

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608477

JAMES ALLEN	CLAIMANT
ALLEN HEATING & COOLING, INC.	RESPONDENT
CAMBRIDGE INTEGRATED SERVICES GROUP, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 31, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by RONALD MCCANN, Attorney, Fayetteville, Arkansas.

Respondents represented by ERIC NEWKIRK, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 26, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 20, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On January 30, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his low back on January 30, 2006.

4. The claimant is entitled to a weekly compensation rate of \$429.00 for temporary total disability and \$322.00 for permanent partial disability.

5. Medical expenses have been paid.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's cervical problems on January 30, 2006.

2. Related medical.

3. Temporary total disability from January 10, 2007, to May 18, 2007.

4. Claimant's entitlement to a permanent partial impairment rating to his low back and cervical spine.

5. Attorney's fees.

The claimant reserves all other issues.

In regard to the foregoing issues the claimant contends that as a result of his accident, he sustained injuries to his neck and lower back. Medical bills relating to the low back injury have been paid. However, the bills relating to the neck injury have not been paid. The claimant contends that his healing period has not ended; and that he is entitled to receive further temporary total disability benefits; payment for medical care related to his neck injury; reimbursement of his out of pocket expenses related to the neck; and a controverted attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant sustained a compensable lumbar/low back injury at the time of his work incident on January 30, 2006. However, the respondents contend that the claimant did not sustain a compensable neck/cervical problems in the months preceding his injury, and the claimant's complaints following the incident were solely to the lumbar/low back area. While the claimant had previous lumbar/low back problems as well, the respondents accepted the claim as a compensable aggravation of the pre-existing condition. Alternatively, in the event compensability is somehow established for a cervical/neck injury, the respondents assert an offset for any group health payments pursuant to Ark. Code Ann. §11-9-411 made to or on behalf of the claimant. The respondents reserve the right to amend their contentions and position in all respects after additional discovery has been completed.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1. The respondents submitted medical records and additional documentation respectfully marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was thirty-two years old, graduated from Springdale High School in 1995 and attended one semester of community college in Rogers. The claimant testified

that he then went to work for the respondent which is his family's business. The claimant testified that the respondent installs heating and air-conditioning units in residential and light commercial buildings. The claimant testified that prior to January 2006 he was a job site foreman and crew leader and that he did most of the technical work such as wiring, soldering, placing the units, placing the duct work, and sizing the units and duct work. The claimant testified that this work was very physical and required lots of lifting. The claimant testified that the furnace he was lifting weighed approximately seventy-five to eighty pounds and that an average air conditioner can weight in excess of four hundred pounds. The claimant testified that his work required crawling, sitting, and standing particularly when working with the duct work.

The claimant testified that he had a work related injury to his thumb in 2001. The claimant testified that he had to miss work for approximately ten weeks following the surgery on his hand. The claimant testified that other than this he has never missed any work because of physical problems.

The claimant testified that on January 30, 2006, he and another employee were installing a furnace into the attic of a new residence. The claimant testified that there was a thirty inch by thirty inch crawl hole which had been framed. The claimant testified that Jesse Wilkes was working with him and his father was on the ground. The claimant explained that because the crawl hole was in an unusual location, they had to tie a rope around the

furnace to lift it up. The claimant testified that he was right over the furnace leaning over the crawl space up in the attic. The claimant testified that he was pulling the furnace up into the attic by a rope and as it got almost up to the crawl space the unit had spun a little bit and he was waiting for it to even up with the hole. The claimant testified that he gave it one last pull so that Jesse could grab the unit. The claimant testified that when he made that last pull he heard a pop or snap and felt a bad pain and he just went down and lost all of his strength. The claimant testified that he dropped the unit and it fell to the ground. The claimant testified that for a period of time he could not move and would not allow anyone else to move him, but after a few minutes Jesse and his dad got him down out of the attic and into the truck. The claimant testified that he was taken to his family's home and their regular physician, Dr. Olsen, was called. The claimant testified that that first day he was hurting from top to bottom, indicating from his neck down to his lower back.

