

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F308076**

<b>CARY CLAYTON CHANDLER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>PRECISION MOLD WELDING, EMPLOYER</b>	<b>RESPONDENT</b>
<b>TWIN CITY FIRE INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 12, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 27, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE ROBERT T. JAMES, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GENE WILLIAMS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits growing out of his compensable injury of June 23, 2003.

On September 6, 2005, a pre-hearing conference was conducted in this claim, 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 is herein designated a part of the record as Commission Exhibit #1.

Respondents elaborated relative to the contentions contained in their pre-hearing questionnaire. Regarding the claimant's assertion of entitlement to benefits for an aggravation of migraine headaches, respondents note that the same is based on the opinion of the claimant's treating physician, and that the opinion does not meet the standards of Federal Rule of Evidence 702, and that Ark. Code Ann. §11-9-705 (D) requires. With respect to the claim on the medical bills, respondents assert that so far as can be determined, in early July 2005, the provider, Baptist Medical Health Center, did finally produce a bill with the proper CPT codes and format, and provided same to respondent-carrier, which resulted in the same being paid in accordance with the fee schedule on July 21, 2005. Respondents maintain that they have paid some of the bills from Orthopedic and Rehabilitation Specialist, in accordance with the fee schedule. Respondents attributed the delay in payment of the bills of both providers to the fact that they had failed to submit the bills with the proper CPT codes and format in compliance with Rule 30.

The testimony of Cary C. Chandler, the claimant, and Paula Chandler along with the August 23, 2005, deposition of Dr. Charles Carttar, coupled with medical reports and other documents comprise the record in this claim.

### **DISCUSSION**

Cary C. Chandler, the claimant, with a date of birth of January 20, 1952, is a high school graduate and six year veteran of the Arkansas Air National Guard. Claimant is the owner-operator of respondent-employer as well as an employee of same. The compensability of the claimant's June 23, 2003, right hip injury was litigated before the Arkansas Workers' Compensation Commission on January 29, 2004, and respondents were ordered to pay appropriated medical and indemnity on behalf and to the claimant.

Claimant underwent right hip replacement surgery relative to the June 23, 2003, compensable injury. Claimant asserts that since the hip replacement surgery he has experienced medical problems which he attributes to the procedure. Regarding the residuals which he attributes to the surgical procedure the testimony of the claimant reflects:

The main thin that of course we're talking about today is the migraine headaches. I have approximately a doubling or maybe a tripling of the frequency of the headaches. I believe this is due to the metallic taste that's being generated from the chrome cobalt metal on metal articulation that I was given in August of 2003. (T. 14).

Claimant noted that he has migraine headaches almost daily since undergoing the hip replacement surgery. In describing the symptoms relative to the migraine headaches claimant testified:

The symptoms have always been basically the same. You get a visual, or with me I get a visual aura, the lights start either dimming or they will take on a greenish and greenish yellow fluorescent color. Sometimes as I look at an object it will be highlighted or illuminated by this light. I then get a real bad taste in my mouth. This has always been somewhat metallic in nature, this taste that I get. And as these things progress and I take the medication, if it does not stop the migraine then it goes into a very sharp, burning pain in generally my right eye very similar to what I would imagine a red hot ice pick would feel like being shoved through your eye impacting the back of the interior of your skull. (T. 14-15).

Claimant testified that he has been prescribed a number of medications that he take at home, to include Midrin, Imitrex injections, Lorcet Plus, and Reglin tables. Claimant added that the medication is not effective he goes to see Dr. Carttar and is provided either an injection of Demerol, Vistaril or Imitrex. Claimant's testimony reflects that he has seen a physician relative the migraine headaches several times a month "pretty" regularly in 2004 and 2005, for which he has incurred pharmaceutical expenses.

The testimony of the claimant reflects that in 2003 he went to the doctor nine (9) time relative to the migraine headaches, however in 2004 he was seen twenty-nine (29) times. Claimant explained that the visits were to Dr. Carttar and entailed injections of Demerol in the treatment of his migraine headaches. (CX. #1). Claimant is of the opinion that the increase in his migraine headaches is the product of the constant metallic taste in his mouth that he has experienced triggered by the hip replacement surgery.

Claimant asserts that the hip implant replacement is a chrome cobalt alloy metal on metal articulation. Claimant added that the two mating surfaces are both made of the same chrome cobalt and lithium alloy. Claimant testified that in mid-2004, Dr. Carttar had urine collection test performed. Claimant denies that he was having the same frequency of migraine headaches prior to his hip replacement surgery. Prior to the surgery claimant maintains that he had one to two migraine headaches a month, for which he took prescription medication. Claimant attributes the unpaid bills of Dr. Carttar and the East End Pharmacy to his medical treatment for the migraine headaches.

Claimant testified that he had seen the bills incurred at Baptist Medical Center and Orthopedic Rehabilitation Specialty relative to medical treatment for his right hip injury. Further, claimant maintains that at the time he underwent the hip surgery he informed the medical providers the identity of the workers' compensation insurance carrier, who would be responsible for the cost of the treatment. Claimant asserts that his monitoring of the status of the Baptist Medical Center bills disclosed that respondent-carrier paid a few of the bills but the vast majority had not been paid. Claimant acknowledged:

The bill has just been satisfied I believe in the last approximately

three months, I think in August of this year when the final payment by Hartford to Baptist was made. (T. 21).

Claimant testified that prior to the final payment by respondent-carrier he received notices and telephone calls from Baptist Medical Center regarding the bill, at which time he remained them that it was a workers' compensation issue which had resulted in a favorable ruling. Claimant added that the explanation was acceptable to the medical provider.

The testimony of the claimant reflects that the unpaid Baptist Medical Center bill was turned over to a collection agency, Service Finance, and that he was in turn contacted by a law firm for the agency, Vangilder.Law Firm. Claimant testified that the efforts to collect the debt by the Vangilder Law Firm was limited to a letter.

Claimant denies that he was ever contacted by respondent-carrier and requested to submit the bill in a particular form. Likewise, claimant denies that he was contacted by Baptist Medical Center regarding the form in which the bill was to be submitted to the insurance carrier. Claimant's testimony reflects that he was unaware that the bill was to be submitted to the insurance carrier in any particular form. Claimant testified that in preparation for the present hearing he had an opportunity to review UB92-HCFA 1450 Forms. Claimant added that it was his belief that the forms were submitted in February 2004. (CX. #3).

On cross-examination claimant acknowledged that migraines have been a serious problem for years and that he had taken the same type of medications prior to hip replacement surgery as he did afterward. Claimant asserts an increase in his medical expenses relative to treatment for migraine headaches attributable to the effects of the material used in the hip replacement.

Mrs. Mary Paula Chandler, the claimant's wife, testified that she had been involved in reviewing the medical claims and paying medical claims since the claimant's June 23, 2003, compensable injury. Mrs. Chandler testified that she informed medical providers, to include Baptist Medical Center personnel, that at the bills for the claimant's medical treatment should be submitted to the workers' compensation insurance carrier, Hartford Insurance Company. Mrs. Chandler's testimony reflects, with respect to other measures she took to assure that the medical bills would be paid:

Oh, we got notices and I mean you took over the case and everything was directed to you. (T. 28).

On August 23, 2005, the deposition of Dr. Charles Carttar was obtained by the parties. The testimony of Dr. Carttar reflects that he is practicing medicine as a general practitioner, however orienting his practice toward family matters, and has practiced as such for twenty-five (25) years. The testimony of Dr. Carttar reflects that he has treated the claimant since 1990. Among the ailments that he has treated the claimant for are migraine headaches.

Dr. Carttar acknowledged that over the years he has used a number of prescription medications to treat the claimant's migraine headaches, to include Vicodin, Tylenol, Midrin, Demerol, Fiorinal, Neurontin, Imitrex, Lorcet, Inderal. Dr. Carttar's testimony reflects that the claimant's migraine headache has been an "extremely" difficult problem. (RX. #3, p.7). Dr. Carttar testified regarding the nature of migraine headaches in general:

The nature of migraines is that you may speculate about things that may bring on the migraine. You can record frequency, but you cannot predict when the individual headache is going to occur.(RX. #3, p.7).

The testimony of Dr. Carttar reflects, with respect to triggering of a migraine headache:

Yes. Exposure to bright light. Different lighting conditions, such as flickering light. Exposure to certain foods, drinks. Some medications can trigger migraine. Weather changes can trigger migraine. There are many, many triggers, and they vary considerably from person to person. (RX. #3, p. 12).

Dr. Carttar testified that while he is not trained as a neurologist, he is a migraine expert.

Dr. Carttar acknowledged authoring a December 8, 2004, note expressing an opinion about the relationship between a cobalt prosthesis and migraine headaches. Dr. Carttar elaborated regarding his comments on “toxicity” in the note:

The whole question of cobalt and Clayton’s symptoms have to do with triggering the migraine, not a toxicity due to cobalt. A trigger can be caused by a reaction that simply makes him more sensitive, such as some people can have their migraines triggered by brussels sprouts or red wine. Those are not toxicities; those are triggers. Chocolate, coffee, all sorts of things. (RX. #3, p. 14).

Regarding evidence of the cobalt prosthesis triggering the claimant’s migraine headaches, Dr. Carttar testified:

One thing is that his frequency of migraines has been much more, more greater. The severity of his migraines have been much worse. The other is we have previous episode of Clayton having his migraines triggered by cobalt before. (RX. #3, p. 14-15).

Dr. Carttar acknowledged that he is not trained as a toxicologist. Supportive of his theory regarding the impact of the cobalt on the claimant’s migraine headaches, Dr. Carttar testified

Clayton told me that a dentist had applied some sort of filling that had cobalt in it, and his migraines got much worse. He went back to the dentist, had the filling removed, and they went back to their usual frequency and severity. (RX. #3, p. 15).

The testimony of Dr. Carttar reflects that while cobalt may be present in trace amounts in some foods,, it is not present in those normal amounts in the claimant. Further, Dr. Carttart

added that while cobalt is a constituent of vitamin B-12, it is not elemental cobalt. Regarding the normal level of blood cobalt, Dr. Carttar acknowledged that the EPA does not have a reference as an establishment, however added:

We have normal levels established by labs according to general statistics and the risk to the public. (RX. #3, p. 16).

The testimony of Dr. Carttar reflects that evidence of metallic ions in the claimant's system, based on urine test, disclosed levels five times normal. Finally, Dr. Carttar testified that to a reasonable degree of medical certainty and probability that the cobalt implant was triggering the claimant's migraine headaches. (RX. #3, p. 18).

The one protocol/regimen identified by Dr. Carttar which could be used to determine whether the claimant's increased frequency of migraine headaches is attributable to the cobalt would be removal of the current hip prosthesis and replacement with one of a titanium alloy. Regarding the possible impact of a titanium prosthesis replacement on the claimant, Dr. Carttar testified:

I don't know what degree titanium ionizes. I assume it's probably much less than cobalt, but we have no reason to believe that that's a trigger for Clayton. (RX. #3, p.19- 20).

As previously noted, Dr. Carttar authored a report of December 8, 2004, regarding the nexus between the claimant's increase in frequency of migraine headaches and the implanted cobalt hip prosthesis. The report reflects:

Clayton Chandler suffers from severe migraines. I believe the cobalt implant is triggering his migraines. This is not a toxicity per se, but is causing an intolerable exacerbation of migraines. Previous history shows migraine exacerbation when cobalt was used in dental work. After the dental work was removed, the migraines were resolved. Mr. Chandler is an expert in metals and researched the product prior to surgery. The

product promised to him was titanium with no cobalt. He specifically explained that cobalt is a known migraine trigger for him. The cobalt containing prosthesis was accidentally substituted for the correct prosthesis at surgery. The problem (migraine exacerbation) is directly related to the surgery for work related injuries. (CX. #2, 3A).

Dr. Larry Nguyen, a Little Rock orthopedic surgeon, performed the right total hip arthroplasty, on August 25, 2003, relative to the compensable June 23, 2003, injury. A May 6, 2004, report of Dr. Nguyen relative to the claimant reflects, in pertinent part:

This is a 52 year old white male who is a metal worker, status post right total hip metal-on-metal arthroplasty for severe hip AVN. He presents eight months postop now. He says he was walking relatively well and progressing in physical therapy back in December, but since returning to work he has been sore, with anterior thigh pain, occasional radiating pain down the lateral and posterior thigh and lateral lower leg to ankle. . . . He also notes that his migraine headaches and metallic taste in his mouth before the surgery have not improved. He feels that his memory is not as good as it used to be, and he is thirsty all the time. He has had increased stress in his life. Of course, this has been flared by his recent legal struggles with worker's compensation to provide coverage of his recent surgery. . . . .

\* \* \*

I feel no appreciable pistoning. I discussed this with the manufacturer rep, and this would be extremely rare. He is concerned about metal ionicity, and I will discuss this with the manufacturer to see whether laboratory testing would be in order. I also discussed with him that this is extremely rare and that the amount of metal debris associated with total hip arthroplasty is below biological levels. I discussed with him that perhaps some of his headaches and other issues may be related to stress associated with his lawsuit, and perhaps psychological evaluation would be in order for antidepressants. He declines that today. (RX. #1, p. 53-54).

Claimant was seen in follow-up by Dr. Nguyen on July 22, 2004, during which time x-rays showed good position of the total hip arthroplasty with no obvious wear, or loosening.

On February 3, 2005, Dr. C. Lowry Barnes, a Little Rock orthopedic physician, examined

the claimant pursuant to a second opinion request. The February 3, 2005, report of Dr. Barnes reflects, in pertinent part:

His biggest complaint is related to the implant choice. He has become quite concerned because he did not want any chrome cobalt to be used for his hip replacement. It was his understanding that Dr. Nguyen was using a nitrate-bombarded titanium head and similar type liner, and that he would not have chrome cobalt. He reports that, since his operation, he has had a metallic taste in his mouth and a severe increase in his incidence of migraine headaches. He reports that it has been suggested to him by the physician treating his migraines that he should have revision of his hip to help with his headaches.

\* \* \*

He reports that he is having hip pain on a daily basis, but that it is not severe. He reports that he has had levels of metallic ions checked. He reports that Dr. Nguyen checked serum levels and found that the had no elevation. Dr. Carttar checked his urine and found that he had cobalt levels that were 6x normal.

\* \* \*

Radiographs show a well-placed total hip replacement with a metal-metal articulation.

At this stage, the important thing is to determine his metallic level. I am unaware that metallic ions do increase the risk of migraine headaches. I think that his problems certainly warrant further investigation. I have told him that we would check with Josh Jacobs Lab to see the best way to proceed from here. (RX. #1, p. 73-74).

On March 31, 2005, claimant was seen by Dr. Reginald J. Rutherford, a Little Rock neurologist. The April 11, 2005, report of Dr. Rutherford relative to the claimant's evaluation reflects, in pertinent part:

Mr. Chandler was seen on March 31, 2005 for the purpose of obtaining an Independent Medical Examination. Mr. Chandler acted as sole informant. He was accompanied by his wife. Medical records were provided. Mr. Chandler was advised when seen that he was being seen for a second

opinion evaluation which would entail taking his history, performing an examination and then issuing a report. He was advised that I would not be involved in his medical care. Preparation of the report was deferred to allow for further research pertaining to whether or not there is a recognized relationship between cobalt and migraine headache which in my experience is a novel complaint.

\* \* \*

. . . . Finally, Mr. Chandler gives a lifelong history of migraine headache. At present headaches are daily in occurrence which he feels is related to cobalt toxicity from a right hip prosthesis.

. . . . Mr. Chandler advised that he instructed Dr. Wynne prior to surgery that he was to receive a pure titanium prosthesis. Surgery was undertaken in August 2003. . . . His current complaints comprise chronic intractable right hip pain and daily migraine headaches. Mr. Chandler believes that both his hip pain and migraine headaches are related to cobalt toxicity from his prosthesis. Mr. Chandler advised that he first became suspicious regarding cobalt toxicity in that he awoke in the recovery room following surgery with a metallic taste in his mouth. He has been Dr. Lowry Barnes in consultation pertaining to possible revision surgery. From Mr. Chandler's report there are technical problems pertaining to this. With respect to migraine headache, this is daily or near daily in occurrence. . . .

\* \* \*

Mr. Chandler's neurological examination is normal. Etiology of the avascular necrosis of the right hip is deferred to orthopedics. With respect to his complaint of migraine headache, this represents a pre-existing problem referable to placement of his hip prosthesis. With respect to exacerbation of migraine headache secondary to cobalt toxicity, I have consulted with a national expert on migraine headache, reviewed three textbooks on toxic and environmental neurology and have conducted a medline search. I can find no scientific data to substantiate any correlation between the hip prosthesis and exacerbation of migraine.

Mr. Chandler is clearly under a great deal of stress. Stress is known to be a potent promoter of migraine headache which I believe to be operant in Mr. Chandler's case. I am also concern pertaining to his current pharmacological regimen. Current treatment profile clearly places Mr. Chandler at risk for rebound headache. . . . It is recommended that Mr. Chandler be referred to a nationally recognized tertiary referral center for

difficult-to-treat headache such as the Diamond Headache in Chicago, IL under the direction of Dr. Merle Diamond or the Houston Headache Clinic in Houston, TX under the direction of Dr. Ninan T. Matthew. (RX. #1, p.75-78).

Finally, the record reflects a report of Dr. Paul A. Nony, an assistant professor in the Department of Environmental and Occupational Health, College of Public Health, UAMS. Dr. Nony is also a Project Toxicologist and Manager of Toxicology at the Center for Toxicology and Environmental Health (CTEH), L.L.C., an environmental consulting firm associate with the University of Arkansas for Medical Sciences (UAMS) Bioventures Program. Dr. Nony was asked to provide an opinion as to “whether the cobalt is a cause or contributor to migraine headaches in people with cobalt alloy prosthetics”. After reciting literature reviewed, the report of Dr. Nony concluded:

The general understanding of the scientific and medical communities is that there is no evidence that cobalt from cobalt alloy prosthetics can cause or contribute to migraine headaches. Cobalt is a natural component of the human diet. Though people with cobalt alloy prosthetics have been demonstrated to experience elevations in blood cobalt levels, there is currently no indication as to whether the degree of increased cobalt concentrations in the body contributed by cobalt alloy prosthetics leads to any adverse health effect. The only observed health effect of moderately increased cobalt in the body is stimulation of red blood cell production. Cobalt alloy prosthetics have gained new favor in the medical community in recent years. Prior to the development of polyethylene implants, metal prosthetics were commonly used for hip replacements. Literally millions of hip replacements using cobalt alloy prosthetics have been performed, and to date, no adverse health effect, specifically not migraine headache, has emerged as a result of increased cobalt levels in the bodies of people with these prosthetics to my knowledge. (RX. #2, p. 4).

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

## **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 23, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On June 23, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$440.00/\$330.00, for temporary total/permanent partial disability.
4. On June 23, 2003, the claimant sustained an injury arising out of and in the course of his employment.
5. On August 25, 2003, claimant underwent a right total hip arthroplasty relative to his compensable injury of June 23, 2003, which resulted in a 20% permanent physical impairment to the whole person.
6. The claimant suffered from migraine headaches prior to June 23, 2003, compensable injury and August 25, 2003, right total hip arthroplasty. The evidence fails to establish by a preponderance that the placement of the cobalt prosthesis aggravated or exacerbated the claimant's pre-existing migraine headaches.
7. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that the UB-92 HFCA-1450, reflecting the expenses incurred in the treatment of the claimant's compensable injury by Baptist Medical Center, was submitted to respondent-carrier prior to July 5, 2005.
8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of June 23, 2003.

## **CONCLUSIONS**

The compensability of the claimant's June 23, 2003, right hip injury was addressed during a January 29, 2004, hearing before the Arkansas Workers' Compensation Commission. As a consequence of the afore, claimant's injury having been found compensable, respondents were directed to the pay to the claimant temporary total disability benefits during the claimant's total incapacitation and to pay reasonably necessary and related medical expenses on claimant's behalf growing out of the compensable injury.

The present claim centers of two areas of contentions regarding the June 23, 2003, compensable injury. First, claimant asserts entitlement to interest on unpaid medical bills of Baptist Health Medical Center and Orthopedic Rehabilitation Specialists which were ordered on April 23, 2004. Second, claimant asserts that he has incurred increase in medical bills and pharmaceutical expenses relating to his recurring migraine headaches as a result of the compensable June 23, 2003, compensable injury.

Respondents deny that interest is due and owing on the medical bills relative to the claimant's treatment at Baptist Health Medical Center or Orthopedic Rehabilitation Specialists and maintain that the bills were paid once they were presented on an approved form pursuant to Rule 30 of the Arkansas Workers' Compensation Commission. Respondents maintain that there is no objective evidence, as required by Ark. Code Ann. §11-9-102 (4) (D), that the hip prosthesis has aggravated the claimant's pre-existing migraine headaches and should be replaced.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to additional workers's compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The evidence reflects that claimant incurred medical bills as a result of medical treatment

for his compensable injury. One of the bills in the amount of \$30,370.37, was as a result of medical treatment provided by Baptist Health Medical Center. Another bill in the amount of \$1,051.00 was as a result of medical treatment provide by Orthopedic Rehabilitation Specialist relative to the claimant's compensable injury. The evidence in the record reflects that check number 31225119 was issued on July 18, 2005, in the amount of \$306.00, by respondents to Orthopedic Rehabilitation Specialist on the \$1,051.00, bill.(RX. #4) Further, check number 31245441 in the amount of \$8,150.00, was issued on July 21, 2005, by respondents to Baptist Health Medical Center on the \$37,170.57, bill. (RX. #4).

Respondents attribute their failure to pay the incurred bills relative the claimant's compensable injury to the failure of the providers to submit the bills in compliance with the requirements of Commission Rule 30. Among the requirements of Rule 30 are that the billing bor provider services be submitted on the forms approved by the Commission, UB-92 and HCFA-1500, and that the carrier shall not make a payment for services unless all required review activities pertaining to that service are completed.

While the claimant has produced a document, UB-92, regarding the \$37,170.57.00 of Baptist Medical Center, with a February 17, 2004, date, which is identical to one dated July 5, 2005, the earlier dated document does not bear a signature. (CX #2, 12 a & 12 B). There is no evidence to reflect that the earlier dated document, though prepared by the medical provider, was ever mailed or received by respondent-carrier.

There is evidence in the record to reflect that an itemized bill regarding the claimant's medical treatment at Baptist Health Medical Center, in the amount of \$37,185.57, with a \$6,815.00 reduction for credits/debits and payment, resulting in an amount owing of \$30,370.57,

was furnished to the claimant's attorney by a law firm representing Service Finance Corporation. (CX. #2, p. 1-8). The evidence reflects that in documentation of June 28, 2005, the medical provider, Baptist Medical Center, was notified by respondent-carrier, with respect to the \$30,370.57, bill, that reimbursement determination was pending receipt of a completed itemized bill which included individual dates of services, charges, CPT codes, diagnosis codes, and revenue codes submitted on HCFA/UB92. (RX. #5). Similarly, reimbursement was not provide to Orthopedic Rehabilitation Specialist until receipt was had relative to medical records.

The question of when and what mechanism respondents are to reimburse medical providers relative to workers compensation claims pursuant to Rule 30 of the Arkansas Workers' Compensation Commission has been addressed by the Arkansas Supreme Court. The Court noted that there is nothing in Rule 30 which implies that its requirements are discretionary. The Court further noted, "the plain meaning of Rule 30 does not establish a duty on the part of a carrier to pay until claims meeting its requirements are properly submitted". *Burlington Industries v. Pickett*, 336 Ark. 515, 988 S.W.3d 3, (1999). In the instant claim, claimant has failed to sustain his burden of proof by a preponderance of the evidence that the delay of respondents to pay the cost of the incurred medical bills of Baptist Health Medical Center and Orthopedic Rehabilitation Specialists was such as to entitle him to the payment of interest on the bills.

It is undisputed the claimant suffered from and received medical treatment relative to migraine headaches prior to the June 23, 2003, compensable injury. Claimant's assertion of an increase in his migraine headaches, and corresponding increase in the cost of medical treatment relative to same, such that respondents should be responsible for the cost of same is not

supported by the evidence in the record.

Claimant attributes the increase in the frequency of migraine headaches to the use of a cobalt prosthesis in his right hip replacement surgery of August 25, 2003. The only physician to attribute the cobalt prosthetic to increased frequency of the migraine headaches is his primary care physician, Dr. Charles Carttar, a family practitioner. Of note with respect to the assertion of the cobalt prosthetic as a triggering mechanism for the increase frequency and severity of the claimant's migraine headaches is an entry in a May 6, 2004, office note of Dr. Larry L. Nguyen, the claimant's treating orthopedic surgeon. Specifically, Dr. Nguyen noted of the claimant, "he also notes that his migraine headaches and metallic taste in his mouth before the surgery have not improved". (RX. #1, p. 53).

The claimant is required to establish a causal connection between any "objective finding" and the compensable injury alleged, even if the alleged compensable injury is an aggravation of a pre-existing condition. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). The claimant is required to prove casual connection by a preponderance of the evidence. As observed and noted by Dr. Nguyen, prior to his August 25, 2003, hip replacement surgery, claimant complained of migraine headaches and a taste of metal in his mouth. Claimant's occupation is described as a "metal worker". There is no objective evidence in the record establishing a causal connection between the claimant's increase in frequency of migraine headaches and the placement of the cobalt prosthetic device.

The dynamics of migraine headaches as well as the mechanisms that may trigger them has been adequately addressed in the deposition of Dr. Carttar and medical reports of Drs. Barnes and Rutherford. Further, Dr. Nony noted the results of his review of the literature on the health

effects of cobalt in humans that there is no evidence currently in the scientific and medical literature that suggests that cobalt can cause or exacerbated migraine headaches.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

In the instance claim the compensability of the claimant's June 23, 2003, right hip injury is not disputed. The claimant experienced migraine headaches prior to the June 23, 2003, compensable injury and the August 25, 2003, placement of the right hip cobalt prosthetic device. The argument/contention of the claimant is one of a compensable consequence with respect to the benefits sought in connection with migraine headaches. Claimant maintains that respondents are liable for the increase in medical costs growing out of the increase in the frequency of his migraine headaches since the cobalt prosthetic device was implanted as well as the cost associated with its removal and replacement.

Ark. Code Ann. §11-9-508 (a) requires employers to provide such medical services as may be reasonably necessary in connection with the employee's injury. Whether a medical procedure or device is reasonable and necessary is a question of fact. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). While expert medical opinion is not required to prove a causal connection between the claimant's increase in frequency of migraine headaches, whether attributable to an adverse reaction to cobalt or routine triggers, claimant is

required to prove casual connection by a preponderance of the evidence. *Wal-Mart Stores, Inc. v. CanWagner*, 337 Ark. 443, 990 S.W.2d 522, (1999).

While there is evidence to reflect, based on a urine test, that the level of cobalt in the claimant's urine was five times normal, the evidence also reflects that claimant's work history is that of a metal worker. There is no record of the level of cobalt in the claimant's system prior to his June 23, 2003, injury or August 25, 2003, surgery, although claimant did suffer from migraine headaches prior to both events. As previously noted, Dr. Nguyen reported that the claimant observed experienced metallic taste in his mouth and migraine headaches prior to the August 25, 2003, hip replacement surgery. The medical and scientific literature is far from conclusive on a nexus between migraine headaches and cobalt exposure. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that the reported increase in the frequency of his migraine headaches is casually related to the June 23, 2003, compensable right hip injury or the medical treatment in connection with same. This claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**