

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F210837**

<b>JOHN COLEMAN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>PRO TRANSPORTATION, EMPLOYER</b>	<b>RESPONDENT</b>
<b>COMMERCE &amp; INDUSTRY INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 27, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 27, 2004, at Little Rock, Arkansas.

Claimant represented by the HONORABLE KEVIN ODUM, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

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

Several pre-hearing conferences were conducted in this claim, the last one having taken place on August 5, 2004, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects 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 Pre-hearing Order also reflects specific dates regarding the identification of witnesses, exhibits and the exchange of documentary evidence by the parties. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of John D. Coleman, the claimant; Carolyn Coleman; Grant Hill, Jr.; and Victor James White; along with the deposition testimony of Dr. Andrew Prychodko and James Victor White, coupled with medical reports and other documents comprise the record in this claim.

### **DISCUSSION**

John D. Coleman, the claimant, with a date of birth of October 23, 1953, has a GED and two (2) years of post-secondary education. Claimant commenced his employment with respondents as a long haul truck driver in 1999, and continued in same until his employment was terminated on October 27, 2003.

There is no evidence in the record to reflect that claimant experienced limitations or restrictions on his physical activities prior to September 19, 2002, compensable injury in the employment of respondents. Claimant presents a consistent work history both prior to and during his employment with respondents. (T. 56-59). Regarding the number of different employers for which he worked, particularly as a truck driver, the testimony of the claimant reflects that each represented an upgrade in terms of earnings.

Claimant commenced his employment with respondents in 1999. As a truck driver claimant was called upon at time to assist in unloading some of his loads with come of his employers. Claimant routinely engaged in manual labor in the discharge of his employment as a truck driver. Claimant testified, with respect to his physical activities prior to the September 19, 2002, compensable injury:

. . . . . I hadn't had any physical problems at all. I hunted, fished, tennis, whatever I really wanted to do. Run for a distance. I have right now from work to home

I used to did run that and I can't even dream of doing that now. (T. 60).

On September 19, 2002, claimant was hauling rolls of paper that had been loaded by the customer, Georgia-Pacific Corp. The accident occurred on Interstate 430, when the load shifted resulting in the vehicle overturning. The testimony of Mr. Victor James White, who was the Safety Director of respondent-employer, reflects:

The president went out and looked at the accident first, called me. I wen back down there and stopped quickly to talk to the state police that was on, you know, who was running the accident scene. That had been secured for the time being, so I went to - - I tried to find out where John was at. Because I didn't know if he had went by ambulance because they didn't tell us. And then I finally - - one of the troopers had told me that they took him up and dropped him off at the truck stop or the gas station at Maumelle highway.

So I went up there and picked John up and took him over to the drug screen place at Baptist and then he went over to the emergency room. I had to go back to the accident scene briefly and then take care of the officer that asked me to come pack. And then I had to get back to the office. (CX. #5, p. 15)

The evidence in the record reflects that claimant received his initial medical treatment relative to the September 19, 2002, compensable injury, at the emergency room of Baptist Medical Center. (CX.#1,ex. #1). Claimant treated with his family doctor for complaints growing out of the September 19, 2002, compensable injury, until he was directed by respondents to their designated medical provider on November 26, 2002. (RX. #1, p.1).

The reports submitted by respondents reflect that claimant was seen by Dr. Scott Carle at Concentra Medical Center with a Final Report of release of treatment of November 22, 2002. The report reflects that clamant was released without restrictions on "11-22-2002", and is dated November 24, 2004. (RX. #1, p4-5). Nevertheless a November 26, 2002, narrative report of Dr.

Carle reflects, in pertinent part:

HISTORY: This is a 49-year-old black male referred here for further treatment and evaluation by his insurance carrier following an independent medical examination regarding disability duration opinion for prolonged disability duration after an automobile accident.

Other history reveals this patient was involved in a single vehicle 18-wheeler accident wearing a seatbelt when the truck turned over on its side. . . . He is currently being treated by an internist regarding followup for his cardiac contusion admission. . . . It appears that they are basically taking the wait-and-see approach with respect to treating his neck and low back symptoms. He has not participated in a temporary appropriate work program. (RX. #1, p. 1-3).