The claimant testified that prior to this event he has had minor problems but nothing that prevented him from working. The claimant testified that the last time he recalled being seen by a doctor with complaints of neck or low back pain before January 2006 was between 1997 and 2000.

The claimant testified that he continued to work for the respondent but more in a supervisory position. The claimant testified that he ceased working for the respondent on July 20,

2006. The claimant testified that he has not worked for anyone since that date.

The claimant testified that his neck problems go from a stiff pain to a really sharp pain during the day. The claimant stated that he has to get in a certain position to sleep at night and even then he has to use medication to get rest. The claimant testified that when he wakes in the morning sometimes he will feel good for three to four hours but sometimes he wakes and cannot turn his head. The claimant testified that he can drive for limited distance before his neck prevents him from turning his head. The claimant testified that he also has numbness going down both arms sometimes and that there are times when this pain is sharp. The claimant testified that he has difficulty raising his arms above his head noting that it was really hard for him to wash his hair. The claimant testified that he has never had problems like this prior to his injury. As to his lower back, the claimant testified that he tries to stay within the limits given to him by his doctor particularly that of lifting no more than twenty pounds. The claimant testified that the more exercise he gets the worse his low back gets. The claimant stated that he has numbness in his legs at times. The claimant testified that presently it is his neck that is his main problem. The claimant testified that he physically could not do the job he once did. The claimant testified that he has applied for jobs at all of the home centers as well as a couple of mechanic places but has never got past the oral interview and none have even let him fill out an application.

On cross examination, the claimant testified that in 1993 he was involved in a motor vehicle accident and as a result of that accident received chiropractic treatment for his neck for approximately one month. The claimant agreed that he continued to be seen by Dr. Huntington, the chiropractor, up through September 1996 for spasms in the left side of his neck. The claimant testified that he was also having problems with headaches during this period of time and that was what he primarily was going in for. The claimant testified that it was his understanding that his headaches were either from sinus problems or tension involved. The claimant agreed that he has continued to receive treatment for his headaches up until at least October 26, 2005. The claimant testified that these headaches began in the back of his head up high but some of them start in his neck area. The claimant testified that he has also had treatment for his low back in the past. The claimant agreed that he did have an incident where he fell down the stairs at his parent's house and another one where he hooked his pant leg on a small tractor and fell off. The claimant testified that after his fall from the tractor he could have had some pain in his legs. The claimant testified that the two times he fell he fell on his right side so he could have reported discomfort in his right thigh due to these falls. The claimant was read a portion of the medical report from his February 1, 2006, doctor's visit after his compensable fall. The claimant agreed that this report sets forth that he reported pain in his low back area with pain radiating to his upper posterior right thigh. The

claimant testified that the pain he was experiencing after his compensable injury was a sharp pain rather than a bruise type pain which he had experienced before. The claimant testified that it was after his functional capacity evaluation that he learned from Dr. Luke Knox that he had a twenty-pound lifting restriction. The claimant testified that he recalls reading the functional capacity evaluation and it setting forth that he had given an unreliable effort or indications of self limiting behavior. The claimant testified that in the past he has experienced neck pain due to grinding his teeth. The claimant testified that he was aware that the first report of injury which was filled out by his mother, Linda Allen, set forth that the part of his body that was affected by his accident was his low back. The claimant testified that he was aware that Dr. Olsen treated him for a lumbar strain from his first visit on February 1 until sometime in June. The claimant testified that he took off five days after his accident but returned to work and worked up through July 20, 2006. The claimant testified that the medications for his back injury were called in so he had no office visits to get these refills. The claimant testified that he recalled that on April 11, 2006, he reported to his doctor that he was having low back pain which was radiating down his left leg. The claimant agreed that on May 1, 2006, he was seen for lower back pain and neck pain. The claimant testified that at this visit he was referred to Dr. Knox. At this point in the testimony the respondents' attorney stated that Dr. Knox's report sets forth that the claimant was seen in March and that date

