

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304700

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| BOBBY JOHNSON, EMPLOYEE | CLAIMANT |
| R & G MASONRY, EMPLOYER | RESPONDENT |
| NORTHWESTERN NATIONAL CASUALTY CO, CARRIER | RESPONDENT |

OPINION FILED JANUARY 30, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 31, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE KRISTOFER E. RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE DAVID LANDIS, Attorney at Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

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

On July 22, 2003, a prehearing conference was conducted in this claim from which a prehearing order was filed. The prehearing 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 prehearing order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Bobby Johnson, the claimant, Sheila Johnson, and Robert Palmer, coupled with medical reports and other documents comprise the record in this claim. As of the date of hearing the vocational specialist who had worked with the claimant, Ms. Edie Nichols, had undergone surgery and not available to testify. Respondents desired the testimony of Ms.

Nichols and were given an opportunity to obtain her deposition within thirty days of the October 31, 2003, hearing, and to submit same to include in the record. In a November 11, 2003, correspondence respondents notified the Commission that Ms. Nichols was still not doing very well following her surgery, and, as a consequence of the afore, withdrew their request to take the deposition for inclusion in the the record.

DISCUSSION

Bobby V. Johnson, the claimant, with a date of birth of December 18, 1954, is a high school graduate. Claimant commenced his employment in the public sector after graduating high school at the age of 17. Claimant was employed by respondent for a total of twelve years as a brick layer and block layer.

With respect to his employment history, the evidence in the record reflects that after the claimant graduate high school at the age of 17, he was unable to secure a factory job. As a consequence of the afore, he began work as a brick layer helper. After working for a period of nine to ten years as a brick layer helper, through on the job training and experience claimant became a brick layer. The evidence disclose other job had by the claimant during his employment history included working in a saw mill for a period of approximately one year in 1970's, with duties stacking lumber, and as a truck driver for a lumber company of a period of approximately four months. Otherwise, the evidence in the record reflects that the claimant's employment history, with the exception of the afore, has been limited to heavy manual labor in the construction industry as a brick layer or block layer.

In 1984, claimant commenced his employment with respondent as a brick layer. Claimant remained so employed by respondent for a period of approximately ten years, until

1994, at which time he was self-employed as a sub-contractor. In August 1999, claimant returned to the employment of respondent, and continued until approximately March 27, 2001.

There is no evidence in the record to reflect that the claimant sought or obtained medical treatment relative to his low back prior to October 2000. Claimant acknowledged that he suffered an injury in the form of bursitis in his left shoulder during his first period of employment with respondent, approximately 1985/1986, and for which he received treatment under the care of Dr. John Ball, a Jonesboro orthopedic physician, in the form of an injection. Claimant asserts that he was off work for a period of two months as a result of the bursitis.

The testimony of the claimant reflects that as the time he ceased performing employment duties for respondent he was earning \$15.00 per hour and usually worked 39 ½ hour work week. The credible evidence in the record reflects claimant did not experience limitations or restrictions on his physical activity prior to October 2000. Claimant performed routine maintenance, repair, and upkeep at this residence.. Further, the evidence discloses that claimant regularly played soccer with his son and took recreational trips with his wife.

The October 27, 2000, low back injury of the claimant was accepted as compensable by respondent. The evidence in the record reflects that after claimant sustained his initial injury of October 27, 2000, though experiencing symptoms and complaints which grew progressive worse, he continued to discharge his employment duties. Nonetheless, the initial injury was reported to appropriate supervisory personnel of respondent shortly following its occurrence. (T. 15). Claimant's testimony reflects, with respect to his continuing symptoms following the initial injury:

. . .So I had Ibuprofen in the truck so I went and

took that and felt better so I didn't go to the doctor that day. Actually, you know, anymore it didn't hurt like that but every once and a while, you know, I could feeling it nagging. And I thought it was, the day before I thought it was because it was so low down, I thought it was a muscle in my hip, every once in a while hurting. So, a few months passed and we moved down to Cabot on a big school job with 12 inch split faced block and all the pressure holding the block, putting it on the left side that's when it started bothering me real bad and then the second week, it didn't really bother me, feel bad until the second week and I worked to the end of the second week on the job and then on Monday, I called Melvin and told him I needed to go to the doctor to see what was wrong. And, he told me to go ahead. And so I went. (T. 15-16)