While the November 26, 2002, visit was characterized as an “independent medical evaluation”, a review of the recommendations and actions of Dr. Carle clearly reflects that he undertook the actions of a treating physician. Dr. Carle discontinued claimant’s medication, formulated light duty restrictions; ordered diagnostic studies and concluded that the claimant had no ratable impairment relative to the injuries growing out of the motor vehicle accident.(RX. #1, p.1-3).

In a December 4, 2002, correspondence to the claims adjuster, Dr. Carle relayed that the claimant did not return for his “scheduled Physical Therapy or MD appointment on 12/2/02”. The report concluded that the claimant had reached maximum medical improvement with no residual permanent physical impairment. (RX. #1, p.6-7).

In addition to injuries to his neck, low back, and shoulder, claimant suffered injuries to his left arm, leg and foot in the September 19, 2002, accident. The residual of the compensable injury relative to claimant’s left arm are silver-dollar size scars. Claimant’s testimony reflects, with respect to the physical complaints growing out of the compensable injury:

Quite a bit of stitches. I think 9 stitches and I have that on my leg and on my foot also. My foot

swells and my hand swells at times. I've got shoulder problems. (T. 61).

The testimony of Mr. Victor James White, the Safety Director of respondent-employer during the pertinent time period, reflects that upon receipt of notice of claimant's light duty release a letter was mailed informing same of the availability of light duty. The letter was mailed to the claimant between November 27, 2002, and December 2, 2002. (CX. #5, exhibit #2). Mr. White testified regarding the job:

We had a job that I had set up that we had created out in the guard shack to check trucks in and out, coming in off of the yard, sedentary position.

\* \* \*

Checking trucks in and out off the yard. If there's any permits, the issue of permit, you know, out of a truck driver that was fixing to leave the yard.

\* \* \*

No, they just walk around the truck. They walk around the truck, write the truck number down, trailer number down and a seal number and take the paperwork from the driver. They usually take the bills of lading from the driver at that time, bring them back into the guard shack. (CX. #5, p. 19-20).

Mr. White testified that on December 8, 2002, he received a telephone call from the claimant and was informed that he was still hurting and that he would not be coming in for work. Mr. White acknowledged that respondent-employer did not provide "permanent" light duty to its employees. Further Mr. White acknowledged that a similar certified letter was not provided to the claimant once respondent-employer received notice of claimant's release to return to work in September 2003.

Claimant testified regarding his understanding of the light duty job offered by respondents in the November 27, 2002, correspondence:

I was told it was getting in and out of trucks, checking

them and loading them and I told them at that time that I couldn't open no door and that Dr. Prychodko told me that going up and down that would injure what my medication and what I was going through at that time. (T. 73-74).

Claimant's testimony reflect that he could not physically perform the functions of the light duty job offered by respondents in the November 27, 2002, correspondence due to residuals of his compensable injury. At another point, claimant testified that he made several efforts go to respondents to check on the job:

I went out going toward Pro, which is about 40 miles from my house and I didn't make it. I called and told them I couldn't make it. (T. 75).

Claimant acknowledge while in route to respondent-employer he ran off the road in his car and could not drive.

Claimant did not receive temporary total disability benefits from the date he received the letter from respondents notifying him of the availability of a light duty job, December 2, 2002, until he came under the care of Dr. Andrew Prychodko on February 10, 2003. Claimant asserts entitlement to the afore benefits, noting that he was still within his healing period and physically unable to perform the job identified.

Claimant's treatment under the care of Dr. Prychodko subsequent to February 10, 2003, was the product of a change of physician request relative to the September 19, 2002, compensable injury. At the time of his initial visit with Dr. Prychodko on February 10, 2003, claimant complained of pain in his foot, head, shoulders, arm, neck, chest and abdomen, all attributed to the compensable injury.