should be May. The claimant's attorney agreed with this assessment. The claimant agreed that when he was seen by Dr. Knox he reported a history of low back pain which ran down into his right leg. The claimant indicated that he would not disagree with Dr. Knox's report that sets forth that he has had acute low back pain for approximately three months and generalized neck pain for approximately eight months. The claimant testified that when he was lifting the furnace and his back went out, he did fall. The claimant testified that Dr. Knox send him to rehabilitation but does agreed that on January 10, 2007, Dr. Knox released him noting that he was not a candidate for surgery. The claimant testified that he recalls undergoing a second medical opinion conducted by Dr. Schlesinger in Little Rock. The claimant testified that he remembers that this doctor's report indicated that he would have no disability rating and thought that he could do more activities than what he actually was doing. The claimant testified that Dr. Knox had recommended that he try to work through some of his discomfort. The claimant indicated that he had not applied for social security disability or for unemployment benefits.

On redirect examination, the claimant explained that he was stooped over at a ninety-degree angle pulling the furnace up into the attic when his back went out and he went down face first with one of his legs rapped around one of the ceiling joists. The claimant stated that he remembers hitting the ground and remembers Jessie being there with him holding him. The claimant was asked by his attorney if the problems he has described about his neck had he

every had these type problems before this incident in January 2006, the claimant stated, "No, Sir."

Jessie Wilkes testified that he is a firefighter/EMT but also works part time for the respondent. Mr. Wilkes testified that he has worked for the respondent approximately three years. Mr. Wilkes testified that he and the claimant have been living together for approximately two years. Mr. Wilkes was asked if at any point before January 30, 2006, was he aware of the claimant having any problems with his neck or low back and Mr. Wilkes responded, "No, Sir." Mr. Wilkes testified that the claimant worked just as hard as he worked and that he was not aware of the claimant making any physical complaints before January. Mr. Wilkes testified that on the date of the claimant's accident they were in the attic pulling up a furnace. Mr. Wilkes stated that he was standing right behind the claimant getting some tools ready when he heard the claimant yell and he turned around and the claimant was complaining about his back saying that it hurt and he got down on the boards in the attic. Mr. Wilkes testified that the claimant lay in the attic for a while complaining about his back and then he went home. Mr. Wilkes testified that when he next saw the claimant it appeared as though the claimant could hardly walk or get around and that his back and neck were sore. Mr. Wilkes testified that the claimant looked like a board and could hardly move at all. Mr. Wilkes testified that the claimant continued to work for the respondent but could hardly do any work at all. Mr. Wilkes testified that during this period of time it appeared as though the claimant was

hurting all over from his neck down to his back. This witness specifically remembers that the claimant could not turn around and look at you he had to completely turn his body around to acknowledge you.

On cross examination, Mr. Wilkes testified that for the six or seven months he and the claimant lived together prior to his accident, he does not recall the claimant mentioning anything about discomfort or prior back discomfort. Mr. Wilkes testified that the claimant did mention to him about a prior motor vehicle accident but did not talk to him about any pain or treatment which he might have had. Mr. Wilkes testified that he was aware that the claimant had a teeth grinding problem and remembers the claimant complaining of jaw pain. This witness testified that he was aware that the claimant had headaches every once in a while. Mr. Wilkes was asked if to his knowledge the claimant had been pain free with his neck and back up until January 30, 2006, and Mr. Wilkes responded, "Yes." Mr. Wilkes testified that on the day of the claimant's accident after he heard the claimant call out, he caught him, lowered him to the attic floor and the claimant said that his back was hurting. Mr. Wilkes was asked if the claimant said anything about his neck hurting and Mr. Wilkes responded, "I don't recall. I just knew he was hurting." Mr. Wilkes was asked based on his observation of the claimant following his accident if he would be surprised that none of the early medical reports mention anything about his neck pain and Mr. Wilkes responded, "Yes."