On March 12, 2001, claimant was seen by Dr. William R. Hurst, D. O., for complaints of left leg pain, tingling, numbness as well as low back pain. Following diagnostic studies and a follow-up appointment on March 16, 2001, claimant was directed to remain off work until March 21, 2001. The results of the March 21, 2001, lumbar myelogram disclosed findings a broad based disk herniation at L4-L5 compressing the thecal sac and cutting off both nerve roots. (JX. 1, p32). Claimant also underwent, on March 21, 2001, a CT lumbar spine post-myelogram, which concluded:

Broad-based herniation at L4-L5 eccentric to the left side. The left L5 nerve root is cut off but there is still some filling of the right L5 nerve root. The finding appeared more severe on the myelogram than on CT. (JX. 1, p33)

Claimant was seen at the First Care Clinic by Dr. Darrell C. Ragland on March 27, 2001, and was issues an excuse from work until after he had undergone back surgery. Dr. Ragland referred the claimant to Dr. Gregory F. Ricca, a Jonesboro neurosurgeon.

On March 21, 2001, claimant was evaluated by Dr. Ricca pursuant to the above cited referral. After his examination/evaluation of the claimant, Dr. Ricca's impression of the claimant's complaint was low back pain, left sided sciatica; right L5 radiculopathy; spinal stenosis with lateral recess stenosis at L4-5 bilaterally; herniated nucleus pulposus l4-5, left; bilateral L5 nerve root compression, left worse than right; and partial footdrop on the left. (JX. 1. p52). On April 17, 2001, claimant was admitted to St. Bernards Medical Center where he underwent surgery under the care of Dr. Ricca. Specifically, Dr. Ricca performed a micro decompressive partial hemilaminectomy, medial facetectomy and foraminotomy at lumbar 4-5 left with discectomy at lumbar 4-5 left using Met Rx system. (JX. 1, p53-54)

Claimant's testimony reflects that following the surgery by Dr. Ricca he obtained some relief from his symptoms:

It did up to a point and then he had me, you know, start walking and driving after the 5th week, something like that. Now its just like it's happening all over again. (T. 16)

As a consequence of the returning symptoms, on June 5, 2001, claimant underwent a lumbar spine myelogram with and without contrast at St. Bernards Medical Center pursuant to the directions of Dr. Ricca. The June 5, 2001, MRI reports reflects, in pertinent part:

L4-L5: Post-operative change with partial left laminectomy. Soft tissue density is seen extending from left laminectomy site into the left lateral recess which enhances following gadolinium administration is consistent with scar tissue in this area surrounding the left L5 nerve root. No evidence of recurrent HNP or bulging disc. Nerve roots appear to exit this disc space level without compromise. (JX. 1, p57)

It is noted that the report reflected clinic information relative to the claimant left lower extremity pain.

The medical in the evidence reflects that the claimant continued to treat with Dr. Ricca following his April 17, 2001, surgery. Claimant was seen by Dr. Ricca on June 25, 2001, during which time he relayed symptoms of lower extremity pain as well as pain burning in nature and radiating into the posterior left thigh and leg. Dr. Ricca noted that the claimant appeared depressed and worried that he would not be able to return to work as a brick layer. Further, Dr. Ricca observed that the claimant had undergone an EMG/NCV of his left lower extremity by Dr. Spanner on June 6, 2001, which showed changes most likely representing residual abnormalities at the left L5 and S1 levels. Additionally, the June 25, 2001, report of Dr. Ricca reflects that he reviewed the MRI of the claimant's lumbar spine which was performed at St. Bernards Medical Center on June 5, 2001, disclosing only postoperative changes at L4-5 on the left, slightly swollen left L5 nerve root however no recurrent disc rupture and no neural compression. Dr. Ricca assessment of the claimant's complaint during the June 25, 2001, visit was that of neuropathic left lower extremity pain. The June 25, 2001, report of Dr. Ricca, reflects, in pertinent part, relative to the claimant's complaint:

The patient description of burning pain and bug crawling is classic of neuropathic pain. He had "nerve damage" prior to surgery and I told him and his wife preoperatively we can remove the pressure from the nerves but we cannot always make the nerve heal. (JX. 1, p 78)