The February 10, 2003, initial report of Dr. Prychodko reflects, with respect to the

claimant's injuries growing out of the September 19, 2002, accident:

Several problems were noted then and subsequently. Of the most gravity was a cardiac contusion, reflected through a dramatic rise in cardiac enzymes. Subsequent work-up, including coronary catheterization, showed that the heart has healed well.

He sustained a closed head injury. Although there apparently was no loss of consciousness, there was some initial headache and residual dizziness. I would like to obtain a Brain MRI.

Pulmonary contusion and broken ribs were also noted. This will need to be followed up later.

Neck and shoulder pain that persist. He seems to have recovered motion in these areas, but due to the nature of the original trauma I would prefer us to rule out cervical spine derangements with MRI.

Low back and leg pains that continue. He is unable to sit and lean forward for any length of time with out development of pain in the back and lower. I would like to obtain an MRI of this area.

\* \* \*

**Assessment & Plan**

BACK PAIN, LUMBAR, WITH RADICULOPATHY

CERVICAL STRAIN

NECK PAIN

HEAD TRAUMA, CLOSED

SHOULDER IMPINGEMENT SYNDROME

PULMONARY CONTUSION, WITHOUT OPEN WOUND INTO THORAX

CONTUSION, HEART W/O OPEN WOUND (CX. #1,exhibit #6).

Dr. Prychodko has remained the claimant's authorized treating physician since the entry of the Change of Physician Order relative to the September 19, 2002, compensable injury.

Dr. Prychodko testified regarding his impression of the claimant based on his contact with same:

He seemed generally to be someone who is truthful. He was apprehensive, I think, about some of the care that he had experienced prior to seeing me, so I think he was somewhat guarded and reserved about the information he offered, but when he would relax and start conversing with me more fluently, it was truthful in the sense that it was a consistent report of events, consistent report of, you know, symptoms and problems, and on physical exam there seemed to be consistency in what he was generally manifesting, and that consistency, especially in terms of his medical history, continued through, I guess, the half-year to a year that I had worked with him.

\* \* \*

I didn't think he was a malingerer, and I did think that returning to work was, you know, a goal for him. He didn't seem to be like somebody who wanted to just sort of check out and go on disability or something of that nature.

I think, though, that he was concerned about the pain symptoms that he continued to experience, and I think he was somewhat hesitant perhaps to return to activities that might aggravate those pain symptoms, without having a full understanding of what was causing those pain symptoms, and that was something that I tried to work with him, tried to address, but it kinda stretched out perhaps time-wise in terms of getting approval for certain kinds of tests and that sort of thing.(CX. #1, p.7-8).

During the course of his September 8, 2004, deposition, Dr. Prychodko, in addition to testifying about his own educational and work experiences, testified regarding the medical treatment received by the claimant relative to the September 19, 2002, compensable injuries. (CX. #1, p. 1-18). Dr. Prychodko authored an "off work" slip reflecting that the claimant was unable to work from September 19, 2002, through March 7, 2003. Regarding the basis for the "off work" slip, Dr. Prychodko testified:

When I saw him there were a few things going on that were troubling to me, one of which was his report of dizziness and headache. As a commercial driver, I was uncomfortable with the idea of somebody - - - although

it's subjective symptom, you know, nevertheless he's a commercial driver - - - I wasn't comfortable with the idea of him being out on the road until that was a little bit further evaluated, and basically, because of the nature of his trauma - - I don't remember - - I think I ordered MRI studies of his brain and of his neck, and there may have been something else that I wanted to see - - like a chemistry panel and a follow-up cardiac enzyme - - because of his trauma and the cardiac injury and the pulmonary contusion that was suspected based on infiltrates and the fracture of the chest . . . And I don't think any of that really got followed up in a way that I was comfortable with in just saying, "okay, you can increase your activity level to, you know, acting enough, even if it was light duty or something like that.

You know, I didn't expect that to last longer than whatever day I said, 3/7. I figured we could order the tests and get all that evaluation done, but I didn't . . . In my opinion I didn't feel that he was, at that time, ready to be released to, you know, any kind of higher level of activity.