Linda Allen testified that the claimant was her son and that she was one of the owners of the respondent business. Ms. Allen testified that her responsibilities with the business involve answering the phone, doing the bookkeeping, and payroll. Ms. Allen was asked if the claimant had any physical problems which prevented him working before January 2006 and Ms. Allen responded, "Not to my knowledge, unless it would be something minor for a very short period." Ms. Allen testified that she could not recall the claimant having anything serious with his neck or back prior to January 2006 that would prevent him from working. Ms. Allen testified that she was sure that she saw the claimant on the date of his accident and he was obviously in pain. Ms. Allen testified that the claimant would move very slowly and not move any more than was necessary. This witness testified that the claimant told her that something happened all the way down from his neck all the way down. Ms. Allen testified that the claimant tried to return to work and they all were very optimistic that he would be able to work through his problems but by July he just could not go any further. Ms. Allen testified that during the period of time he continued to work for the respondent he was paid his full wages although he often did not work full time but he did his best. Ms. Allen testified that the claimant would show up and do what he could do but she was not out on the job site so she could not give a description of his work. Ms. Allen was asked about why when she filled out the insurance form she did not mention anything about the claimant's neck problems. Ms. Allen responded that it was

probably ignorance on her part that she just assumed that the insurance company would take care of any work related injury. Ms. Allen testified that probably at the time she was filling out the form the claimant's back was hurting worse than his neck at that time. This witness testified that she did not know that she had to name absolutely everything that could possibly be involved at that moment and she thought that the insurance would take care of anything as it needed to be taken care of. Ms. Allen testified that she is aware of the problems which the claimant is currently having with his neck and he did not have these problems prior to his accident. Ms. Allen testified that she was aware that the claimant has been seen by a doctor for his neck before his accident but it generally was for swollen glands caused by a sinus infection. Ms. Allen testified that she is aware that the claimant has a hard time getting dressed and really has a hard time shaving as well as washing his hair. This witness testified that the claimant never had any problems prior to his accident in January 2006.

On cross examination, Ms. Allen testified that she was aware that when she filled out the initial insurance forms she indicated that it was the claimant's low back that was injured. Ms. Allen testified again that probably it was the claimant's back that was upmost in her mind at the time she filled out the form. Ms. Allen testified that she would go with the claimant to his doctor's appointments and when the nurse would take down the claimant's symptoms she would give just the bear bones information because she

knew that they were going to go through the same information with the doctor when the claimant was seen. Mr. Allen testified that the claimant grinds his teeth because of his neck pain and that she was not aware that he was grinding his teeth prior to the accident in January. On closer questioning, Ms. Allen testified that she had gone with her son to the dentist and was aware that he might have to undergo major dental work. Ms. Allen agreed that if this appointment was in October 2005 this would have been prior to his accident. Ms. Allen testified that the claimant has had headache problems for the past fifteen years due to his sinus problems. This witness testified that she also was aware that the claimant had had neck treatment following a motor vehicle accident in the 90s by a chiropractor. Ms. Allen testified that she was aware that the claimant has suffered from depression and anxiety in the past but was not aware of his medication because that is his responsibility. Ms. Allen testified that she was present during Dr. Schlesinger's very brief examination and was aware of what his report set forth.

On redirect examination, Ms. Allen testified that when the claimant was seen by Dr. Schlesinger the doctor spent a few minutes in the actual examination room with the claimant. This witness testified that they had taken a stack of x-rays and to her memory the doctor pulled out one and looked at it. Ms. Allen testified that the doctor asked if this injury existed pre the incident and the doctor was told no it did not. Ms. Allen testified that the

doctor spent considerable time in the hall talking to the workers' compensation nurse and a few minutes in the room with the claimant.

The medical records set forth that the claimant was seen by Dr. Mark Olsen on February 1, 2006, with complaints of low back pain with pain radiating to upper posterior right thigh. After examination, Dr. Olsen assessed the claimant with having a lumbosacral strain with radicular symptoms. Medications were prescribed and the claimant's right hip was injected. Dr. Olsen writes on April 11, 2006, that the claimant continues to complain of lower back pain and now has radiating pain down his left leg. At this visit the claimant was also treated for allergy symptoms. Medications were prescribed and it is noted that his symptoms are worsening. On May 1, 2006, Dr. Olsen notes that the claimant is having lower back pain and neck pain where it is noted that the claimant is still grinding his teeth and that contributes to his neck pain. After examination, the claimant was assessed with muscular skeletal back pain and physical therapy was recommended to evaluate and treat the claimant's chronic lumbar and neck pain. The claimant was seen at Dr. Luke Knox's office on May 31, 2006, and assessed by Tana White a physician's assistant. In the history reported to Ms. White by the claimant, he reports complaints of acute low back pain for a three-month period of time as a result of a work related injury. The claimant also reported that he has generalized neck pain for approximately eight months and this pain occasionally radiates to the interscapular region. Upon examination, Ms. White specifically notes that the claimant has

marked spasms of the para cervical and para lumbar spine. Ms. White notes that the claimant's plain films reveal multiple levels of cervical spondylosis and lumbar spondylosis and there is evidence of degenerative disc changes as well as a straightening of the normal cervical and lumbar lordosis. Medications were prescribed and it was recommended that the claimant have an MRI of his cervical and lumbar spine. The claimant underwent an MRI of his lumbar and cervical spine on June 9, 2006. The claimant's lumbar spine MRI revealed a desiccation and mild broad based disc protrusion at L5-S1 with signal consistent with annular fissure. This report notes no evidence of nerve root impingement. It is also noted that the claimant has mild desiccation at L4-5 disc. The MRI of the claimant's cervical spine demonstrates disc protrusion at C5-6 in the central and left para central region that slightly flattens the spinal cord. Dr. Luke Knox writes to Dr. Olsen on June 19, 2006, concerning the claimant. Dr. Knox writes that the claimant has a significant disc herniation at C5-6 as well as a disc space changes at 5-1. Dr. Knox notes that the claimant has ruptured these discs secondary to his work related injury occurring three months ago and that he informed the claimant that these should resolve with time. Dr. Knox recommended a strengthening program for the claimant's cervical and lumbar region. The claimant was seen by Dr. Olsen on June 30, 2006, and again on July 27, 2006, where it is noted that the claimant has muscle spasms in his low back and neck. Dr. Olsen continued the claimant on medications for his pain. Dr. Knox writes to Dr. Olsen

on August 2, 2006, concerning the claimant. Dr. Knox notes that the claimant reports that he is worse within the last couple of weeks and that he lost bladder control a few weeks ago. Dr. Knox notes that the claimant's MRI of both his cervical and lumbar spine do not set forth evidence of compressive pathology that would create these symptoms. Dr. Knox recommended that the claimant undergo a myelogram. The claimant underwent a CT scan of his lumbar spine and a myelogram of his cervical and lumbar areas. These tests reveal that the claimant has a left para central disc protrusion at C5-6 causing some left sided neural foramina stenosis as well as the lumbar spine myelogram and CT demonstrated some minimal degenerative changes at L4-5 and L5-S1. The claimant underwent steroid injections into his cervical spine on September 19, 2006, administered by Dr. Jared Ennis. Dr. Knox writes on September 20, 2006, that the claimant continues to have difficulty with cervicalgia and lumbago. Dr. Knox recommended that the claimant return to physical therapy and recommended that they try an RS stimulator. Dr. Knox writes that the claimant's myelogram was unimpressive, noting that he did have a herniated disc at C5-6 on the left which is very mild without evidence of compressive pathology that would explain his right arm symptoms. Dr. Knox writes that the claimant had mild degenerative changes at L4-5 and L5-S1 levels. Dr. Olsen writes on October 12, 2006, that he is the claimant's primary care physician and that he saw the claimant on February 1, 2006, after the claimant had sustained a work related injury while pulling a furnace into an attic on January 30, 2006.

Dr. Olsen writes that because of his injuries the claimant was referred to Dr. Knox for evaluation. By letter, Dr. Olsen writes that Dr. Knox stated that he felt that the claimant ruptured cervical and lumbar disc secondary to his work related injury and that he concurs with this assessment. Dr. Knox writes on October 19, 2006, that the claimant only got mild improvement from his facet injections at 5-6, noting that this improvement was a delayed response which was not the answer that he was hoping for. Dr. Knox notes that the claimant as well as his mother are getting quite disgruntled with the claimant's failure to respond to conservative treatment. Dr. Knox recommended that the claimant return to Dr. Ennis for pain management and opined that surgery would not be wise at this point. Dr. Knox writes as to the claimant's drug use recommending that the claimant wean himself off of his Demoral and manage his discomfort with activity restriction, physical therapy, strengthening program, and pain management. It is also noted by Dr. Knox that the claimant should remain off work for the next month. On November 21, 2006, Dr. Knox writes that the claimant continues to be miserable with his pain. Dr. Knox notes that after reviewing the claimant's various tests, he informed the claimant that he needs to work through his discomfort. A functional capacity evaluation was recommended and Dr. Knox notes that the claimant wants to be transferred to a pain management physician for his Demoral prescriptions. Dr. Knox notes that the does not feel comfortable doing this. The claimant underwent a functional capacity evaluation on January 2, 2007. The evaluator notes that

the results of this evaluation indicates that the claimant gave an unreliable effort with 45 of 62 consistency measures within expected limits. After going through the various tests, the evaluator determined that the claimant's true functional limitations remain unknown due to the inconsistencies he demonstrated but he did demonstrate the ability to perform material handling over twenty pounds. The evaluator concluded that the claimant is able to perform work at least at the light physical demand classification. Dr. Knox writes on January 10, 2007, to Dr. Olsen concerning the claimant and the results of his functional capacity evaluation. Dr. Knox notes that the evaluation was rather illuminating noting that it demonstrated the claimant could perform work at the light physical demand classification. Dr. Knox notes that the claimant is frustrated with his failure at non operative measures and the doctor expresses that he has absolutely nothing to offer from a surgical standpoint for the claimant. Dr. Knox recommended that the claimant seek a second opinion. In a letter to the claimant's attorney Dr. Olsen writes on March 8, 2007, that due to the claimant's continuing problems with pain and disability, he would recommend that the claimant be evaluated at the Texas Back Institute and recommended that the claimant see a pain management physician for medical management of his back and neck pain. In a letter dated May 18, 2007, Dr. Knox rated the claimant with a 5 percent impairment to his lumbar spine and a 6 percent impairment to his cervical spine. Dr. Knox writes that this is based on the AMA Guides, Forth Edition, Table 75. Dr. Knox notes that this

would give the claimant an 11 percent whole body permanent partial impairment rating.

The respondents' medical exhibits set forth that the claimant was treated at the Huntington Clinic from March 3, 1993, through October 2, 1996, for stiffness and spasm from his thoracic spine extending into his cervical area. The claimant was also treated for headaches. Dr. Mark Olsen treated the claimant for panic disorder, insomnia, and nausea on January 7, 2002, for which he recommended medication. The claimant continued to be seen and treated by Dr. Olsen throughout 2002 for his headaches, anxiety disorder, and depression. On May 28, 2003, Dr. Olsen writes that the claimant was seen for complaints of cough, congestion, and body aches after falling from a tractor and now has back pain. On August 20, 2003, Dr. Olsen writes that two days ago the claimant fell about six feet and hurt his right leg and lower back. After examination, the claimant was diagnosed with lumbar strain as well as chronic back pain and medications were prescribed for muscle spasms. On February 22, 2005, the claimant reports to Dr. Olsen that he is having ear and neck pain. After examination and evaluation, the claimant was assessed with sinusitis acute, allergies, and muscular skeletal neck pain. The claimant was seen by Dr. Olsen on August 1, 2005, for what was possibly a spider bite. The claimant reported a headache and high fever as well as vomiting. The claimant also experienced symptoms of having his right leg very swollen. Dr. Olsen notes that since the claimant has no persistent symptoms there is really nothing to treat. On

September 29, 2005, the claimant reports high fever as much as 104.2 the night before as well as a nose bleed to Dr. Olsen. The claimant complains also of having a very severe sore spot on the back of his head and a constant ringing in his ears. It is noted that within the past three months the claimant has started grinding his teeth so much that he is having to have crowns placed on six of his teeth. Dr. Olsen writes on October 26, 2005, that the claimant is some bit better but has been grinding his teeth and is going to have twenty-two crowns placed. Dr. Olsen recommended that the claimant be seen by Scott Ironside for treatment of his headaches.

After a complete review of this matter, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on January 30, 2006, while working for the respondent. Although the claimant did not initially report cervical problems due to the severity of his low back pain, he has testified as have other witnesses that he was complaining of neck pain although it was not as prominent as his low back pain immediately following his accident. The medical evidence sets forth that the claimant does have herniated discs in his cervical spine which has been treated conservatively. Dr. Knox has not recommended surgery for his cervical area but has recommended that the claimant work his way through his problems indicating that his discomfort should resolve with strengthening programs. The respondents, therefore, should pay for any recommended treatment for this claimant's cervical problems if recommended by his treating physician. I find that the claimant

has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from January 10, 2007, to May 18, 2007. The claimant had undergone a functional capacity evaluation which indicated that he could do light labor involving lifting from one to twenty pounds throughout his work day. Dr. Knox also has recommended that the claimant work through any discomfort which he has and that his problems as far as pain should resolve with strengthening programs. There is no indication in this record that there has been a physician take the claimant off work during the period of time TTD has been requested. Dr. Knox assessed the claimant with an impairment rating on May 18, 2007, for his low back and his cervical spine, however, this evaluation was based on the claimant's last visit with Dr. Knox on January 10, 2007. I do find that the claimant has proven by a preponderance of the evidence that he is entitled to an impairment rating for his low back in the amount of 5 percent and an impairment for his cervical problems in the amount of 6 percent giving him an 11 percent permanent partial impairment to the body as a whole.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On January 30, 2006, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to his low back on January 30, 2006.

4. The claimant is entitled to a weekly compensation rate of \$429.00 for temporary total disability and \$322.00 for permanent partial disability.

5. Medical expenses have been paid.

6. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine while working for the respondent on January 30, 2006. See discussion above.

7. The claimant is entitled to reasonable and necessary medical treatment for the treatment of his low back and cervical spine as recommended by his treating physicians at the respondents' expense.

8. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from January 10, 2007, to May 18, 2007. See discussion above.

9. The claimant is entitled to a permanent partial impairment rating to the body as a whole of 11 percent as rated by Dr. Knox. See discussion above.

10. The respondents have controverted this claimant's entitlement to benefits for his cervical spine as well as an impairment rating due to his compensable injuries.

11. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine while working for the respondent on January 30, 2006.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's low back as well as cervical problems as recommended by his treating physicians.

The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability from January 10, 2007, to May 18, 2007.

The claimant has proven by a preponderance of the evidence that he is entitled to an impairment rating of 11 percent to the body as a whole for his low back and cervical injuries to be paid by the respondents.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE