

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F102835

HARLAN PENNINGTON, EMPLOYEE

CLAIMANT

SERVICE EXPERTS, EMPLOYER

RESPONDENT

KEMPER INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED JANUARY 20, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 16, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On September 14, 2004, 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 positions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Harlan Pennington, the claimant, Marijean Voss, George Eggleston, James Carl Nowlin, James McVay, Jim Martin, Collin Ledford, George Penning, Connie

Phillips, and James Monk, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Harlan Pennington, the claimant, with a date of birth of August 8, 1945, has a seventh grade education. Claimant commenced his employment with respondent on July 14, 1993, as a Master Plumber over the commercial plumbing division.

On February 28, 2001, claimant suffered an injury within the course and scope of his employment. Claimant's testimony reflects, regarding the accident:

Well, we were trying to get gas back on to the ballfield over there at UALR and I had my hands full of pipe fittings and wrenches and stuff and walking down through there and there was a piece of concrete reinforcement wire laying on the ground and the end of it was turned up and it was laying in pine straw and stuff and I didn't see it and it took my legs out from under me and I did a nose dive and broke my [right] arm and jammed my [left] shoulder and busted by [left] knee. (T. 8)

The injury was reported to appropriated supervisory personnel of respondents and claimant received immediate medical treatment relative to same. Claimant's injuries were treated by Dr. William Hafley, a Little Rock orthopedic surgeon. Claimant underwent arthroscopic surgery relative to the left knee injury.

Claimant maintains that Dr. Hafley relayed, with respect to the left injury, that he had done all he could do without replacing the knee. Claimant asserts that Dr. Hafley informed him that there was no need to return to him until the insurance company got a second opinion and approved the procedure for a total knee replacement. Claimant's testimony reflects that he was sent to Dr. Rosenzweig by the respondents on March 14, 2002:

. And got a second opinion but I never received a report from the doctor or the insurance company for approval to get fixed. And I called the insurance company and they wouldn't answer a phone, they wouldn't return a call. All I'd ever get was a voice mail.(T. 9).

Claimant maintains that his calls to the insurance were numerous and continuous until they “dismissed” him. Claimant asserts that he continuously asked for help at work because he was told he had to go through the company.

The testimony of the claimant reflects that following the February 28, 2001, accident and his released to return to work, he returned to the employment of respondents. Claimant asserts that he was fired by respondents on October 3, or 4, 2003, and that he scheduled an appointment with Dr. Hefley on October 7, 2003. Claimant testified that it was at the time of the appointment with Dr. Hefley that he learned that respondents had rejected his claim. Specifically, claimant maintains that Dr. Hafley's office contacted respondent-carrier regarding the surgery:

They did. They went and filled out all the paperwork and stuff and I had my schedule, my surgery schedules to get my knee replaced and everything and they got put off until January when I finally got my COBRA insurance straightened out and they agreed to pay for it so I could get it fixed.

Claimant asserts after he was discharged from the employment of respondents in 2003 he returned to Dr. Hafley in an effort to secure treatment relative to the compensable injury.

Claimant added that he could not physically perform his job, was unable to obtain employment due to residuals of his injury, and, “I thought maybe then I could force them since I was put in a bind”. (T. 10).

Claimant was seen by Dr. Hafley on February 4, 2002, relative to the February 28, 2001, compensable injury. On March 14, 2002, claimant was evaluated by Dr. Rosenzweig pursuant to

the directions of respondent. Claimant return to Dr. Hafley on October 8, 2003, and underwent surgery on January 20, 2004, relative to the left knee.

Claimant maintains that following the March 14, 2002, visit to Dr. Rosenzweig, he was unable to get a response from the insurance carrier relative to his request for medical assistance regarding his left knee complaint and getting the surgery approved. Claimant's testimony reflects that he contacted the Human Resources Office at work, Marijean Voss, and was informed by her that she was working on it. In addition to Ms. Voss, claimant testified that he talked to Ty Westlake, a supervisor over the plumbing part of respondent-employer, and George Penning, who eventually became his boss, "many times about finding out something" because of the non-responsiveness of the insurance company. Regarding his exchange with Mr. Penning, claimant's testimony reflects:

Yes, sir, I talked to him the week before he fired me asking had he found out anything about the insurance, you know, my workmen's comp because I was getting down so bad I couldn't do nothing, you know, physically work and before he fired me I asked him had he found out anything and he told me then, the week before he fired me, he said, well, that's your problem. That ain't none of mine no more. And that's all I got out of him. The next week he fired me. (T. 14).

In describing his continuing complaints attributable to the February 28, 2001, accident, claimant maintains that he lost the use of his left arm, and that the swelling in his leg became so severe that at times he had to get off of it and sit down and rest. Claimant added that his left arm got to the point that he was unable to use it to drive.

Claimant acknowledged that even with the continuing symptoms he did not return to the doctor for further treatment. Claimant's testimony reflects:

No, I didn't know I had any right to. I just suffered through

it.

Well, the last, I never could talk to the insurance company and couldn't get nobody else to at work, you know, after I asked them about it and stuff. I thought my hands was tied with workmen's comp, you know.(T. 15).

Claimant acknowledged that he occasionally would see Mr. Jim Monk, who to his knowledge was over commercial heading and air as well as commercial plumbing. Claimant asserts that Mr. Monk did not have any direct dealing with him. In response to why he did not relay his concerns to Mr. Monk regarding his continuing difficulties, claimant testified:

I very seldom seen Mr. Monk and like I said, he was not the man that I was suppose to be talking to. I felt out of place even to do much more that say hi to Mr. Monk. (T. 25).

Claimant denies that the was ever informed during the time of his employment that Ms. Connie Phillips was in the Human Resources Department of respondent.

Claimant acknowledged being furnished a handbook by respondent, however had no knowledge of a 1-800 number in same that he could call about any other complaints or problems.

Claimant testified:

No, ma'am. Everything was done through the office, the local office here. (T. 26)

Claimant provided a basis for his concern about losing his job if he failed to adhere to respondents' policy of following the chain of command:

Well, yes, sir. I called them [Arkansas Workers' Compensation Commission] after I went back to work and I'd never been paid for the time I was off work. The company didn't pay me and workmen's comp didn't pay me and I called Workmen's Comp Commission to see what, if I needed to do something, you know, to get the insurance company to pay me for my time off work - -

At Workmen's Comp she told me that she would check with the insurance company and see why I hadn't been paid and get back with me. And she called me back about an hour or so later and said that I would be getting my check for being off work that six weeks or eight weeks, whatever it was, that I hadn't been paid for. I think it was like six weeks that they hadn't paid me. And after she called me back then I received another phone call from the office telling me that - -

[It was Marijean Voss, the Human Resource Officer]

Telling me that I was not to be calling workmen's comp. If I had a problem it strictly went through the company and they would take care of it. So, I never called workmen's comp again because I just couldn't afford to lose my job. I had to have my personal insurance because I had an invalid wife and I had to have my insurance and my job. (T. 27-28)

Claimant's testimony reflects that after his employment was terminated he returned to Dr. Hafley in order to receive medical treatment for his left knee and left shoulder, attributable to the February 28, 2001, compensable accident. Claimant testified that it was at that point he learned that respondents were denying liability for any further benefits relative to the claim:

Yes, sir, they said that the statute of limitations had run out on me getting it fixed. And I didn't know there was because I didn't know, you know, what the statute of limitations was on getting fixed. I thought if I got hurt on the job that they, you know, would do what they were supposed to do. And I don't, never could find out why that Rosenzweig, after they got the report from it why they didn't approve me to get my leg fixed. (T. 29).

The credible testimony of the claimant reflects that he did not receive a copy of Dr. Rosenzweig's report until after the claim was in litigation and he received it from respondents' attorney.

In addition to his supervisor, the workers' compensation insurance carrier, and Ms. Voss, claimant testified that he also requested assistance from Ms. Voss' replacement in Human Resources, Mr. Mike Jones. Claimant's testimony reflects that the afore occurred prior to

October 2003:

Oh yes, sir. It was during the time that he was employed over there as a Human Resource officer. But this other lady, Connie, I don't know her. The only time I ever met her was when they terminated me and I went up to the front office. That's the only time I ever seen her or even knew who she was. Our meetings were at 6:30 on Friday morning and they come to work after we done gone. We were usually out of there around 7:00 gone to the jobs to work and didn't return to the office until the following Friday, you know. We were just our own little plumbing division in the company. We got in and we got out and we never, the workers never went back to the office as a general rule during the week. (T. 30).

Claimant acknowledge two (2) prior injuries to his left knee before the February 28, 2001, compensable accident. In 1978 claimant underwent surgery relative to the left knee. May 2000, claimant suffered a fall and busted his left knee on the concrete. Claimant maintains that the 2000 injury was work related. Although he underwent surgery under the care of Dr. James Mulhollan, and was kept off work for six weeks, claimant asserts:

Yes, ma'am - - well, workmen's comp paid for my surgery and getting it fixed but the company kept me on the payroll because I worked by telephone, I kept the job going so they never - - workmen's comp never paid me no money at all for that. (T. 17-18).

Claimant acknowledged that at the time he sought medical treatment as a result of the February 28, 2001, accident, his chief complaint was the pain in his right wrist, "because it was really killing me at that point in time because it was broken". (T. 17) Claimant was referred to Dr. Hafley by the attending emergency room physician. Dr. Hafley repaired the fractured wrist and later removed the hardware, which was used in the treatment of same. While uncertain of the date, claimant acknowledged relaying concerns and complaints to Dr. Hafley regarding his knee after receiving treatment for the fractured right wrist:

I don't remember what day or time. I just told him that since I had felt that my leg was swelling extremely bad and everything and I couldn't use it. (T. 18).

Claimant recalled that Dr. Hafley indicated that he had significant osteoarthritis in the left Knee in April 2001. The testimony of the claimant reflects that after undergoing treatment for his wrist and knee, he returned to the employment of respondent on November 5, 2001, although he questions whether the same was to full duty.

The testimony of the claimant reflects that respondents accommodated his physical restrictions during the period that he continued to work following the March 2002 evaluation by Dr. Rosenzweig:

Yes, sir, as much as I could. The let me do what I could do, see that the jobs was done and do what physical work I could do, you know. I could still run a piece of equipment for them and dig their ditches or something like that. I couldn't use no sledgehammers or picks and shovels or anything like that but I could, you know, see that the jobs got done because they were working on my license. My license is what they were operating the business off of. (T. 15).

Claimant was licensed as a Master Plumber. Claimant explained, regarding the use of his license by respondent:

Yes, sir. They operated the business off of my license for about the last four years. And about February 2003 George Penning started asking the other plumbers, Master Plumbers about, you know, operating the business off of their license and he finally got George Eggleston to use his license and stuff and when he got all the permits off of mine, se he didn't have to go pay for them again then that's when they terminated. (T. 15-16).

Claimant questions and disputes that the reduction of force as the basis for the termination of his employment by respondents:

Reduction of force. ROF. But the day they terminated me,

they hired two new guys. There was another Master Plumber sitting at the table when I went to work that morning for the meeting. There was a Master Plumber sitting there and another guy that they had just hired that same day. That was their first day at work. And they did me a reduction of force. (T. 16).

Claimant maintains that he was the only employee terminated at the time.

The testimony of the claimant reflects that while respondents eventually eliminated the plumbing division, at the time of his termination the division was in full force. Claimant denied that he received unemployment compensation benefits following the termination of his employment in October 2003. Claimant acknowledged that he did go down and inquire about unemployment compensation, however testified:

I went down and talked to the but Dr. Hafley agreed that I, you know, with my leg and shoulder in the condition it was in that I couldn't get a job and stuff so therefore I was ineligible to draw unemployment. And I wouldn't draw or attempt to draw it and risk the fact of having to pay all that money back and didn't have it, so, no, ma'am, I haven't drawn no unemployment. (T. 24).

Claimant underwent surgery relative to his left knee under the care of Dr. Hafley on February 20, 2004. In August 13, 2004, claimant underwent surgery on his left shoulder under the care of Dr. Hafley. The cost of both procedures was filed on claimant's group health insurance.

Ms. Marijean Voss, currently employed part-time at Tipton Hurst Florist, testified that she was employed by respondents from May/June 1998 until May 2002, in various and sundry positions. Ms. Voss' testimony reflects that at the time respondent needed someone to do human resources she moved into the position along with payroll. Ms. Voss testified that she worked in human resources sometime in 1999 until May 2001, during which time her duties included insurance and safety as well as payroll. With regard to the workers's compensation aspect of her

duties entailed filing claims, and sending bills to corporate. (T. 32).

Regarding her role as human resources officer following the claimant's February 2001, injury, Ms. Voss testified:

I was only in human resources for three months from the time he was injured until May. And basically I remember that he had a fall and was injured and, you know, whatever paperwork ensued for that three month period. (T. 33).

Ms. Voss denied that she had any responsibility in scheduling doctor's appointment for the claimant as human resources officer. From May 2001, until she left the employment of respondents in May 2002, Ms. Voss testified that she worked as the corporate recruiter which involved interviewing new people.

Ms. Voss testified that she did recall receiving a telephone for the claimant about getting some workers' compensation benefits. Ms. Voss qualified her explanation by noting the claimant was still employed by respondent at the time of the telephone conversation:

I remember that Harlan called one afternoon and, you know, I do remember that he called. I don't remember the complete of the conversation through.(T. 33).

I know he told me, you know, basically that he had called the Commission but I don't remember the whole beginning to end of the conversation. (T. 34).

Ms. Voss testified that in her capacity as human resources officer she would have had communication with the workers' compensation carrier regarding the claimant's claim. Ms. Voss further testified regarding any conversation she had with the claimant about company procedure:

I would have, you know, I would have told you that you needed to deal, you know, through the company and, you know,

that these would be the steps - - (T. 34-35).

Ms. Voss' testimony reflects that Mike Jones became the human resources officer in May 2001, after her tenure as such. Regarding her knowledge of claimant's continuing problems attributable to the February 2001, accident, Ms. Voss testified:

I would have known, you know, seeing him around the building, you know, watching him walk. He had an appliance on his arm at one point in time and so just from interaction in the normal co-worker situation. (T. 37).

Ms. Voss confirmed that based on her observation of the claimant when she was last employed by respondents, which was May 2002, he continued appear to have physical difficulties:

Just from what I would see mostly would be on his walking. You know, I don't know about the shoulder. (T. 38).

Mr. George Eggleston, an employee of Air Master which was formerly Service Experts, testified that he has been so employed for six years. Mr. Eggleston was employed with respondent at the time of the claimant's February 2001, compensable injury. Mr. Eggleston's testimony reflects that he worked with the claimant after claimant returned to work following he February 2001, accident. Mr. Eggleston described the claimant's condition at the time the claimant was terminate in October 2003, as "getting bad", "he was limping", and "the shoulder was bothering him". (T. 41-42).

Mr. Eggleston's testimony reflects that the supervisor was George Penning at the time of the claimant's firing. Mr. Eggleston further asserts that he heard the claimant register complaints about his physical condition to the supervisor:

Well, he'd go in and ask and I mean I don't know like he'd gon into the human resource lady or something and he asked George about it and what was said after that I don't know anything about what

was said but I do know that he tried to get work done and it was to no avail. (T. 42).

Mr. Eggleston's testimony reflects, regarding respondents' use of an employee's Master Plumber license:

You know, as far as the dates, I can't remember the dates but that come up several times. It come up several times during that year and everything before you was terminated that if we ever need a Master Plumber can we count on you. He was talking about me, Gary or Charles McVay. He asked us that, if he ever needed a Master Plumber, you know, could he count on us. (T. 43).

Regarding any conversation between the claimant and George Penning, the supervisor, Mr. Eggleston testified:

Yes. I mean, all I know, you know, is Harlan went in there, you know, after we had a meeting on Friday because he wanted to get something done, you know, but what went on in there I don't know. (T. 44).

Mr. Eggleston testified that claimant was complaining about his knee and shoulder up until the time he left the employment of respondent in October 2003.

James Carl Nowlin testified that he was employed by respondents for a period of approximately four (4) years having the employment of same in June 2004. Mr. Nowlin was working with the claimant at the time of the February 28, 2001, compensable accident. The testimony of Mr. Nowlin reflects that at the time claimant left the employment of respondents in October 2003, the supervisor was George Penning. Mr. Nowlin testified that during the period between March 2002, and October 2003, claimant complained of having problems with both his knee and shoulder attributable to the February 2001, accident. Mr. Nowlin's testimony reflects regarding claimant's complaints to supervisory personnel:

I know he would go every, I don't know, it seemed like

every week or every two weeks, you know. After the meetings he would go ask them if, you know, they ever found out anything about what they were going to do about his injuries. (T. 49).

Mr. Nowlin concedes that he was not present in the office during any discussion between the claimant and Mr. Penning, only that he saw claimant go into his office. Mr. Nowlin noted that every Friday meetings were held from 6:30 a.m. to 7:30 a.m., and that at the conclusion of same claimant would relay, “he was going to have to go to the office to see if they found out anything”. (T. 51).

James McVay testified that he was employed by respondents from October 1999 until February 17, 2004. Mr. McVay’s testimony reflects that he was familiar with the claimant’s February 2001, compensable injuries and the difficulties he experienced between March 2002 and October 2003 as he continued to work. Regarding any complaints that the claimant may have made to supervisory personnel during the afore time period, Mr. McVay testified:

All I know is that Harlan would say that he was trying to get them to get things started with workmen’s comp and get things done and as such it wasn’t moving very well. It wasn’t going very fast. (T. 53).

Mr. McVay’s testimony reflects that it was his impression that claimant had requested assistance from Ms. Marijean Voss, who at the time worked as the public relations administrator, and Mr. George Penning, supervisor of er the plumbing crew - - yard supervisor.

The testimony of Mr. Jim Martin reflects that he was employed by respondents as a plumber for six (6) years through February 2004. Mr. Martin noted that at the time of his employment by respondents claimant was the plumbing foreman. Mr. Martin was familiar with the claimant’s February 2001, compensable accident, and had an opportunity to work with

claimant from off and on for various jobs during the time period between March 2002 and October 2003. Mr. Martin attended the weekly Friday morning meetings. Mr. Martin's testimony reflects, with respect to claimant requesting access to medical treatment relative to his injuries of supervisory personnel:

Well, I don't know of any individual incident when he, you know, done it but I know that it was said that he wasn't getting nowhere with them, you know - -

It was said that he wasn't getting nowhere with getting anything done long before he was laid off. (T. 58).

Mr. Martin did recall being present during a telephone call by the claimant to Ms. Marijean Voss wherein claimant was attempting to get treatment for his knee:

I was working with him and he was on the phone with Marijean Voss trying to get something done and I just heard his end of the conversation but I was there.

Well, I know where we was working. We was working over on 12th at the Boy's Club over there and I want to say it was like in February of 2003. All I heard was one end of the conversation but I do know that he was on the phone quite some time trying to get some action on it. (T. 59).

Mr. Martin acknowledged that he did not recall when Ms. Voss left the employment of respondents, however offered that he though it was the maybe the middle part of 2003.

Mr. Collin Ledford was employed by respondent slightly in excess of seven (7) years, having left the employment of same in September 2004, and was familiar with the injuries suffered by the claimant in February 2001. Mr. Ledford worked with the claimant during the period leading up the claimant's departure from the employment of respondents in October 2003, and testified that claimant appeared to continue to have problems relative to his injuries. Mr.

Ledford testified that he heard the claimant tell the supervisor, Mr. George Penning, that he needed to find out something about getting medical treatment for his injuries. Mr. Ledford's testimony reflects that he witnessed the afore exchange during the Friday morning meetings and "out in the field". (T. 62). Regarding Mr. Penning's response to the claimant's request, Mr.

Ledford testified:

Basically what I can recall is that he had complaints about his knee and his shoulder and his arm and basically was told that there was nothing that could be done about it at that time, I believe. That's my best recollection that I can remember. (T. 63).

Mr. Ledford testified that at the time of the afore conversation the claimant's arm was "still wired up", which made the same a few months following the accident. (T. 64). With respect to any conversation the claimant may have had with Mr. Penning between March 2002 and October 2003, Mr. Ledford testified:

Like I say, basically all I can remember is him complaining about his aching of his, you know, wrist and his knee and like I say, I never seen anything done about it. (T. 66).

The testimony of Mr. George Penning reflects that he was employed by respondent from 1996 until March 2004. In 2001 Mr. Penning worked in the capacity as assistant production manager, and in July 2002 took over as the commercial plumbing manager for respondents.

Regarding the commercial plumbing aspect of respondents, Mr. Penning testified:

The commercial plumbing part of Service Experts was, you would bid jobs with contractors out there and you would be a subcontractor doing the plumbing work. It's a competitive business and it's easy to get yourself in trouble and lose money. It's a tough business. (T. 68).

Mr. Penning acknowledged that as commercial plumbing manger he supervised the claimant.

Mr. Penning denies that the claimant ever came to him and complained the he needed additional workers' compensation benefits or additional medical treatment for the injuries sustained in the February 2001, fall, during the period subsequent to March 2002. Mr. Penning asserts that had such a request been made to him, he would have referred the claimant to the human resources administrator of respondents.

Mr. Penning testified every employee of respondent was issued a handbook which contained a 1-800 number to the corporate headquarters of respondents. The testimony of Mr. Penning reflects:

Yes, there was a 1-800 number in that handbook that they were always open to call and it was brought up in numerous meetings to all the employees that if they ever had a problem and they couldn't get it resolved at that location that they could call the 1-800 number. (T. 69-70).

Mr. Penning testified that during the time claimant worked under his supervision following the February 2001, accident, he performed all the job duties he was required to perform. When questioned whether claimant indicated he had any kind of physical limitations or physical problems where he could not do any of the work, Mr. Penning responded:

He's a plumber. He hurt. He's been in the trade for many years and it's hard on you. It's hard on your body. (T. 70).

Mr. Penning conceded that claimant could not physically do the same jobs that uninjured plumbers could do following his return to work subsequent to the February 2001, accident. (T. 76-77).

Mr. Penning testified regarding the claimant's lay-off in October 2003:

The corporation, Service Experts, was - - they were planning on deleting te plumbing department. And in that part they told us

we had to reduce our force. And we had to start reducing force.(T. 71).

Mr. Penning asserts that at the time of the claimant's lay-off there were "two or three other employees that were laid off" at the same time. (T. 71). Additional lay-offs occurred in February 2004.

On cross examination Mr. Penning responded to the question claimant's request during Friday morning meeting for assistance with his workers' compensation for his knee and shoulder, that every time claimant came to him he sent him to human resources. (T. 72). Mr. Penning conceded that claimant asked for assistance:

You may have asked me but there was nothing, it was out of my hands as I told you at the time. I referred you to human resources whenever you had a problem. And you went in and had the wrist surgery and you had the knee surgery. (T. 72).

Mr. Penning acknowledge that claimant came back to him subsequent to the September 2001 knee surgery. Additionally Mr. Penning concedes that when claimant returned to him subsequent to the afore, he was referred to Human Resources:

I probably did, I'm sure. He complained about his knee hurting him often, yes. (T. 75).

On those occasions when claimant was referred to the Human Resources office of respondents by Mr. Penning, the testimony reflects the human resources administrator was Mr. Mike Jones. Mr. Penning estimates that Ms. Connie Phillips took over the position of human resources administrator in May 2003. While Mr. Penning testified that he did not refer the claimant to the human resources department after Ms. Phillips became administrator, he also had a production manager under him "who may have referred him" to HR.

At another point, Mr. Penning clarified his response regarding the number of people laid

off at the time of claimant's departure:

No, I did not state that other people in the plumbing department, I stated there were other people in the company that were laid off that day. And there were other people in other departments. Every department was told that they had to reduce the force. (T. 72)

In terms of why the claimant was laid off in October 2003, as opposed to a plumber with less experience and seniority, Mr. Penning's testimony reflects:

. . . . And number two, I was doing exactly what the general manager at the time, Scott Sketchman (phonetic) from Nebraska had told me to do. He told me to look through everybody in our departments and I needed to reduce force, whoever I could, and he wanted to know who was making the most amount of money with what type of production we were receiving back from it. It was not just my decision. (T. 74)

There is credible testimony in the record to reflect that the claimant's earning was not out of line with other Master Plumbers in the employment of respondents in October 2003. Further the testimony reflects that while the other plumbers were granted interviews with supervisory personnel relative to the lay-offs, claimant was not.

Ms. Connie Phillips testified that she began her employment with respondents in April/May 2003, in the Human Resources Department. In addition to her other duties, Ms. Phillips' testimony reflects that she would be the contact person that would get in touch with the corporate office in Texas, at the time, if someone wanted to request workers' compensation benefits or needed additional benefits relative to a work related injury. Ms. Phillips testified that claimant did not come to her at any point from April/May 2003 to October 2003, requesting additional workers' compensation benefits or wanting additional medical treatment.

Ms. Phillips testified that it was not until early November 2003, when she was contacted by claimant requesting additional workers' compensation benefits. Regarding the November

2003, conversation with the claimant, Ms. Phillips testified:

Well, he was stating that he was having medical problems that, a workers' comp injury he had back in 2001, I think.

No, I contacted our corporate office and I pretty much filled them in on what was going on and he had a workmen's comp claim that was generated back in 2001 to his wrist and he had this problem with the previous HR and they never did followup on it for him.(T.79-80)

Ms. Phillips testified that Mr. Mike Jones was the HR contact before her, and that she did not see any notations "in there from" him regarding prior contacts by the claimant. Regarding the extent of her review of the claimant's file at the time of the November 2003, contact by the claimant, Ms. Phillips' testimony reflects:

Well, I just looked back in the file. He had two claims and I was looking for the one that was 2001. And I was looking trying to see if there was any notation or anything in there because I was going to respond to corporate out of Texas to see what was going on with it but there wasn't anything in there from Mike Jones. (T. 81).

I did not review it thoroughly. I was just looking for anything that had Mike Jones' name on it because he said it was from the previous administrator but there was something in the file that Marijean Voss had, trying to work on the cane with him. (T. 83).

James William Monk, Jr., part-owner of Air Masters LLC, testified that he was the general manager of respondent-employer from September 2003 until June 2004. From January 1997 to October 2003, Mr. Monk was the manager of the commercial construction department of respondent. Mr. Monk testified that the afore period he knew the claimant and had occasion to have conversations with him from time to time. Mr. Monk's testimony reflects that claimant never mentioned to him that he was having problems with workers' compensation.

Mr. Monk acknowledged that claimant should have registered any complaints or

difficulties he had with workers' compensation benefits with the claimant's immediate supervisors. Additionally, Mr. Monk concedes that does not recall the placement of Ms. Phillips as the human resources administrator was publicized to the entire company.

While the claimant had suffered a previous injury to his left knee requiring surgery, the same was sustained within the course and scope of his employment with respondents. While the claimant underwent surgery on May 26, 2000, under the care of Dr. James S. Mulhollan for a torn medial meniscus, articular surface defect to the trochela, medial femoral condyle and patella, cancellous fracture proximal femoral condyle, he did not received any indemnity benefits from respondents as a result of same. Claimant continued discharged employment duties for respondents following the May 2, 2000, compensable left knee injury, though not active plumbing, and received his regular pay. In a June 1, 2000, report to respondent-employer, Dr. Mulhollan relayed that by Monday, June 5, 2000, claimant would be able to resume his work as a plumber. (RX. #1, p.1-11).

There is no medical in the record subsequent to the June 1, 2000, report of Dr. Mulhollan, relative to his treatment of the claimant for the May 2, 2000, left knee injury. The June 1, 2000, report of Dr. Mulhollan does conclude, "I plan to see him at anytime his course is poor or this fall for a long term check". (RX. #1, p. 9). By virtue of the absence of a medical report from Dr. Mulhollan, one is left to conclude that claimant was not again seen by Dr. Mulhollan because he had no further complaints with his left knee once he resumed his plumbing duties on June 5, 2000, or the parties have failed to offer any subsequent report of Dr. Mulhollan which may have contained an impairment rating.

Claimant had returned to unrestricted employment duties with respondents at the time of

the February 27, 2001, accidental fall. At the time of the claimant's February 2001, accident, his most prominent injury was to the right wrist, for which he came under the care and treatment of Dr. William F. Hafley, Jr., to include surgery. (RX. #1, p. 12-17). During a March 9, 2001, follow-up visit, Dr. Hafley noted claimant's new complaint of left shoulder discomfort. (T. 18).

On April 13, 2001, claimant was again seen in follow-up by Dr. Hafley. The office note relative to the afore visit reflects, in pertinent part:

SUBJECTIVE: He is 6 weeks pos right Colles ex/fix. The wrist is felling well. He has a new problem today of left knee problems. He originally fell and fractured his patella in 1978. He was treated in Hot Springs with ORIF. About six months later he had the hardware removed then one year ago he was having problems with the knee and Jim Mulhollan did an arthroscopy for him. The knee has been doing well until six weeks ago when he was injured at work. He tells me he was walking at work and tripped and fell. That was when he fractured the right wrist. He didn't realize the knee had been injured as well because the wrist was hurting so much but he has had giving way episodes in the left knee since then and wanted to have it checked. (RX. #1, p.20).

Claimant continued to register complaints relative to the left knee in subsequent follow-up visits with Dr. Hafley and his associates. During a June 22, 2001, visit, Dr. Hafley opined that the claimant had reached maximum medical improvement relative to the right wrist injury and assessed a permanent physical impairment in the amount of 10 % to the right upper extremity. (RX. #1, p. 27). Respondents accepted and paid corresponding permanent partial disability benefits relative to the right wrist.

The evidence in the record reflects that respondents provided medical benefits relative to claimant's left shoulder and left knee complaint once the complaints were relayed to claimant's treating physician, Dr. Hafley, as a product of the February 27, 2001, compensable accident.

On September 21, 2001, Dr. Hafley performed a left knee arthroscopy on the claimant. (RX. #1, p. 31) In a report of the same date relative to the procedure Dr. Hafley relayed:

I found Grade 3 medial and Grade 2 lateral a Grade 4 patellofemoral degenerative changes. There was a torn remnant of the medial meniscus.

I did an arthroscopy, a revision medial meniscectomy and tri-compartmental chondroplasty. He tolerated surgery nicely. (RX. #1, p. 30).

Claimant was seen on several occasions by Dr. Hafley in follow-up subsequent to the September 21, 2001, arthroscopy. During a February 4, 2002, visit, Dr. Hafley noted that claimant was back at full duty and having global knee pain. The report further reflects:

I discussed options with Harlan. He is not improving and would like to proceed with knee replacement surgery. I've discussed risks, plans and expectation. (RX. 1, p. 38).

The testimony of the claimant reflects that prior to proceeding with surgery as recommended by Dr. Hafley, he was directed by respondents to be seen by Dr. Kenneth M. Rosenzweig.

Claimant was in fact seen by Dr. Rosenzweig as directed, however was never furnished a copy of the report. Further, the credible testimony in the record reflects that claimant solicited the assistance of supervisory personnel of respondent to help in obtaining medical treatment for his continuing complaints relative to his left knee.

The March 14, 2002, report of Dr. Rosenzweig, relative to his evaluation of the claimant does not reflect that a copy of same was provided to the claimant. Nor is there any indication that the contents of the report was shared with the claimant. The report reflects, in pertinent part:

Mr. Pennington is a 56-year-old gentleman who is seen for a second opinion at the request of Cheryl Johnson, case manager of Kemper, to address left knee pain and the recommendation of total joint replacement. (RX. #1, p. 39).

The report than reflects a history of the claimant's injury and medical treatment relative to the left knee, to include the February 2001, accident. The report further reflects:

Subsequent to his surgery, over the past year, he has had continued pain and swelling and discomfort without the internal derangement symptoms of catching or giving way. He has had three episodes of corticosteroid steroid injections, without long-term relief. He has now been recommended to have a total joint replacement for definitive care of his knee injury, and he is here for a second opinion regarding the medical necessity. It is also a concern in regard to apportionment, as to the pre-existing condition, and the percentage this most recent injury contributes to his overall findings. (RX. #1, p. 39).

The history contained in the March 14, 2002, report of Dr. Rosenzweig, is corroborate of the testimony present by the claimant during hearing in this claim. Of note in the entry in the report, "He holds a Master's Plumber's license that validates his employer's license and plumbing business." (RX. #1, p. 39).

The March 14, 2002, report of Dr. Rosenzweig further reflects, regarding the claimant:

He reports that the pain in his knee is debilitating, prohibits him from doing his regular job as far as stooping, climbing, squatting, kneeling, crawling, and that he can only basically sit, with his knees extended.

* * *

IMPRESSION: Tri-compartmental arthritis with advanced patellofemoral degenerative disease. His symptoms are quite significant in as far as the atrophy and stiffness and the antalgic gait. He has not responded to arthroscopy and/or a year of conservative care.

It is this examiner's opinion that Mr. Pennington dose meet the criteria of a joint replacement surgery as far as medical necessity. However, with reservations of his age and activity level, it is not without risk, as far as loosening, requiring further surgery, but would most definitely improve his pain and quality of life. If he chooses to go back to climbing, stooping, bending, kneeling, and crawling with an artificial knee joint, it most likely will not hold up for a significant amount of time.. . .

In regard to the apportionment of current findings and pre-existing conditions, it is clear that the previous meniscectomy and chondromalacia and exposed subchondral bone is pre-existing to his trauma. The fall in February of 2001 has propagated the symptoms beyond response to conservative care. The arthroscopic findings and Dr. Hafley's notes show a tear of the remnant of the medial meniscus that was debrided, as well as chondroplasty and synovectomy and washout of the degenerative arthritis. Mr. Pennington reports that although the internal derangement symptoms have improved, the pain, crepitation and misery have not, and he has certainly had enough time to respond to those treatments.

It is felt that the current recommendation meets the criteria of medical necessity. It is felt that the majority of current objective findings are pre-existing, but there has been propagation of his pain and symptoms beyond a level of tolerance, to where it is now intractable and unrelenting. As far as Third party issues, it is recommended that this examiner not comment on compensability apportionment, but address the pure medical necessity, and confirm that the majority of clinical findings, as far as x-rays, intraoperative reports, are most pre-existing. (RX. #1, p. 39-41).

Claimant was not again seen by a physician relative to his left knee and left shoulder complaints, attributable to the February 2001, accident, following the March 14, 2002, evaluation by Dr. Rosenzweig, until the October 8, 2003, visit to Dr. Hafley.

At the time of the October 8, 2003, visit, Dr. Hafley recommended proceeding with the total knee replacement surgery. Additional treatment was also recommended relative to the claimant's left shoulder complaint. Claimant was unable to work as a result of the compensable injuries at the time of the October 8, 2003, visit to Dr. Hafley. (RX. #1, p. 43). On February 20, 2004, claimant underwent the total knee replacement surgery. (RX. #1, p. 54). On August 13, 2004, claimant underwent a left shoulder arthroscopy under the care of Dr. Hafley. (RX. #1, p. 59-62). Claimant has not been released to return to work.

Respondents refused to authorize claimant's medical treatment under the care of Dr. Hafley in relation to the February 2001, compensable injuries, asserting that the claim was barred

by the statute of limitation. Respondents concede that workers' compensation benefits were last paid in this claim on May 15, 2002.

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

FINDING

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about February 27, 2001, the relationship of employee-employer-carrier existed among the parties.
3. On or about February 27, 2001, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$410.00/\$308.00, for temporary total/permanent partial disability.
4. The claimant was temporarily totally disabled for the period commencing October 3, 2003, and continuing until such time as he reaches the end of his healing period or is released to return to appropriated work, a date to be determined, in addition to prior periods of total incapacitation growing out of the February 27, 2001, compensable injuries.
5. The evidence preponderates that claimant made numerous requests of appropriate supervisory personnel of respondents for further workers' compensation medical benefits, subsequent to May 15, 2002, such to toll the limitation period set forth in Ark. Code Ann. § 11-9-702 (b), and, pursuant to *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W. 2d 253 (1994).
6. Respondents are estopped from asserting the statute of limitations as a defense to the claimant's present claim for workers' compensation benefits growing out of the February 27,

2001, compensable injuries. *Snow v. Alcoa*, 15 Ark. App. 205, 691 S.W. 2d 194 (1985).

7. Medical treatment rendered to the claimant under the care of Dr. William F. Hefley, Jr., as well as referrals therefrom, subsequent to May 15, 2002, is reasonably necessary in connection to the claimant's compensable injuries of February 27, 2001.

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of February 27, 2001.

9. The respondents have controverted the claimant's entitlement to all workers compensation benefits in this claim subsequent to May 15, 2002.

CONCLUSIONS

The compensability of the injuries suffered by the claimant in his February 27, 2001, fall is not disputed. In the afore claimant suffered injuries to his right wrist, left shoulder, and left knee. Respondents paid medical benefits relative claimant's injuries, as well as indemnity benefits in the form of temporary total disability. Further respondents paid permanent partial disability benefits to correspond to 10 % impairment to the claimant's right upper extremity growing out of the accident. Following a February 4, 2002, recommendation that claimant undergo a total knee replacement to address the knee injury, respondents arranged a March 14, 2002, evaluation another physician. Claimant was not again seen by a physician following the March 14, 2002, second opinion evaluation until October 8, 2003. Respondents last paid workers' compensation benefits in this claim on May 15, 2002.

Claimant asserts entitlement to further workers' compensation benefits relative to the February 27, 2001, accident, to include that had on and after October 8, 2003. Respondents contend that the claimant's request additional workers's compensation benefits is barred by the

statute of limitation. 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 provisions.

The credible evidence reflects that while the claimant, who commenced his employment with respondents on July 14, 1993, suffered a compensable injury to his left knee on or about May 2, 2000, for which he underwent surgery, was asymptomatic and performing unrestricted job duties at the time of his admitted compensable injury of February 27, 2001. Respondents paid the cost of medical treatment relative to the claimant's right wrist injury, growing out of the February 27, 2001, accident, as well as for his complaints regarding the left shoulder and left knee once relayed to claimant's treating physician and related to the accident.

While the claimant underwent conservative treatment modalities relative to the left knee injury, as well as arthroscopy, the symptoms progressively worsened until a total knee replacement was ultimately recommended by his authorized treating physician, Dr. Hafley on February 4, 2002. Before undergoing the procedure respondents arranged for the claimant to be seen by another orthopedic surgeon, Dr. Kenneth Rosenzweig, on March 14, 2002. In his March 14, 2002, report Dr. Rosenzweig addressed the medical necessity of the recommended procedure as well as the nexus of same to the February 27, 2001, compensable injury.

Respondents informed the claimant that the surgical recommendation of Dr. Hafley would be address after the second opinion was obtained. Claimant underwent the second opinion evaluation, however was never furnished a copy of the report. Early on in the claim, respondents had failed to pay temporary total disability benefits to the claimant for a period of six to eight weeks while he was totally incapacitated after having undergone surgery on his right wrist.

Claimant ultimately contacted the Arkansas Workers' Compensation Commission, who in turn contacted respondent-carrier. Thereafter, claimant was informed that the indemnity benefits would be forthcoming. The fall out from the afore was a admonition by supervisory personnel to the claimant that he was not to contact the Commission about any problems relative to his claim, but, pursuant to the policy of respondent-employer, he was to go through the company.

As a consequence of the above, when respondents failed to furnish access to medical treatment relative to his left knee following the March 14, 2002, second opinion evaluation with Dr. Rosenzweig, the only recourse claimant was aware the he could take, if he wanted to retain his job, was to solicit assistance from supervisory personnel of respondents. While claimant continued to discharge assigned job duties between March 14, 2002, and October 3, 2003, the evidence preponderates that he continually solicited supervisory personnel of respondent-employer to help him get medical treatment for his left knee and left shoulder. Further the evidence preponderates that supervisory personnel of respondent-employer were either non-responsive or ineffective with respect to claimant's request.

As early as the March 14, 2002, evaluation by Dr. Rosenzweig, the claimant's Master Plumber license was being used to validate the respondent-employer plumbing business. Respondent-employer solicited the use of the licenses of other master plumbers in its employ and the claimant's physical complaints and physical limitations attributable to the compensable injury grew more severe. Claimant was not provided a copy of the March 14, 2002, report of Dr. Rosenzweig, nor was he given a definitive response regarding returning to Dr. Hafley for medical treatment regarding the left knee. It is noted that the claimant had been specifically directed from Dr. Hafley to Dr. Rosenzweig when the recommendation was made for the total knee

replacement. It is more than coincidental that claimant was the only master plumber laid off on October 3, 2003, during the “reduction of force”, when the use of the his Master Plumber license no longer to benefit respondent-employer.

At the time claimant was “laid off” by respondent-employer in October 3, 2003, he was not physically capable of discharging employment duties as a result of the injuries to his left shoulder and left knee growing out of the February 27, 2001, accident. Claimant was ineligible for unemployment compensation benefits due to his total incapacitation relative to the compensable injury. Indeed, it was only because he had been “laid off” that claimant felt he could return to Dr. Hefley for medical treatment, reasoning that at that point he could no longer be threaten with the loss of his job by respondent-employer for not going through the company, as he had consistently previously done.

I find the actions of respondents relative to this claimant unconscionable, and certainly not such that should profit by same or avail themselves to the statute of limitations as a defense to the claimant’s claim for benefits. The February 27, 2001, accidental injuries of the claimant were accepted as compensable and corresponding workers’ compensation benefits paid to and on behalf of claimant. Respondents deliberately mislead claimant regarding access to medical benefits following the March 14, 2002, second opinion evaluation by Dr. Rosenzweig. Claimant was prohibited, via threat of loss of job, from seeking workers’ compensation benefits other than through the company, pursuant to the “company policy”. When claimant adhered to the “company policy” in his efforts to obtain workers’ compensation benefits respondents were either unresponsive, ineffective, or duplicitous.

Claimant’s failure to be seen by a physician subsequent to the March 14, 2002,

evaluation/examination by Dr. Rosenzweig until his October 8, 2003, visit to Dr. Hafley, relative to his February 27, 2001, compensable injuries, was not the product of inadvertence, tardiness, or lack of diligence or medical necessity, but rather the manipulation of respondents. Unfettered access to medical benefits was provided to the claimant by respondents through the February 4, 2002, visit to Dr. Hafley and recommendation for total left knee replacement surgery. Claimant was informed by respondents that before the procedure could be had a second opinion would have to be obtained. Respondents obtained a second opinion evaluation on March 14, 2002, from Dr. Rosenzweig who concurred in the medical necessity of the recommended procedure. Claimant was not privy to contents of the March 14, 2002, second opinion report, and, as such, was never in position to act on it. The claimant diligently pursued medical treatment for his compensable injuries within the constraints imposed on him by respondents. It was only after those constraints had been removed, with his October 3, 2003, "lay-off", did claimant feel at liberty to schedule a return visit to Dr. Hafley. The evidence preponderates that the medical necessity of the recommended procedure never abated, nor did claimant abandon his pursuit of medical treatment between March 14, 2002, and October 8, 2003.

In the instant claim where respondents have furnished medical treatment and have either actual or constructive knowledge the claimant is receiving medical treatment or that the claimant will require further medical treatment, respondents continue to furnish medical treatment until they communicate to the claimant that they are controverting further medical treatment. *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W. 2d 253 (1994) and *Safeway Stores, Inc., v. Lamberson*, 5 Ark. App. 191, 634 S.W. 2d 396 (1982). In the instant claim, the afore did not occur until after the October 8, 2003, visit by the claimant to Dr. Hafley. On or about November

7, 2003, claimant filed a Form AR-C with the Commission seeking additional workers's compensation benefits. (RX. #2). The filing of the afore was well within the one year limitation period set forth in Ark. Code Ann. § 11-9-702 (b).

Further, the evidence in this record preponderates that the respondents are estopped from asserting the statute of limitations as a defense to the claimant's claim for additional benefits.

The elements of equitable estoppel are as follows:

- (1) The party to be estopped must know the facts;
- (2) He or she must intend that his or her conduct shall be acted upon or must act so that the party asserting the estoppel has the right to believe the other party so intended;
- (3) The party asserting the estoppel must be ignorant of the true facts; and
- (4) The party asserting the estoppel must rely on the other party's conduct to his or her injury.

Snow v. Alcoa, 15 Ark. App. 205, 691 S.W. 2d 194 (1985).

In the instant claim the evidence preponderates that respondents were fully aware of the claimant's continued need for medical treatment as recommended by his authored treating physician, and confirmed by the March 14, 2002, evaluation of the second opinion physician. Further, respondents were aware of the nexus of claimant's need for medical treatment to the February 27, 2001, compensable accident. Respondents required the claimant to undergo the March 14, 2002, second opinion evaluation before they would authorize the procedure recommended in the February 4, 2002, report of claimant's treating physician. Claimant was not privy to the contents of the March 14, 2002, second opinion report. Respondents' policy mandated that claimant pursue his workers' compensation benefits through the company.

Pursuant to the afore, claimant sought the medical treatment to supervisory personnel of respondent and never told that the same was being denied, but rather was consistently held at bay. Claimant relied on the conduct/policy of respondents to his detriment or injury.

Accordingly, respondents are estopped to assert the statute of limitations as defense to the present claim.

Claimant suffered injuries to his right wrist, left knee, and left shoulder in the February 27, 2001, compensable accident. Although claimant had previously suffered an injury to the left knee and undergone surgery in 1978, he had been employed by respondents since 1993, and performed assigned job duties without physical restrictions or limitations relative to same through May 2000. Claimant suffered a compensable to the left knee on May 2, 2000, in his employment with respondents, which again required surgery. On or about June 5, 2000, claimant was released to regular plumbing duties relative to the May 2, 2000, compensable injury. There is no evidence in the record to reflect that claimant required medical treatment or experienced any physical restrictions or limitations relative to his left knee between June 5, 2000, and the February 27, 2001, compensable accident.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S. W. 3d 150, (2003). Ark. Code Ann. § 11-9-508 (a) mandates that employers 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 to be decided by the Commission. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W. 3d 1 (2000). In the instant claim, the evidence

preponderates that the total left knee replacement surgery and left shoulder arthroscopy procedures were reasonably necessary in connection with the claimant's injuries growing out of the February 27, 2001, compensable accident. Respondents have controverted the afore.

Claimant discharged employment duties for respondents through October 3, 2003, when he was "laid off". Nonetheless, the evidence preponderates that claimant remained within his healing period as a result of the February 27, 2001, compensable injuries, through October 3, 2003, and beyond. At the time of the October 3, 2003, "lay-off" claimant was rendered totally incapacitated from engaging in gainful employment as a result of the scheduled left knee and unscheduled left shoulder compensable injuries. An employee who suffers a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during his healing period, or until he returns to work. *Wheeler Construction Co., v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Entitlement to temporary total disability benefits for an unscheduled injury is contingent upon a showing that the employee is completely incapacitated from earning wages and remain within his healing period. *Arkansas State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). Claimant has sustained his burden of proof that he remained within his healing period subsequent to October 3, 2003, and totally incapacitated from engaging in gainful employment thereafter. Respondents have controverted claimant's entitlement to temporary total disability benefits subsequent to October 3, 2003.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$410.00, for the period beginning October 3, 2003, and continuing until such time as the claimant has reached the end of his healing period or has

returned to appropriate work, a date to be determined. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonably necessary medical, nursing, hospital and other apparatus expenses growing out of the claimant's compensable injuries of February 27, 2001, to include medical related travel.

Respondents are further ordered and directed to reimburse any and all other health care carriers for sums expended in this claim on the claimant's behalf relative to the February 27, 2001, compensable injuries of the claimant.

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