\* \* \*

Even light duty, because of the lack of some evaluation - follow-up evaluation - to give him the "all clear". (CX #1, p. 18-19).

Dr. Prychodko testified that the case manager, Debbie Doyle, was not present at any of the visits with the claimant. Dr. Prychodko explained:

I generally see the patient individually and then invite the case manager to come in later, after I've seen the patient, and then discuss the case, of course, because the manager can often facilitate the care if they have that opportunity. (CX. #1, p. 19).

During a May 23, 2003, visit, the case manager expressed an interest in obtaining a FCE. Dr.

Prychodko explained why he did not feel that the same was appropriate at that time:

The patient's evaluation had come along reasonably well in terms of obtaining MRI studies and some lab tests that I had ordered, and I don't recall whether a CT scan of the chest had been completed by this time or not, but basically we got him started in physical therapy, to which he responded

rather well. We got him into an aquatic - or pool-based - therapy, and that seemed to improve his neck pain, and I think also to a certain extent the low back pain.

But there was definitely an ongoing concern with respect to the low back pain and - slash - or some of the radiations that he was experiencing, and this concern kind of impacted, you know, whether his work either as a truck driver, where he's sitting for long periods of time and experiencing back pain and leg radiations, or performing some other function in the yard or whatever that might involve prolonged standing and repetitive bending, stooping, lifting and so forth.

The concern over this pain was such that I at that time decided to make a referral to Dr. Sunder Krishnan, who's an interventional pain management specialist, who was, in discussions with the case manager, was somebody that the case manager was agreeable to and I was agreeable to.

The fact that Mr. Coleman was to be referred for additional interventional management presented a scenario where obtaining a Functional Capacity Evaluation, which is a dynamic study - - it's where an individual is subjected to anywhere from three to five hours of simulated work-type activities with rest periods in between, which are then superimposed on one or another form of extrapolative models that would say that, "Yeah, this person can work eight hours lifting ten pounds" or whatever. . . .

The Functional Capacity Evaluation in my opinion was not something that would have . . . You see, the yield from the Function Capacity Evaluation, prior to the interventional pain management treatment, would have been moot, I guess, or relatively less valuable than if the Functional Capacity Evaluation were performed after the interventional pain management. (CX. #1,p26-27)

Dr. Prychodko pointed out that physical therapy was ordered during the course of his treatment of the claimant. A second period of physical therapy prescribed by Dr. Prychodko during a May 23, 2003, visit was cancelled by Ms. Doyle, the case manager. (CX. #1, exhibit. #16).

Claimant was next seen by Dr. Prychodko following the May 23, 2003, visit on September 29, 2003. The report of the visit reflects, in pertinent part:

. . . . His last visit here was 5/23/03. He has had two lumbar injections per Dr. Krishnan. Most recently he was sent to Dr. Jim Moore within the past week, who released him to work.

Since my last visit with the patient, the patient told me that he was directed away from me by Debbie Doyle, the case manager (on or around 7/31/03) because he hadn't seen me in a while. He was referred to an FCE, ostensibly by me - although I had no awareness of this referral having been made, which assigned him a Medium PDC. This is what Mr. Coleman reports that Dr. Moore assigned as a work restriction. Dr. Moore also told Mr. Coleman that he couldn't drive commercially.

Mr. Coleman has resigned himself to not being able to get further care due to administrative resistance from AIG and is therefore deemed to be at MMI from this practical consideration. (CX. #1, exhibit #17).

Dr. Prychodko's testimony reflects, with respect to "administrative resistance":

. . . I was glad to hear his reported improvement of his symptoms, but then we got into this little bit of administrative resistance, and then . . . It's not really clear why he didn't see me for a period of time, but apparently he didn't. Maybe his appointments were cancelled without my knowledge. Maybe he didn't know to set up appointments or get in touch with me, because, again, he was sort of a person that was a little bit suspicious of the world around him. I was able to establish a bit of a rapport with him. He did indeed begin to make some clinical progress, but, you know, then the case manager might intervene or maybe somebody in . . .

\* \* \*

And apparently he was told that some of this was done in my name. I never knew that I had ordered a Functional Capacity Evaluation on him, for example. Mr. Coleman came and told me that he was told that I was the one that ordered it, you know, and that's not true.

I mean, I would have at some point, and that was certainly something that would be reasonable and appropriate at a given point in time in his care, but to say that I was the one that ordered it, when I didn't order it, you know, that could kinda undermine, I guess, my

physician/patient relationship with him, since I didn't discuss it with him and all of a sudden he's being told that I had ordered it, you know. So, yes, it kinda got weird, if you will. (CX. #1, p.33-34).

Dr. Prychodko testified regarding the role of a case manager in general, and that of Ms.

Doyle:

. . . The role of the case manager oftentimes is very a welcome addition to the healthcare team in terms of helping facilitate appointments, helping keep the patient focused on their recovery process, and keeping information flow between the different practitioners', you know, real time.

So, a case manager can be an invaluable asset to treating somebody's medical problems in a complex medical environment and a complex social environment.

Ms. Doyle was certainly pleasant and seemed competent in my discussions with her, but there was, you know, certainly focus in her mind about return to work issues, and that didn't seem particularly inappropriate. I mean, certainly one of the things that a case manager may be charged with is to assess work status and return-to-work issues.

I think what happened after my interactions with Ms Doyle were a bit more perplexing in terms of what Mr. Coleman reported to me that he was directed . . . His statement to me was that Ms. Doyle directed his away from me, away from continuing care with me, because of some appointment scheduling issue, and that this matter of apparently Ms. Doyle had scheduled a Functional Capacity Evaluation using my name as the ordering physician, where no communication had occurred with me about this matter . . . Those factors seemed a little bit to be outliers, if you will, in terms of previous dealings with case managers. (CX. #1, p. 45-46).

Dr. Prychodko assessed the extent of the claimant' anatomical impairment at 5% relative to the lumbar spine and 6% relative to the cervical spine based on the DRE method of the AMA Guide, 4<sup>th</sup> edition. Dr. Prychodko testified regarding the basis for the rating relative to the

claimant's compensable injuries. (CX. #1, p. 19-23; 34-36). Dr. Moore initially agreed with the ratings as assessed by Dr. Prychodko, however later revised his rating to 2% to the cervical spine and 2 ½ % to the lumbar spine, for a total of 4 ½ % to the whole body, which was accepted and paid by respondents.

The credible testimony presented by the claimant, to include that of the claimant, claimant's wife, and a friend and former business associate, reflects the status of the claimant's health and physical capabilities prior to and subsequent to the September 19, 2002, compensable injury. The testimony reflects that claimant encountered difficulty performing the tasks outlined in the Functional Capacity Evaluation, which was performed on August 27, 2003. (RX. #1, 11-29). Claimant's testimony reflects that he put forth valid efforts during the FCE, and any inability or inconsistency reflected in the report was the product of his compensable injury.

The testimony in the record reflects that as a result to the injuries suffered by the claimant in the September 19, 2002, accident, and residuals therefrom, claimant is unable to return to commercial truck driving. When seen by Dr. Jim J. Moore on September 24, 2003, permanent restriction were imposed relative to the claimant physical activities.(CX. #5, exhibit #3).

The credible testimony presented by claimant and his wife regarding telephone communication with respondent-employer following the September 24, 2003, visit, reflects that claimant was not directed to report to work. Rather the testimony reflects that initially claimant was told that the written report of the case manager would be received and review. Later claimant was told that a discussion would have to be had between the owner of respondent-employer and other personnel before claimant would be returned to work.

After he was informed that his employment with respondent had been terminated due to

his failure to report for work pursuant to the September 24, 2003, release of Dr. Moore, claimant sought employment elsewhere. Claimant was initially hire through a temporary employment agency, Manpower. Later claimant secured employment at Lowe's as a custodian. Claimant present testimony regarding the reduction in earnings attributed to the compensable injury.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. The Arkansas Worker's Compensation Commission has jurisdiction of this claim.
2. On September 19, 2002, the relationship of employee-employer-carrier existed among the parties.
3. On September 19, 2002, the claimant earned an average weekly wage of \$874,71, which generates weekly compensation benefits rates of \$425.00/\$319.00, for total/permanent partial disability.
4. September 19, 2002, the claimant sustained compensable injuries arising out of and in the course of his employment.
5. The claimant was temporarily totally disabled for the period beginning September 20, 2002, and continuing through the end of his healing period, September 29, 2003, as a result of the September 19, 2002, compensable injuries.
6. The claimant has sustained permanent physical impairments in the amount of 5% and 6% to the body as a whole relative to his lumbar and cervical spine injuries, respectively, growing out of the September 19, 2002, compensable injuries.

7. In addition to his anatomical impairment, when the claimant's age, education, work history, permanent restrictions and limitations are considered, the evidence preponderates that claimant has sustained a loss of earning capacity or wage loss in the amount of 45 % as a result of the September 19, 2002, compensable injuries.

8. The respondent shall pay all reasonable related medical, hospital and medical expenses arising out of the injury of September 19, 2002.

9. The respondents have controverted the payment of temporary total disability benefits to the claimant for the period December 2, 2002, through February 10, 2003; the claimant's entitlement the payment of permanent partial disability benefits in excess of 4 ½ % to the body as a whole; and the claimant's entitlement to medical benefits subsequent to September 24, 2003.

### **CONCLUSIONS**

On September 19, 2002, claimant suffered injuries to his shoulder, arm, leg, lower back, neck, head, and chest as a result of a motor vehicle accident. Claimant was within the course and scope of his employment at the time of the single vehicle accident. Claimant was a truck driver operating a 18-wheeler truck and rig when his load shifted causing the truck to overturn. The compensability of the claimant's injuries was not disputed by respondents. Claimant asserts that he is entitled to additional workers' compensations benefits relative to the September 19, 2002, compensable accident. Respondents take the position that claimant has been paid all benefits to which he is entitled. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

Following the September 19, 2002, compensable injuries claimant sought and obtained medical treatment at the emergency room of Baptist Medical Center. The nature and extent of claimant's injuries growing out of the September 19, 2002, accident are not dispute. Claimant suffered injuries to his thorax area, lumbar spine, cervical spine, head, and limbs. Claimant continued to receive active medical treatment relative to his injuries by authorized treating physicians until he was seen by Dr. Scott Carle at the request of respondents.

The evidence in the record reflects that claimant was asymptomatic prior to his September 19, 2002, compensable accident. Claimant successfully discharged the duties of his employment with respondents prior to the September 19, 2002, accident. Further, claimant had been continuously employed in manual labor jobs since he begin his employment history with Safeway stores in 1969.

Prior to the November 26, 2002, evaluation by Dr. Carle claimant had received appropriate medical treatment under the care of Dr. Patricia Moss, an internist, relative to the September 19, 2002, injuries. While Dr. Carle acknowledged that the claimant's medical providers were taking a "wait-and-see" approach relative to the claimant's cervical and lumbar complaints, he nevertheless proceed to declare an absence of permanent impairment, discontinuance of medication, and institute his own treatment regiment. Prior to the November 26, 2002, date claimant had not been released by his treating physician, who had had greater contact with him, to return to work.

The records submitted by respondents reflect that claimant was released by Dr. Carle to return to work without restrictions on November 22, 2002. Claimant only saw Dr. Carle on one occasion, November 26, 2002. Dr. Carle scheduled a return appointment for the claimant for

December 2, 2002, which claimant did not attend. Thereafter in correspondence of December 4, 2002, Dr. Carle again declared the claimant at maximum improvement with no permanent impairment growing out of the September 19, 2002, accident.

While it is not disputed that respondents notified claimant of the “light duty” release of Dr. Carle and the availability of a job within the restrictions, the credible evidence preponderates that claimant remained within his healing period and unable to physically perform the function of the job. Claimant came under the care of Dr. Andrew Prychodko on February 10, 2003, as a result of the entry of a Change of Physician Order. Based on his credible assessment of the claimant’s medical records, physical examination and appreciation of the extent and nature of claimant’s compensable injuries, Dr. Prychodko determined that claimant had remained within his healing period and totally incapable of return to work from September 19, 2002, through the date of his initial contact with same, inclusive of the period December 2, 2002 through February 10, 2003.

Temporary total disability is that period within the healing period in which an injured employee suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981); *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S. W. 2d 677 (1998). The healing period is that period for healing of an injury which continues until the employee is as far restored as the permanent character of his injury will permit. *Id.* If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. Conversely, if further treatment is available to improve the condition and the same has not become stable, the healing period has not ended.

In the instant claim, claimant came under the care and treatment of Dr. Prychodko on February 10, 2003. Thereafter he receive active medical treatment relative to his compensable injuries, which included injections, physical therapy, and medication. Claimant was continuing to improve even at the point that the case manager recommended a Functional Capacity Evaluation, which was vetoed by his treating physician.

The evidence preponderates that the case manager directed claimant away from the care of his authorized treating physician, and arranged for the claimant to undergo a FCE, contrary to the recommendation of his treating physician, while at the same time asserting that the same was a referral of the treating physician. The afore, when coupled with the November 22, 2002, release to regular duty by a physician that had not seen the claimant until November 26, 2002, and thereafter assumed the role of a treating physician, renders the actions of the medical case manager and claims adjuster suspect, at minimum.

Claimant's authorized treating physician remains Dr. Prychodko relative to the September 19, 2002, compensable injury. Dr. Prychodko explained why he did not feel that the FCE was warranted at the time solicited by the case manager. The fruit of that wisdom is reflected in the FCE, which for the most part yield questionable results. Results which respondents now attempt to validate and use to show that claimant is capable of more physically such that he has not suffered a lost in earning capacity.

On September 24, 2003, claimant was directed by the case manager to Dr. Jim J. Moore, a Little Rock neurosurgeon, for an evaluation. Dr. Moore saw the claimant on only one occasion. Based on the single visit, review of the FCE, and medical reports, Dr. Moore concluded that claimant had reached maximum medical improvement. (RX.#1, p. 34).

Dr. Prychodko saw claimant on September 29, 2003, and concluded, based on the administrative resistance of respondents, that the claimant had reached maximum medical improvement relative to the September 19, 2002, compensable injury. Claimant was assessed with a permanent physical impairment of 5% to the lumbar spine and 6% to cervical spine relative to the injuries growing out of the September 19, 2002, accident. During the course of his deposition, Dr. Prychodko credible provide the basis for the anatomical ratings.

The evidence preponderates that claimant remained within his healing period and totally incapacitated from engaging in gainful employment from September 20, 2002, through September 29, 2003, and correspondingly entitled to temporary total disability benefits. Respondents have controverted the claimant's entitlement to temporary total disability benefits from December 2, 2002, through February 10, 2003.

The evidence further preponderates that claimant has sustain permanent physical impairments in the amounts of 5% and 6% to the lumbar and cervical spines, respectively, as a result of the September 19, 2002, compensable injuries in the employment of respondents. Respondents have controverted claimant's entitlement to permanent disability benefits in excess of 4 ½ % to the body as a whole, relative to the September 19, 2002, compensable injuries.

Claimant was asymptomatic prior to the September 19, 2002, compensable accident. Since the compensable accident claimant has remained symptomatic. Claimant experiences constant pain in his lower back, and cervical area. Claimant also experiences muscle spasm on a regular basis in leg, in addition to pain.

With respect to continued medical treatment, Dr. Prychodko's testimony reflects:

. . . One of the reasons he came in at that time was to get

medication refills, and he continued to report that Skelaxin was helpful to him, and we renewed that prescription. (CX. #1, p. 41)

Dr. Prychodko also testified that he felt that claimant would at times benefit from physical therapy, and well as continue to need medication for his neck and back complaints. Dr.

Prychodko further testified, in that regard:

There could be a possibility, particularly with respect to his lumbar spine, that he may need further injections, possibly discography, perhaps surgery, although, hopefully not, because of continuing limitations that he's experiencing.

\* \* \*

I believe I saw him in June. I believe I saw him in June, and I don't . . . I was in the process of transitioning away from UAMS and was not certain as to what my next professional location would be, so I was trying to give him some more medications and some more advice. But, yeah, he would probably benefit from some medical continuity care, at least periodically, to reassess his medications for these musculoskeletal conditions and, again, depending on flare-ups or exacerbations, how often they happen, how much he's limited, particularly with the lumbar spine - - yeah, he may need it to determine some kind of interventional or perhaps hands-on manual physical therapy.(CX. #1, p. 42-43).

All of the above medical treatment, Dr. Prychodko testified would be reasonably necessary relative to the September 19, 2002, compensable injury.

Ark. Code Ann. § 11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W. 3d 764 (2000). Whether a medical procedure or device is reasonable and necessary treatment is a question of fact. In the instance claim, the claimant has sustained his burden of proof by a preponderance of the evidence that he continues to require medical treatment relative to his September 19, 2002, compensable injuries. Respondents have

controverted claimant's entitlement to medical treatment relative to his compensable injury subsequent to September 24, 2003.

Respondents' assertion that claimant is not entitled to wage loss benefits due to the fact that he failed to report back to work following his September 24, 2003, release by Dr. Moore is not persuasive. At the outset, it is noted that Dr. Moore was not claimant's authorized treating physician. Secondly, claimant was not released to return to commercial driving as a truck driver. Third, while respondents had light duty work available, it did not have permanent light duty work available. Accordingly, even had claimant presented to respondents for work as they maintain he was directed to do, there was no work available for him on a permanent basis as a result of the physical residuals or limitations on his employment activity as a result of the compensable injury.

Claimant requires medication to address his pain and muscle spasms. Claimant is limited in the amount of lifting, standing, bending, and walking that he can engage in as a result of the compensable injury. Claimant has been able to secure employment since reaching maximum medical improvement, however at a substantially reduced rate. The afore is directly related to the residuals of his compensable injury. Prior to the compensable injury claimant presented a consistent employment history with no physical limitations or restriction on his employment. The evidence preponderates that claimant has suffered a substantial loss of earning capacity as a result of the September 19, 2002, compensable injury.

When the claimant's age, education, permanent restrictions and limitations are considered along with his work history in the manual labor field, the evidence preponderates that he has suffered a loss of earning capacity in the amount of 45 % in addition to his anatomical impairment as a result to the September 19, 2002, compensable injury. Respondents have

controverted claimant's entitlement to permanent partial disability in excess of 4 ½ %.

**AWARD**

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$425.00, for the period September 19, 2002, and continuing through September 29, 2003, as a result of his September 19, 2002, compensable injury. Said sum accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward to the afore.

Respondents are further ordered and directed to pay to the claimant permanent partial disability benefits at the weekly compensation benefit rate of \$319.00, to correspond with the claimant's 5% and 6% anatomical impairments to his lumbar and cervical spine respectively, as well as 45 % wage loss disability growing out of the September 19, 2002, compensable injury. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the afore obligation.

Respondents are further order and directed to pay all reasonably necessary related medical, hospital, and other apparatus expenses arising out of the claimant's compensable injury of September 19, 2002, to include medical related travel.

The claimant's attorney, the Honorable Kevin Odom, is herein awarded a maximum attorney fee on the controverted indemnity benefits awarded, pursuant to Ark. Code Ann. § 11-9-715, with fees to paid in accordance with Ark. Code Ann. § 11-9-801 and WCC Rule 10. The claimant's portion of the controverted attorney's fee shall be withheld from and paid out of indemnity benefits and remitted by respondents directly to claimant's attorney.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 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**