

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER E807349**

**ORVILLE MOONEY, EMPLOYEE**

**CLAIMANT**

**BERNIE PORTER/  
MARGIN LUMBER COMPANY, EMPLOYER**

**RESPONDENT**

**BITUMINOUS CASUALTY CORPORATION, CARRIER**

**RESPONDENT #1**

**SECOND INJURY FUND**

**RESPONDENT #2**

**OPINION FILED JANUARY 6, 2004**

The hearing was conducted on November 12, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Little Rock, Pulaski County, Arkansas.

The claimant was represented by Janna Withers, Attorney at Law, Little Rock, Arkansas.

Respondent #1 was represented by Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

Respondent #2 was represented by David Pake, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on November 12, 2003, in Little Rock, Arkansas. It was stipulated as follows:

1. Previous Opinions, Orders and transcripts with exhibits from previous hearings in this case are hereby incorporated by reference, as part of the record herein.

2. The previous Administrative Law Judge's Opinion dated September 30, 1999, found that the claimant sustained a compensable injury to his low back on June 10, 1998. In an Opinion dated March 16, 2000, the Full Arkansas Workers'

Compensation Commission affirmed the finding of compensability.

3. The claimant's average weekly wage is \$320.00.

The issues to be litigated at the hearing were as follows:

1. Is claimant entitled to temporary total disability from June 10, 1998, to March 28, 2002, and from August 9, 2002, to September 6, 2002?

2. Is claimant entitled to a 20% permanent impairment rating?

3. Is claimant entitled to permanent and total disability, or in lieu of permanent and total disability is claimant entitled to wage-loss disability?

4. Is claimant entitled to medical treatment rendered subsequent to April 15, 1999?

5. Respondent #1 alleges that the claimant suffered no permanent impairment from the 1998 injury.

6. Respondent #1 alleges that there was no permanent disability due to the 1998 injury, but if there was a combination of permanency (the 1994 and 1998 injuries), the major cause of any permanent impairment was due to the 1994 injury. Respondent #1 alleges that respondent #2 is liable due to the combination.

The Opinion filed by the Administrative Law Judge on September 30, 1999, and the Full Arkansas Workers' Compensation Commission Opinion filed March 16, 2000, are made a part of the record in this case as Commission Exhibits 1 and 2. At a hearing conducted July 28, 1999, the claimant alleged that he sustained a compensable back injury on June 10, 1998, and that he was entitled to reasonably necessary medical benefits and an attorney's fee. All other issues were reserved. The claimant testified at that hearing that he sustained a previous back injury in 1994 which

required surgery. He denied any significant back symptoms from 1994 until his injury on June 10, 1998. He apparently was hired in December, 1996, by respondent/employer. The claimant testified that he injured his low back on June 10, 1998, when he pulled a piece of defective lumber from a conveyor, attempted to lay it aside, and suffered pain in his back with burning in his hip and burning, numbness and tingling going down his right leg. The claimant ultimately had to go to the emergency room at Conway Regional Medical Center. He was treated by orthopaedic surgeon, Dr. Phillip A. Johnson, who had treated him for his previous 1994 back injury and had performed the 1994 surgery. Dr. Johnson's deposition testimony, given prior to the July 28, 1999 hearing, stated that, although claimant had significant degenerative problems, as well as scarring from his 1994 surgery, he had also sustained an injury in July, 1998, with associated mild swelling of the left S1 nerve root. Swelling of the left S1 nerve root was the only objective finding of injury in the record. The Administrative Law Judge in the September 30, 1999 Opinion, stated, "While swelling of the nerve root (left ) is the only objective finding of injury in the record and does not account for the claimant's right leg symptoms, it is sufficient to establish the occurrence of a compensable injury superimposed on the claimant's pre-existing degenerative condition." In that Opinion, the respondent was ordered to pay reasonably necessary medical expenses. The record in this case reflects that the respondent paid medical expenses which were incurred up through mid-April, 1999.

At the November, 2003 hearing, the claimant testified that he was born in 1956. His testimony was, basically, that he suffered an idiopathic low back injury in 1994 when "I woke up one morning. My back was out and my legs were burning. I

went to Conway Hospital and I had a herniated disk.” (T-35) The claimant testified that he was off work for approximately 60 days.