Claimant was furnished medication by Dr. Ricca relative to his complaint, in the form of Neuontin, provided a six week follow-up visit, and noted that he could not return to his regular

work. (JX. 1, p78)

The medical reflects that the claimant was next seen by Dr. Ricca on August 13, 2001, in follow-up of the neuropathy pain in his left lower extremity. Dr. Ricca noted during the August 13, 2001, visit that the previously prescribed medication, Neurontin, did not help the claimant's symptoms and the side effects were unacceptable. The examination performed by Dr. Ricca during the August 13, 2001, visit of the claimant indicated that the claimant appeared to be depressed and that he walked with a mild limp. Dr. Ricca prescribed Effexor and directed the claimant to remain off work. The August 13, 2001, report concluded:

He will call me if these medications are not working and we will have to consider other options. I reviewed the list of options including dorsal column stimulations. (JX. 1, p79)

Claimant was next seen by Dr. Ricca on October 8, 2001. The October 8, 2001, report reflects, in pertinent part:

I had the pleasure to see Mr. Johnson in the office for neuropathic left lower extremity pain. The patient is status post microdisectomy at L4-5 left on 04/17/01. He has tried multiple medications and cannot seem to get relief. Most recently he was on Tegretol, which did not help. Before that he was on Neurontin and Effexor and he stated that they "helped but threw me; pretty tough." He is scheduled to see Dr. Savu on 10/15/01 for consideration of a DCS trial. (JX. 1, p80)

Claimant was continued in a off work status by Dr. Ricca following the October 8, 2001, visit.

A review of the medical in the record reflects that on October 30, 2001, claimant underwent a transforaminal lumbar epidural steroid injection on the left at L4-5, under the

directions of Dr. Calin A. Savu, a pain management specialist. On November 14, 2001, claimant underwent a left L-5-S1 transforaminal lumbar epidural steroid injection under the care of Dr. Savu. The afore procedures were preformed in a effort to address residuals of the claimant's October 27, 2000, compensable injury. (JX. 1, p62-64)

Claimant was seen in follow-up by Dr. Ricca on November 20, 2001. Dr. Ricca's report reflects, in pertinent part:

. . . He reports he continues to have diffused tingling pain into the left leg and foot, predominately involving the last three digits of the left foot. He has received some epidural injections, and even saline injections for the low back from Dr. Savu and this has helped a little. His medications have been switched and he is now taking Nortriptyline 25mg. q. h.s. and OxyContin 10mg. b.i.d. He has tried several different narcotics and each of them, he says after taking them for about three days he has problems with rather severe nausea, vomiting and even sweating. Mr. Johnson also reports that physical therapy has helped him considerably.

On examination, he still appears to be a little depressed. His back incision has healed well and he has no muscle spasms and good range of motion. His gait is normal. He has a slight weakness of dorsiflexion on the left when compared to the right. This is mild.

* * *

I reviewed Dr. Savu records and I agree with Dr. Savu to treat him with injections. I do not agree that postoperative scar tissue is causing this patients symptoms. This patient had significant neurologic compromise with L5 nerve dysfunction preoperatively. As I tell all my patients prior to surgery we can remove the pressure from the nerve but we cannot make the nerve heal. I suspect he is

suffering neuropathic pain and his nerve is not healing well. This is a rare problem.

We agreed that Mr. Johnson will continue working with Dr. Savu. I also started him on Celebrex 200mg, b.i.d. He will try stop all narcotics and live with some of his symptoms. I believe the narcotics are causing slowing of the gut, causing Nausea and vomiting. I will keep Mr. Johnson off work and we will see him in three months to monitor his progress. (JX. 1, p81)

On December 11, 2001, claimant was again seen by Dr. Calin Savu, pursuant to the referral of Dr. Ricca. Claimant underwent a transforaminal decompressive neuroplasty at L4-5 on the left side, under the care of Dr. Savu to address his neuropathic pain on the left L5 dermatome. (JX. 1, p65-66).

At this juncture it is noted that the claimant's authorized treating physician relative to the October 27, 2000, compensable injury was Dr. Ricca in conjunction with Dr. Savu. On January 21, 2002, claimant was evaluated at St. Frances Clinic, in Memphis, by Dr. Lavern R. Lovell. Medical records of Dr. Ricca identified Dr. Lovell as a Memphis neurosurgeon.

Claimant presented creditable testimony regarding the extent and duration of his evaluation by Dr. Lovell:

I had to drive all the way to Memphis, got down there and it took about, on don't know I don't it was over 15, 20 minutes, what he through he need to do. And Sharon McCaroll was my case manager and she met us down there.

* * *

She told me - - she came to our house and told us that the only reason we were going down there was for a second opinion. I didn't know anything about

an impairment rating or anything. And it was about the 15 or 20 minutes. He had me walk down the hall a couple of steps and they went out in the hall and then come back in in two or three minutes and said, we've decided to give you an impairment rating today. (T. 17)

Sharon McCaroll was a nurse case manager assigned the claimant's claim by respondent.

While Dr. Lovell provided a prescription for a cream for the claimant to rub on his leg when it was hurting, he did not again see the claimant. The January 21, 2002, report of Dr. Lovell reflects a history of claimant's injury, identifies a follow-up MRI scan as a test that was reviewed and recites that claimant had a past history of back problems, arthritis and GI problems. The report further reflects Dr. Lovell's impression of the claimant's complaint as subjective symptoms in the distal lower extremity postoperatively. Finally, Dr. Lovell's January 21, 2001, report concludes:

RECOMMENDATION: I have absolutely no findings on the imaging studies or on the exam to confirm the subjective complaints. He does not appear to have any hyperesthesia with touching of the lower extremity and for this reason, I don't think we are dealing with any sort of reflex sympathetic dystrophy or severe neuritic pain. I believe this patient is capable of returning to his prior work or certainly to a wide variety of other jobs. I find him with a standard PPI rating of seven percent (7%) per the AMA Guidelines for a disc herniation, post surgical in the lumbar spine. In addition, I find him at maximum medical improvement as of today, 21 January, 20 02. I have given him a prescription for Capasicin cream to apply to the affected area in the left foot and lower extremity three times a day. I don't know whether this will help him but if he, indeed, does have some subjective sensory complaints in that lower leg, he may find some improvement with this. I feel strongly that he is at

maximum medical improvement and the PPI rating is as dictated above. (JX. 1, p74)

Pertinent with respect to Dr. Lovell's assessment is the fact that he does not identify which edition of the AMA Guidelines on which he based the 7% impairment assessed the claimant.

Following the January 21, 2002, visit of the claimant to Dr. Lovell, he was next seen by an authorized treating physician on January 31, 2002, when he was seen in follow-up by Dr. Calin Savu. Dr. Savu's January 31, 2002, report relative to his follow-up visit of the claimant reflects a history of the treatment provided to the claimant relative to the October 27, 2000, compensable injury. Dr. Savu's physical examination of the claimant during the January 31, 2002, visit, ten days subsequent to the January 21, 2002, physical examination of Dr. Lovell, resulted in contrasting findings:

Physical examination is significant for hypoesthesia and some degree of allodynia in the L5 territory. The test of the neurological examination is within normal limits as is the musculoskeletal one. (JX. 1, p67)

The January 31, 2002, report of Dr. Savu reflects a diagnosis of the claimant's complaint as residual neuropathic pain involving the L5 dermatome most likely secondary to epidural scar formation and failed back surgery syndrome. The January 31, 2002, report of Dr. Savu concludes:

I would recommend initiation of a more targeted physical therapy approach to be focused mostly on the left foot and leg. If that fails to offer significant relief, I will provide him with a tape regarding spinal cord stimulation, as his neuropathic pain is very unlikely to respond to the usual regular therapy consisting of narcotics or anti-inflammatories. I doubt very much he will be able to

return to his previous job without any restriction. On the other hand, moderate restrictions to include prevention of repetitive lifting, bending and twisting as well as occasional periods of brief rest each couple of hours are more than reasonable and balance to offer him a reasonable level of comfort and provide him all the necessary rests to allow him to perform his daily duties without much hindrance. (JX. 1, p67-68)

Claimant was seen by Dr. Gregory Ricca on March 12, 2002, for follow-up of chronic lower extremity pain. The March 12, 2002, report of Dr. Ricca noted that claimant's continuing complaint relative to his left lower extremity attributable as residuals of the October 27, 2000, compensable injury. Additionally, Dr. Ricca noted that the claimant had been evaluated by a neurosurgeon in Memphis who had released him with no restrictions. After noting the results of his examination of the claimant during the March 12, 2002, visit, the report of Dr. Ricca reflects:

I explained to Mr. Johnson's wife that I do not have any objective findings to confirm his neuropathic pain. I believe he is honest in his history is reliable and if the is the case then he has neuropathic left lower extremity pain. Because of this, I would recommend that he trial of dorsal of column simulator. I also recommend job re-training for light duty work.

There is noting further I have to offer Mr. Johnson at this time. I will leave followup open. If he passes a dorsal column stimulator trial, then Dr. Savu can arrange an appointment for him to see me and I can place the permanent electrode. I reviewed dorsal column stimulator and electrode with the patient and his wife. (JX. 1, p82)

In a May 28, 2002, letter to Dr. Lovell, Ms. Sharon McCarroll, the medical case manager, recited a summary of the claimant's history relative to the October 27, 2000, compensable injury

and medical treatment received thereafter to include treatment by Dr. Ricca, a Jonesboro neurosurgeon and Dr. Savu, a Jonesboro pain management specialist. The May 28, 2002, correspondence further reflects Ms. McCaroll's summary of Dr. Lovell's conversation with her relative to his impression of the claimant and any treatment recommendations. Pertinent with respect to the documents, on which Dr. Lovell signed off on June 12, 2002, agreeing with the summary of his conversation with Ms. McCaroll is the fact that Dr. Lovell was of the opinion that the claimant could return to his normal regular job duties as a brick layer and that the claimant did not appear to be a good candidate for any type of dorsal column stimulator. (JX.1, p75-76)

On August 8, 2002, claimant underwent implantation of a pacemaker under the care of Dr. Fraser M. Richards. Claimant does not attribute his cardiovascular complaint and treatment to his compensable injury. Additionally, in a report of November 4, 2002, Dr. Richards cleared the claimant to undergo a functional capacity evaluation . (JX. 1. p83-87)

On January 2, 2003, claimant underwent a functional capacity assessment at American Physical Therapy Center, Inc., in Jonesboro, Arkansas. The duration of the functional capacity evaluation was four and a half hours. The report reflects recommendations to include possibly EMG studies of claimant's left lower extremity be tested for the L3, 4 and possible L5 nerve root strengthening protocol to enhance the claimant left lower extremity; work conditioning protocol; posture mechanics to improve the claimant mechanical activities; and retesting the claimant in six weeks. The record concluded that the claimant demonstrated that he was capable of working in a light/medium classification of work, which excluded his job with respondent. (JX. 1, p88-102)

On September 22, 2003, claimant was evaluated by Dr. Robert Abraham, a Jonesboro neurosurgeon, at the request of respondents. Dr. Abraham's September 22, 2003, report relative to the claimant, reflects a history of the claimant's work related injury and medical treatment received relative to same under the care of Dr. Ricca and Dr. Savu as well as the evaluation by Dr. Lovell, who felt that the claimant could return to his previous work. The report further reflects that the claimant presented with complaints of pain in his lower lumbar region on the left in the S1 joint, which was not too bad and only occasionally. Further, claimant relayed complaint of left lower extremity pain in the calf and foot, burning, stinging pain with numbness in the extremity which is present at all times, as well as weakness in the left lower extremity. Following his examination, Dr. Abraham assessed the claimant with status post-left L4-5 micro decompression laminectomy with discectomy and post laminectomy pain. The report further reflects that the claimant was counseled, that no operative intervention was needed and claimant could do light to medium duty work and return to the clinic on a prn basis. (JX. 1, p105). Additionally, Dr. Abraham authored a certificate relative to physical limitations imposed upon the claimant to include no bending, stooping, twisting at back and no lifting weights greater than forty pounds. (JX. 1, p106)

Respondents utilized the services of Crawford & Co. for the purpose of completing an vocational evaluation of the claimant. The August 17, 2003, report of the vocational consultant, Ms. Edie Nichols, reflects that a review of the medical had been had as well as a transferrable job skill analysis conducted. Claimant had also undergone testing to include the WRAT-3, wide range achievement test where he scored at the post high school level for reading, at the high school level for spelling and at the seventh grade level in arithmetic. A recommendation was

made for job placement efforts on behalf of the claimant for appropriate work at the highest wages possible. (JX. 1, p107-109).

The record contains a vocational status report of October 3, 2003, detailing the efforts of Ms. Nichols with respect to job placement as well as they contact the claimant. Claimant credibly testified that he has follow through with Employment Security Division, in Jonesboro, which included his physical restrictions in the computer with respect to available jobs. Claimant denies that he informed Ms. Nichols of his inability to work certain job hours. Claimant further noted that through out his efforts with area employers, to include Nestles, D & W Automotive, and Neilson Design Group, he has not been offered a job. Claimant did note that certain other jobs identified were not within his physical restrictions, in that they entailed repetitive bending, and twisting.

The evidence in the record reflects that claimant was last seen by a physician relative to his compensable injury on October 20, 2003, when seen at First Care by Dr. Darrell Ragland. The claimant's chief complaints during the October 20, 2003, visit was leg pain. A review of the October 20, 2003, report reflects a history of the claimant's injury and complaint with respect to his lower back and left leg. The report details that the claimant was not presently seeing a pain physician, Dr. Savu. The report further reflects that both Dr. Ricca and Dr. Savu had recommended a trail of a dorsal spine stimulator.(JX. 1, p114-115)

Claimant acknowledged that he has applied for Social Security disability benefits, however has not been approved for same. Claimant is not presently receiving either workers' compensation indemnity benefits, unemployment benefits, or Social Security disability benefits. The testimony of the claimant reflects that he continues to experience pain and residuals in his

lower back and down his left leg such that his physical activity is limited with respect to walking. Claimant notes that he is unable to drive, with comforted, a standard vehicle, where in he has to engage the clutch.

Claimant's work history has consisted of heavy manual labor employment. The testimony of the claimant reflects that due to residuals of his symptoms he is unable to remain standing for prolong periods, to bend and twist his back, and experience limitations in the amount of weights he was able to lift. Claimant noted that he has to sit and rest periodically and is unable to remain in one position for an extended period of time. The testimony of the claimant's wife, Sheila Johnson, is corroborative of that of the claimant, with respect to the claimant's activity level prior to his October 27, 2000, injury and subsequent to the injury and surgery.

From all of the evidence, I make the following:

FINDINGS

- _____ 1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 27, 2000, the relationship of employee-employer-carrier existed among the parties.
3. On October 27, 2000, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$394.00/\$296.00 for total disability/permanent partial disability benefits.
4. On October 27, 2000, the claimant sustained an injury arising out of and in the course of his employment.
5. The trial dorsal column stimulator is reasonably necessary medical treatment relative to the claimant's compensable injury of October 27, 2000.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of October 27, 2000.

7. The claimant's healing period ended January 21, 2002.

8. The claimant has a permanent physical impairment in the amount of 10% to the body as a whole based on AMA Guide, 4th edition, Table 75 II, E.

9. When the claimant's age, education, work experience, permanent physical/medical restriction, along with other matters reasonably expected to affect his future earning capacity are considered, the evidence preponderates that he has been rendered permanently and totally disabled, within the preview of the Arkansas Workers' Compensation Act., Ark. Code Ann. §11-9-519.

10. The respondents have controverted the payment of permanent disability benefits to the claimant in excess of 7% to the body as a whole, and the trial of a dorsal column stimulator.

CONCLUSIONS

The compensability of the claimant's October 27, 2000, compensable injury is not disputed. Claimant has undergone surgery relative to a diagnosed herniated disc in his lumbar spine which has resulted in the medical physical restrictions on his activity level by at least three authorized treating and/or examining physicians.

After the October 27, 2000, compensable injury in the employment of respondent which resulted in surgery, claimant continued to experience residuals which warrant further medical treatment as recommended by his treating physicians. Further, claimant asserts that as a result of the October 27, 2000, compensable injury he has been rendered permanently and totally disabled.

from engaging in gainful employment within the purview of the Arkansas Workers' Compensation statute and is correspondingly entitled to permanent total disability benefits. In the alternative, claimant asserts that his permanent disability is in excess of the 7% impairment accepted by respondents. Respondents take the position that the claimant is not permanently and totally disabled and that the extent of his disability as a result of the October 27, 2000, compensable injury is 7% to the body as a whole. Respondents deny that further medical treatment, in the form of the dorsal spine stimulator, is reasonably necessary relative to the claimant's compensable injury. 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.

The claimant, a date of birth of January 18, 1958, is a high school graduate with an employment history consisting of heavy manual physical labor. The evidence in the record discloses that on October 27, 2000, claimant suffered an injury to his lumbar spine within the course and scope of his employment with respondent. Claimant continued to discharge employment duties for respondent subsequent to the October 27, 2000, injury, although he continued to experience residuals and symptoms from the injury. The evidence discloses that it was not until March 2001, that claimant became totally incapacitate from engaging in gainful employment as a result of the October 27, 2000, compensable injury. Claimant sought and obtain medical treatment under the care of his family physician for the October 27, 2000, in March 2001, and after diagnostic studies were referred to a Jonesboro neurosurgeon, Dr. Gregory Ricca.

On April 17, 2001, claimant underwent surgery under the care of Dr. Ricca. (JX. 1, p53-

54). Dr. Ricca's records reflect that at the time he performed the surgery on the claimant relative to the herniated disc on April 17, 2001, claimant had significant neurological compromise at the L5 level. Dr. Ricca attribute claimant's post-surgical symptoms relative to the claimant left lower extremity and pain to the afore.

As a consequence of claimant's residual post-surgical complaints and symptoms he was referred by this treating surgeon, Dr. Ricca, to Dr. Calin Savu, a pain management specialist. The medical in the record reflects that the claimant underwent three separate procedures to address the residuals pain complaints under Dr. Savu care and treatment. Both Dr. Ricca and Dr. Savu recommended a trial of dorsal column stimulator with respect to the claimant's residual left lower extremity complaints.

Claimant was evaluated by Dr. Lavern Lovell, who has been identified as a Memphis neurosurgeon, on January 21, 2002, for total duration of twenty minutes. In addition to finding a lack of objective findings with respect to the claimant's complaint, Dr. Lovell concluded that the claimant has reached maximum medical improvement with a seven percent impairment and was fully capable of returning to his pre-injury job duties. After reviewing the total medicals in the record and noting the extent of the claimant's contact with Dr. Ricca and Dr. Savu relative to his compensable injury, I am persuaded that the afore physicians are more credible and reliable in their assessment of the claimant relative to his compensable injury, than Dr. Lovell.

Dr. Lovell assessed the claimant's anatomical impairment at 7% to the body as a whole. While he attributes the impairment to the AMA Guidelines he neglected to identify the edition he relied upon. Under the Arkansas Workers' Compensation statues and rules of the Commission the AMA Guideline 4th Edition is utilized in assessing the anatomical impairment. A review of

the afore reflects at Table 75 II E that for surgically treated disk lesion with residuals, medically documented pain and rigidity, the appropriate impairment is 10% to the body as a whole. In the instant claim claimant authorized treating physicians Dr. Ricca and Dr. Savu medically document the pain relative to the claimant's compensable injury post surgery. Indeed, the evidence discloses claimant received treatment under the care of a pain management specialist with further recommendations. The evidence preponderates that the claimant has sustained a permanent physical impairment in the amount of 10% to the body as a whole as a result of the October 27, 2000, compensable injury as subsequent surgery and residuals. Respondents have controverted the payment of permanent physical impairment in excess of 7% to the body as a whole.

The claimant at that time in the hearing in his claim, with a date of birth of December 18, 1954, was just shy of his 49th birth date. Claimant presents an employment history consisting of heavy manual labor. Further, the evidence disclose that since graduating high school at the age of 17 claimant as been continuously employed. The record does not reflect extended period of unemployment in the claimant's work history. Additionally, claimant's work history for the most part has entailed heavy physical manual labor and specifically work as a brick layer or block layer in the construction industry. The only factory work contained in the employment of the claimant's work history is a short period of time during which he worked at a lumber mill discharging duties stacking lumber. Claimant's employment history has consisted of the physical demands of lifting, bending, stooping, walking and standing without restrictions or limitations, all of which are severely restricted or limited at the juncture as a result of the October 27, 2000, compensable injury.

Ark. Code. Ann. §11-9-522(Repl. 2002) provides, in pertinent part (b)(1) in considering

claims for permanent partial disability benefits in excess of the employees percentage of permanent physical impairment, the Workers ' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the claimant's age, education, work experience, and other matters reasonably expected to effect his or her future earning capacity.

In the instant claim the evidence reflects that claimant was employed by respondent for a total period of 12 years as a brick layer masonry worker. Claimant has been unable to engage in gainful employment as a brick layer since March 2001. Pertinent with respect to the restrictions placed upon claimant's activity from a physical standpoint are prohibitions against bending, lifting, stooping, and twisting at the back. Additionally weight lifting restrictions have been imposed by the claimant's authorized treating and or examining physicians. Claimant underwent a functional capacity evaluation which last a total of 4 ½ hours and resulted in a weight lifting restriction of 45 pounds maximum and a frequent lifting of 33 pounds.

Claimant, with the documented medical, physical restrictions on his employment activity had inquired of employment pursuant to the recommendation of vocational specialist Ms. Edie Nichols. Claimant has not been offered employment by either of the employer identified by the vocational specialist were made. Claimant has suffered a back injury and undergone surgery relative to same with corresponding residuals symptoms in his low back as well as left lower extremity. Claimant is unable to remain in one position for a prolonged time, include sitting to driver. Claimant frequently alternates position and requires rest when symptoms intensify.

While the functional capacity evaluation had concluded that claimant can perform work in the light to medium job category, the evidence nevertheless reflects that claimant has severe

documented medical restrictions on his employment activity. When seen by Dr. Abraham in September 22, 2003, restrictions were placed on the claimant to include no bending, stooping, crawling, twisting at the back and no lifting greater than 40 pounds. (JX. 1, p106) On January 31, 2002, Dr. Savu, the pain management specialist noted that the claimant would not be able to return to his previous job without restrictions. Dr. Savu identified claimant's restrictions to include no repetitive lifting, bending, and twisting as well as occasional period of brief rest each couple hours would be reasonable.

It is therefore my opinion, that the evidence preponderates that the claimant has been rendered permanent totally disable from engaging in gainful employment pursuant to Arkansas Workers' Compensation statute, when his age, education, work experience and other factors reasonably expected to effect his earning capacity or considered. Respondents have controverted the payment of permanent disability benefits in excess of 7% to the body as a whole.

Respondents are liable for all reasonable related medical treatment relative to the compensable injury sustained by claimant. In the instant claim claimant's authorized treating neurosurgeon, Dr. Gregory Ricca, and his pain management specialist, Dr. Calin Savu, have both recommended placement of a trial dorsal column stimulator to address the symptoms in the claimant's left leg attributable to residuals of the October 27, 2000, compensable injury. The evidence in the record reflects that the claimant has consistently registered the complaints and symptoms relative to his left lower extremity since the October 27, 2000, compensable injury as well as subsequent to his April 17, 2001, surgery. The evidence preponderates that the recommended trial dorsal column stimulator is reasonably necessary relative to the treatment of the claimant's compensable injury. The respondents have controverted the afore benefits.

AWARD

Respondents are hereby ordered and directed to pay to the claimant permanent partial disability benefits to correspond with the claimant's 10% anatomical impairment sustained as a result of the October 27, 2000, compensable injury. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the discharge of the afore obligation.

Respondents are further ordered and directed to pay to the claimant's permanent total disability benefits at the weekly compensation benefit rate of \$394.00, commencing with the end of the claimant's healing period and continuing until such time as respondent has satisfied its obligation pursuant to Arkansas Workers' Compensation statutes. Said sum accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include the trial of the dorsal column stimulator relative to claimant's compensable injury of October 27, 2000.

Maximum attorney fees are herein awarded to the claimant's attorney the Honorable Kristofer E. Richardson, on the controverted portion of this Award, pursuant to Ark. Code Ann. §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 Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge