN, Attorney at Law,  
Jonesboro, Arkansas.

Respondent No. 1 represented by the HONORABLE MICHAEL E. RYBURN, Attorney  
at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Jonesboro, Arkansas on June 3, 2003.  
A prehearing conference was held on March 12, 2003 and a prehearing order was filed  
the same date. A copy of the prehearing order was marked as Commission Exhibit No.  
1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. This was a compensable specific incident injury on  
July 1, 1999.
2. The compensation rate is \$375.
3. A 9% permanent impairment rating was accepted  
and paid by respondent.

The claimant contends he is entitled to temporary total disability benefits from December 11, 2002, to the present and additional medical benefits. Permanency is reserved.

The respondents contend that the claimant sustained a compensable injury to his neck and pelvis and all appropriate benefits have been paid. The respondents contend an impairment rating has been given for the neck and that has been paid. A permanent impairment rating has been assigned for the hip, but has not been paid; however, the rating is not an issue for this hearing. The respondents contend the healing period ended at the time the neck rating was given and the date the pelvis rating was given. The respondents further contend that the claimant has an unrelated lower back problem from a previous surgery that is the cause of his current condition and this condition is unrelated to the compensable neck and pelvis injury. The respondents contend that all medical has been paid for the neck and pelvis but contend the claimant's back problems are unrelated to the compensable injury.

From a review of the record as a whole, to include medical reports, the record from the November 1, 2001, hearing incorporated by reference, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. This was a compensable specific incident injury on July 1, 1999.

2. The compensation rate is \$375.
3. A 9% permanent impairment rating was accepted and paid by respondent.
4. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment for his back condition is reasonable and necessary and related to the compensable July 1, 1999, incident.
5. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and unable to earn wages because of the compensable July 1, 1999, incident after December 10, 2002.

### **DISCUSSION**

The claimant, 56 years old, has worked as an electrician and was injured in an automobile accident on July 1, 1999, sustaining a neck injury requiring surgery. Bone was taken from the pelvis area and the pelvis broke requiring surgery. According to the claimant, when he was first injured, he had pain in his neck, down his arms, in his low back, and down his left leg.

In 1981, the claimant sustained an injury to his low back requiring surgery when he worked for another employer. The claimant was a journeyman lineman and climbed poles. After the surgery, he continued to work. The claimant described his pain then as on his right side and down his right leg. The claimant testified that he had not had problems with his left side until the July 1999 incident.

The claimant was a master electrician when he was working for the respondent employer and was running wire and conduit for a job remodeling Wal-Mart stores. The claimant testified that there was a case manager, Sandy Couch, involved in his doctors' visits and she was aware of his neck and back pain. According to the claimant, Ms.

Couch advised him to choose the area that hurt worse and let the doctor fix that first. The claimant described his back pain and leg pain as pain running down his buttocks to his toes down his foot. The pain ran down the back side of his leg. According to the claimant, after he broke his pelvic bone, he had pain going down the top of his thigh down to his knee. The claimant testified that he still has this pain off and on. The claimant testified he continues to have the pain from his back going down his left leg.

The claimant confirmed that he was subsequently employed with another employer working in electrical, heat and air. He did not return to work for the respondent employer. The claimant had his pelvic surgery in April 2002 and, when he reached the end of his healing period, he returned to work with restrictions. The claimant continued working until December 6, 2002, when he was terminated. According to the claimant, he was paid some temporary total disability through December 11, 2002. The claimant sought medical treatment with Dr. James Guyton with symptoms of pain from his back down his leg but the case manager, Sandy Couch, advised the claimant that additional medical treatment for his back was being controverted.

The claimant underwent a MRI ordered by Dr. Guyton and Dr. Guyton referred him to Dr. Parks, a pain management specialist. The claimant returned to Dr. Edward Cooper and Dr. Cooper referred him to Dr. Sunil Gera, a pain management specialist in Jonesboro. The claimant testified that he has also undergone a nerve conduction study on his left leg performed by Dr. Ron South. The claimant testified the pain management has helped some, but he wants to consider a surgical option with Dr. Edward Cooper. The claimant stated his condition had worsened and he cannot sit or

stand very long. He has had numbness in the bottom part of his foot since 1999. Excess walking causes pain as well as activities such as spending 10 minutes on the mower. The claimant testified he is currently taking Neurontin, Amitriptyline and Darvocet for pain. His health insurance company is paying for his doctors' visits and medication.

The claimant confirmed that he was injured in an automobile accident on July 1, 1999 and he has a lawsuit against the driver of the other vehicle.

The claimant confirmed under cross examination that he had neck surgery and was off work about two months and received a 9% permanent impairment rating that has all been paid by the respondents. The claimant also confirmed that he had pelvis surgery following his neck surgery and has received a 4% permanent impairment rating and was released on December 11, 2002. The claimant confirmed that he had a myelogram of his low back in 1999, following his automobile accident and the results came back normal. Since then the claimant has had a MRI of his back and nothing new was noted and the claimant confirmed that.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 1996). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is

sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

A review of the medical from the previous hearing, which has been incorporated by reference, indicates the claimant was initially complaining of both neck and back pain. He underwent physical therapy and both neck and back were addressed. On March 20, 2000, Dr. Edward Kaplan discussed that the claimant's lumbar myelogram was essentially normal and diagnosed the claimant with lumbar strain. The more recent medical reports by Dr. Sunil Gera, pain management specialist, indicate the claimant complains of pain radiating from the left side of the leg and it goes all the way to the front and back of the lower trunk and the claimant notices numbness in the thigh, leg, foot and toes. Dr. Gera recommended a nerve block and proceeded with one. Dr. Gera next recommended a nerve conduction study and Dr. South concluded from the study that the claimant's studies were compatible with S1 radiculopathy. On February 14, 2003, Dr. Gera opined in his report that the claimant's MRI of the lumbar spine done on December 12, 2002, showed status post right L5 laminotomy with a scar at L5-S1 with no disk herniation or spinal stenosis. Dr. Gera had opined on January 3, 2003, that the claimant's symptoms appeared to be more because of the scar around the lateral femoral cutaneous nerve.

After considering the claimant's credible testimony about his pain and after considering the medical evidence presented at this hearing and at the November 1, 2001, hearing, I find the claimant's current back problems are related to his pre-existing

condition and not to the July 1, 1999, work injury. The claimant's initial complaints were both neck and back pain and treatment was pursued. From the claimant's testimony, his medical visits after December 2002 were denied by respondents. The preponderance of the evidence supports the respondents' position that the problems the claimant has with his back are associated with his pre-existing condition and payment of the medical associated with the back problems remains the responsibility of the claimant.

In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant was given an impairment rating for his hip November 12, 2002, and on December 10, 2002, was released to full duty for the hip by Dr. Guyton. The claimant had already been released to work for the neck condition with a permanent rating assigned. The claimant's main complaints now concern his back symptoms and the medical evidence fails to connect the claimant's current back problems with the July 1, 1999, compensable incident. I find the claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and unable to earn wages because of his compensable July 1, 1999, incident after December 10, 2002.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment for his back condition is reasonable and necessary and

related to the compensable July 1, 1999, incident. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and unable to earn wages because of the compensable July 1, 1999, incident after December 10, 2002. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**