Subsequently, the claimant was an over-the-road-truck driver and he testified that he had no problems returning to that job. Subsequently, he continued to do heavy labor work until he was hired by respondent/employer on or about December 1, 1996. He was hired to do general labor, stack lumber and cut boards. The claimant testified that to the best of his recollection, he had no medical treatment with regard to the problems he had with his back between 1994 and 1998.

The claimant testified that he began seeing Dr. Carl Covey in March, 2000. He testified that subsequent to April, 1999, his lower back hurt, he had pain down the back of his right leg and muscle cramps. The claimant testified that he did not seek medical treatment between April, 1999 and March, 2000, because he did not have the money and no insurance coverage. The claimant testified that he saw Dr. Covey regarding his low back and right leg. He testified that he had numbness down his right leg all the time and his left leg part of the time. (T-40). He underwent epidural steroid injections and received pain medication from Dr. Covey. According to the claimant, the epidural steroid injections did not help. At the time of the November, 2003 hearing, the claimant was taking prescription pain medication for pain and Xanax.

The claimant began to see Dr. Schock in 2001 because Dr. Covey referred the claimant to him. By then, the claimant had received social security disability and medicare approval. Dr. Schock performed surgery on the claimant in March, 2001 in the form of a spinal fusion at L5-S1 and the placement of hardware in his back. According to the claimant, the surgery alleviated some of the pain he was

having. According to the claimant, Dr. Schock gave him the restrictions of no twisting, bending, stooping, no heavy lifting. The claimant testified that he is still on those restrictions. Dr. Schock performed a second surgery on August 9, 2002, to remove the hardware from his back. According to the claimant, something was swelling and putting pressure on a nerve, and Dr. Schock performed surgery to remove the pressure caused by the hardware. The surgery, according to the claimant, alleviated some of the symptoms that he had at that time. The claimant is still seeing Dr. Covey for pain management once every three months.

The claimant testified that he finished the ninth grade and was not able to continue school because he had to go to work and help his mother make a living. The claimant testified that he has performed heavy manual labor his entire life. He loaded poultry, drove a truck, framed houses, worked at a grain elevator, and worked building mobile homes. He has never performed office work or applied for any other type of work other than manual labor.

The claimant testified that he has not been employed since June 10, 1998. The claimant testified that if he were physically able to return to work, he would like to, but it is his opinion that he is not physically able to work.

The claimant testified that he is not able to stand in one spot for longer than 10 or 15 minutes without discomfort. He can walk a quarter of a mile without needing to stop and rest and take a breath. The claimant does try to walk regularly and has been advised to exercise. The claimant has difficulty sleeping during the entire night and claimant can only sit in a chair without discomfort for approximately 20 minutes. The claimant is unable to drive an automobile for a significant distance. He is

not able to do any type of house or yard work.

On cross-examination the claimant admitted that he was mistaken regarding the date he filed for social security disability. He remembered that he filed for social security disability in July, 1998, about a month after his June 18, 1998 injury. He began receiving social security disability benefits in October, 1999, and continued to receive them up to the date of the 2003 hearing. The claimant testified that Medicare had paid for both surgeries from Dr. Schock. Medicare is also paying for the treatment from Dr. Covey for pain management. The claimant stated that his complaints in 1994 concerned pain in his left lower extremity and in his back. Dr. Johnson performed a left lumbar laminectomy at L5-S1 in 1994 due to left S1 nerve root compression.

The claimant testified that subsequent to the 1998 compensable injury he received an MRI. No surgery was received at that time and none was recommended.

The claimant testified that in August of 2000, Dr. Johnson performed another MRI. It showed no evidence of a recurrent disk and Dr. Johnson stated "I have little to offer this patient." The claimant testified that Dr. Johnson released him at that time. According to the testimony, the claimant did not see Dr. Schock until February 6, 2001.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Previous Opinions, Orders and transcripts with exhibits from previous hearings in this case are hereby incorporated by reference, as part of the record herein.

2. The previous Administrative Law Judge's Opinion dated September 30, 1999, found that the claimant sustained a compensable injury to his low back on June 10, 1998. In an Opinion dated March 16, 2000, the Full Arkansas Workers'

Compensation Commission affirmed the finding of compensability.

3. The claimant's average weekly wage is \$320.00.

4. The preponderance of the evidence reflects that the claimant is entitled to temporary total disability from the date of the compensable injury in 1998 to April 7, 1999. During that time he was totally incapacitated from earning wages and was in a healing period due to the 1998 compensable injury. Additionally, the claimant's healing period for the compensable 1998 injury was April 7, 1999.

5. The preponderance of the evidence reflects that the claimant suffered no degree of permanent injury to his back based on the 1998 compensable injury.

6. The preponderance of the evidence reflects that the claimant is not entitled to any additional medical benefits subsequent to April 7, 1999. Tests reflected a resolution of the "mild swelling" shown on the 1998 MRI and no additional or permanent injury due to the 1998 injury.

7. The preponderance of the evidence reflects that the claimant's attorney Ms. Jana Withers is entitled to a maximum attorney's fee for controversion of the above described benefits.

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### **DISCUSSION**

The previous Opinions in this case found that the claimant sustained a compensable injury to his low back on June 10, 1998, and that the respondent was responsible for medical treatment up through April 7, 1999. Apparently, the basis for a finding of compensability was a finding on an MRI of claimant's low back on July 31, 1998, that claimant had **mild swelling in the left S1 nerve root. The swelling of the**

**nerve root was the only objective finding of injury in the record, and did not account for the claimant's right leg symptoms.** However, the Administrative Law Judge in the previous Opinion found that it was sufficient to establish the occurrence of a "compensable injury." The record in this case reflects that the claimant has not worked since June 10, 1998. He alleges that he is entitled to temporary total disability from June 10, 1998, through March 28, 2002, and from August 9, 2002, through September 6, 2002. The claimant was removed from work because of serious pain and discomfort on or about June 10, 1998, the date of his compensable injury. A subsequent MRI was conducted on April 7, 1999. The MRI disclosed post-operative mild degenerative changes at the L5-S1 location, but there was **no evidence of a recurrent disk herniation. A EMG/NCV test on or about April 7, 1999, disclosed normal findings.** The preponderance of the evidence in this case reflects that the claimant was, for this compensable injury, in a healing period and totally incapacitated from earning wages from the date of his injury until April 7, 1999. It is noted that the previous Administrative Law Judge found that the claimant was entitled to reasonably necessary medical benefits, and those ( subsequent to the first ALJ Opinion in this case) were paid up through on or about April 7, 1999.

The other issues in this case concern whether the claimant is entitled to a 20% permanent impairment rating, permanent and total disability, wage-loss (in lieu of permanent and total disability), and medical treatment subsequent to April 7, 1999. The preponderance of the evidence in this case reflects that the claimant is not entitled to any additional benefits subsequent to April, 1999.

The claimant's contentions revolve around the question whether the claimant sustained a permanent injury in June, 1998. It is important to set out in a chronological fashion the important diagnostic studies which claimant received in this case:

1. 1994: Compensable lumbar spine injury with left sided symptoms. Left laminectomy at L5/S1 due to left S1 nerve root compression.
2. Compensable injury, June 19, 1998.
3. July 31, 1998: mild swelling of the left S1 nerve root seen on MRI.
4. April 7, 1999: MRI shows post-operative mild degenerative changes at L5/S1, but no evidence of recurrent disk herniation.
5. April, 1999: EMG/NCV - normal results.
6. June 30, 2000: MRI showing no recurrent herniated disks, but does show focal degenerative and surgical changes at L5/S1.
7. February 16, 2001: MRI showing a disk **bulge on the right side**.
8. March 28, 2001: **Fusion surgery for the right sided symptoms, including degenerative changes and right sided bulge.**

Depositions given by Dr. Charles Schock were made a part of the record in this case. On March 28, 2001, he performed an L5/S1 fusion surgery on the claimant's lumbar spine because of nerve root compression. He stated that a disk pressing on the nerve root was a significant factor in the surgical decision. **He stated that the findings during the surgery were consistent with right leg pain.** He noted that the claimant's right leg pain and low back pain were much improved after the fusion

surgery. It was Dr. Schock's opinion that the 1998 injury was the major component of the process which resulted in the narrowing of the neural foramen and impinging nerve root. Dr. Schock stated that it was more likely than not that some trauma to the L5/S1 disk occurred that irritated the nerve root. He stated that there was a 51% probability that the 1998 injury was a significant factor in the claimant's pain and discomfort. According to Dr. Schock, the claimant reached maximum medical improvement on March 28, 2002, and he had an additional healing period for one month after the removal of the hardware, which was performed on August 9, 2002. He gave the claimant a 20% permanent impairment rating to the body as a whole.

Dr. Anthony Russell, who performed an IME on the claimant at the request of respondent #1, testified by deposition on two occasions. He testified that you cannot always see symptomatic nerve root compression on MRI. He also stated that if nerve roots are in a space already too small, it can cause a bigger problem for a particular patient, as opposed to someone who has plenty of room for the nerve roots to expand. He agreed that trauma was a known cause of nerve root swelling. He stated that if a patient who has spinal foramina stenosis suffers trauma, and nerve roots try to swell in an area that is already too small, it can cause a patient who is non-symptomatic to become symptomatic. However, Dr. Russell, a board certified neurosurgeon, commented on the findings in the diagnostic studies that the claimant underwent. The surgery by Dr. Johnson, in 1994, was for left sided symptoms at L5/S1. The subsequent diagnostic studies showed degeneration of that disk consistent with post-surgical changes. The July 31, 1998 MRI, showed only the "mild swelling" at the L5/S1 nerve root, which, according to Dr. Russell, was consistent with a post-surgical

degenerative change.

“Q. And the surgery that was performed by Dr. Johnson was to the left at L5-S1; is that right, sir?”

A. I believe that’s correct, yes.

Q. And is there anything on the 1998 MRI that references any findings that were noted by Dr. Schock in his operative report, any foraminal stenosis or anything of that nature on the July 31, 1998, MRI?

A. I think they only - and it’s not in the same words, but there’s a little - some discussion of the left lateral recess.

Q. Okay.

A. Other than that, no.

Q. **And those are left-sided symptoms, right?**

A. **That’s correct.**

Q. **Okay. Nothing on the right?**

\_\_\_\_\_A. **We see nothing on the right here, no.**

Q. **Which is where the surgery was, as you read it?**

\_\_\_\_\_A. **Yes.**

\_\_\_\_\_Q. Okay. And moving along to the next MRI, and what’s the date of that, sir? I believe that’s the 1999 MRI.

A. Yeah, hang on. 4/7 of ‘99.

Q. Okay. **And we talked about that earlier. Again, are there any right-sided findings such as found by Dr. Schock in 2001 in her operation?**

\_\_\_\_\_A. **No. Stable exam from July of 1998; postoperative changes on the left at L5-S1.**

\_\_\_\_\_Q. Okay. And under “clinical information,” Mr. Mooney is complaining of back pain and bilateral leg pain with a history of surgery; is that right, sir?

A. That's correct."  
(R#1x-3)

The preponderance of the evidence in this case reflects that subsequent to April, 1999, the claimant's problems were the result of a degenerative condition or findings unrelated to the compensable injury of June 10, 1998. Of course, the 1994 injury was not work-related, according to the claimant. As stated earlier, the claimant underwent an MRI on April 7, 1999, which showed post-operative mild degenerative changes at L5/S1, but **no evidence of recurrent disk herniation**. The claimant underwent an MRI on June 30, 2000, which showed **no evidence of a recurrent disk with findings consistent with "focal degenerative changes at L5-S1."** The mild swelling of the L5/S1 nerve root was not apparent on the 1999 or 2000 MRI's. The finding of mild swelling was clearly temporary in nature, resolved, and was not disabling in and of itself. Respondent #1's Exhibit #3 is a deposition from Ron Walker, M.D., the radiologist who read the MRI of June 30, 1999. He testified at length regarding the comparison in MRI's:

"Q. Okay. We have marked that as Exhibit Number 2. And I'll show you Exhibit Number 3, which is the April 7, 1999, MRI, and hand that to you, Doctor.

Q. Okay. And this, likewise, was performed at Baptist MRI. And again, there seems to be no change from the July 31, 1998, exam and, in fact, the interpreting physician says so in his report.

Q. All right, sir. Again, no evidence of a herniated disk?

A. Correct.

Q. If you reviewed that, you would view that as being what you would expect from someone who had a surgery five years earlier?

A. Correct.

Q. It shows the degenerative changes?

\_\_\_\_\_ A. Right.

Q. Which you would expect in someone who has had this type of surgery?

\_\_\_\_\_ A. Right. They will always be there.

\_\_\_\_\_ Q. Okay. **And Exhibit Number 4, which we have marked, you can confirm is the MRI that you read on June 30, 1999?**

**A. Correct. And again, there is no apparent change from any of the other post-surgical examinations.**

**Q. No new findings or anything that would be indicative of a new injury or an acute injury?**

\_\_\_\_\_ **A. Correct.”**  
(R1x-3, P. 13)

The preponderance of the evidence reflects that the claimant's surgery was more likely for degenerative changes and a right disk bulge that did not appear on any diagnostic study until almost three years after the June 10, 1998, compensable injury. During that time, the claimant not only underwent three MRI's, but also a EMG/NCV test which was normal. It was not until claimant underwent an MRI on February 16, 2001, that the findings of the right side were found. None of the previous diagnostic studies reveal any such findings which were not only new, but on a different level than the mild swelling on the left side found in the MRI in 1998. Dr. Schock performed fusion surgery in March, 2001, for the right sided symptoms, including the degenerative changes and a bulge. Those findings were not shown on the MRI of July 31, 1998. The mild swelling on the MRI of July 31, 1998, formed the Commission's

basis of compensability. Dr. Walker testified, at length, regarding the MRI:

\_\_\_\_ “Q. Exhibit 5, Doctor, is a February 16, 2001, MRI performed at Westside Open MRI and Diagnostic Center ordered by Dr. Schock. It’s two pages, read by Dr. David Harshfield. I’ll hand that to you.

A. Okay. In this report, he apparently had the prior examinations from 1998 and ‘99, but did not have mine for comparison.

Q. Okay. You are reviewing page one under overview; is that right, Doctor?

A. Correct.

Q. And it talks about the patient having had a history of low back pain, this says dating back to June ‘98, and the second paragraph talks about the surgery and that there are prior MRI examinations from 1998 and 1999.

A. Well, and he says - neither of the previous MRIs describe neuroforaminal stenosis, which appears to have developed in the interim, but I believe they did describe that in the body of their reports. He describes lateral canal stenosis greater on the right than left. At least on my exam, I would actually say it’s greater on the left than right.

Q. Okay. You can keep reading, Doctor, under page two in the impressions, and I’ll ask you to comment on what changes were shown or evident on the February 16, 2001, MRI compared to the previous studies, including the one you read on June 30, 1999.

A. The changes would be that he felt that the left S1 nerve root had increased in size. Again, I don’t have these images to look at it.

Q. Which impression is that stated under, what number?

A. That’s number two.

Q. Okay.

A. And under impression number three, he says the patient has developed bilateral, moderate to high grade, lateral recess of lateral canal narrowing or encroachment, great on the right. Again, I don’t have any other exams to compare, but this was present on the exam I interpreted and probably would be a change. I mean, there is fairly significant narrowing and there may be nerve root impingement, but there may not, I

can't tell.

Q. Okay.

A. He says greater on the right than left. On my exam, it's greater on the left than right. And that's about it.

Q. Okay. **So how would you characterize his impression, and I know you just touched on that for us, but essentially, he stated that there is some lateral canal encroachment or narrowing greater on the right. Do the previous studies show that?**

\_\_\_\_\_ A. No.

\_\_\_\_\_ Q. So that would be a new finding?

\_\_\_\_\_ A. Yes.

\_\_\_\_\_ Q. Okay. What can be a cause of lateral canal encroachment or narrowing greater on the right? Is that a chronic degenerative condition or can that be the result of an acute injury?

**A. More likely, in this setting, it would be because the patient's osteophytes, the body's attempt to buttress that level, are increasing in size.**

**Q. And the osteophytes, and you described that for us, that's a mechanism that the body develops to -**

\_\_\_\_\_ **A. Try to stabilize this area of weakness.**

\_\_\_\_\_ **Q. Following the surgical procedure?**

\_\_\_\_\_ **A. Actually, it's just from arthritis. Any arthritis can lead to this from any cause.**

\_\_\_\_\_ **Q. All right, sir. Okay. So you would - let's just kind of go through this. The change that you described for us on the February 16, 2001, report under impression number three, the narrowing or the encroachment which was greater on the right, you would attribute, in all likelihood, to the osteophytes, which is a chronic degenerative condition?**

\_\_\_\_\_ **A. Yes.**

Q. All right, sir. And that developed apparently following the - -

A. Following the June 30, 2000, examination.

Q. - - June 30, 2000, MRI?

A. Correct.

Q. And the February 16, 2001?

A. Yes. Well, I have the 2001 - oh, this is the February 16, 2001.

Q. Yes, sir.

A. Okay.

Q. And you would attribute that as something that would develop over a period of time, and would this be typical of a degenerative condition such as this?

A. Yes. Slowly progressive degenerative disease.”

(R1x-3, P. 15 thru P. 18)

Dr. Russell conducted an independent medical evaluation of the claimant on January 2, 2001. According to Dr. Russell, there was no evidence of a recurrent herniated disk at that time or any right sided findings. He reviewed Dr. Schock's records, including the MRI of February 16, 2001:

“Q. And do you agree with Dr. Schock's assessment that the MRI of February 16, 2001, showed some degenerative changes that weren't apparent on this 1999 MRI?

A. Yes. The newer study shows some things that weren't there on the initial study.

Q. Okay. Just so we understand, the 2001 MRI shows findings that weren't apparent in 1999 or on the June 30, 2000, MRI?

A. That's correct. In the text of the report on 4/7 of '99, the doctor notes, specifically notes “No canal or foraminal stenosis is present,” and it's the foraminal stenosis that Dr. Schock is referring to in his note.

Q. Okay. You're referring to the April 7, 1999, MRI and the text which specifically says, quote, "No canal or foraminal stenosis is present. I see no evidence of recurrent disk herniation, significant scarring or," I'll let you pronounce that last word.

A. Arachnoiditis.

Q. Okay.

A. Correct.

Q. And moving on, Doctor, to your June 30, 2000, MRI, does it show the foraminal stenosis that was found, or at least the level or extent of foraminal stenosis that was found in 2001?

A. The - just reading back through the radiologist's report, at L5-S1, this is again in the text of the report, "Circumferential osteophyte with a hard disk complex. This produces bony narrowing of each lateral recess, slightly greater - left slightly greater than right in terms of narrowing."

Q. Okay. Does this appear to be degenerative in nature?

A. Yes.

**Q. Doctor, can you give an opinion as to the new findings in 2001 as to whether they're the result of trauma that occurred in the interim of whether the new findings are the result of a progression of the degenerative condition?**

**A. Well, I think all things considered, the gentleman's going to continue to have deterioration regardless, even without a intervening trauma, so I suspect, more likely than not, it's just a progression of his initial findings.**

**Q. All right, sir. And is this consistent with the 1994 MRI which showed a herniated disk, the 1994 surgery, and the subsequent MRI's which showed the post-surgical changes and degenerative condition?**

**A. Yes.**

\_\_\_\_\_ Q. Okay. Is this a type progression that you typically see with this type of situation, Dr. Russell?

A. Yes. Frequently.”  
(R1x-2, P. 13)

The preponderance of the evidence reflects that the claimant suffers from a degenerative disk that can be directly traced to the 1994 injury. Dr. Schock performed surgery for a degenerative condition at L5/S1 with foraminal stenosis on the right side. Dr. Russell testified that these were new findings of a **chronic** nature consistent with degenerative changes. He also stated that the mild swelling of the left S1 nerve root seen on the 1998 MRI was consistent with degenerative changes and **was not apparent on any study after the July 31, 1998, MRI.**

The preponderance of the evidence reflects that the claimant suffered a temporary aggravation of his pre-existing degenerative disk disease, which according to any diagnostic test resolved itself by the date of April 7, 1999. The preponderance of the evidence reflects that the finding of “mild swelling” would be not be disabling in and of itself. The diagnostic studies subsequent to July, 1998, showed nothing objective which could be related to the June 10, 1998, incident. Dr. Schock’s treatment and surgery were for a right disk bulge and new degenerative changes which did not appear until almost three years after the compensable injury of June 10, 1998. The preponderance of the evidence reflects that subsequent findings are not related to the incident of June 10, 1998.

Therefore, the claimant’s claim for additional benefits subsequent to April 7, 1999, are hereby denied.

**AWARD**

The claimant is awarded temporary total disability benefits through April

7, 1999, along with an attorney's fee for his attorney, Janna Withers. This Award shall bear interest at the legal rate until paid.

\_\_\_\_\_ **IT IS SO ORDERED.**

\_\_\_\_\_  
DON N. CURDIE,  
Administrative Law Judge

DC