

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606428

DAVID BODINE	CLAIMANT
BALDOR ELECTRIC COMPANY	RESPONDENT
SPECIALTY RISK SERVICES, INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 31, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by TOM HARPER, JR., Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 11, 2007, in Fort Smith, Arkansas. The deposition of Dr. Larry Armstrong was taken on January 10, 2007, and has been admitted as Claimant's Exhibit No. 16. A pre-hearing order was entered in the case on August 16, 2006, and was admitted as Commission's Exhibit No. 1. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time.

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

1. The relationship of employee-self insured employer-TPA has existed between the parties from February of 1993 through January of 2006.

2. In October of 2002, the appropriate weekly compensation rates would be \$376.00 for total disability and \$282.00 for permanent partial disability.
3. In January of 2006, the appropriate weekly compensation rates would be \$467.00 for total disability and \$350.00 for permanent partial disability.
4. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained a compensable injury to his low back or lumbar spine that was not the result of a specific incident or is identifiable by time and date of occurrence.
2. The claimant's entitlement to medical services, temporary total disability benefits from January 23, 2006 through a date yet to be determined, and attorney's fees.
3. whether this claim is barred by the statute of limitations set out in Ark. Code Ann. §11-9-702.
4. The possible effect of the notice provisions of Ark. Code Ann. §11-9-701 on any benefits accruing prior to May 1, 2006.

In regard to these issues, the claimant contends:

"The claimant contends that during and within the scope of this employment on January 23, 2006, the claimant sustained an injury to the lumbar spine. The claimant contends that as a result of continuous repetitive bending, stooping, and lifting on the process line at the respondent/employer's manufacturing plant, the claimant has sustained a herniated disc to

the lumbar spine. The claimant has had pre-existing lumbar spine complaints and medical treatment in the past. All of the lumbar spinal treatment has been the result of a lumbosacral strain without radiculopathy to the extremities. As a result of the continuous and repetitive nature of the job on January 23, 2006, the claimant was unable to continue his employment. The claimant contends he is entitled to temporary total disability benefits from January 30, 2006 to a date yet to be determined and medical expenses for the treatment by Dr. Thomas Cheyne, Dr. Vikki Sutterfield, Dr. Arthur Johnson, and Dr. J. Michael Standefer. The claimant contends that this claim has been controverted in its entirety, entitling the claimant to the maximum attorney's fee."

In regard to these issues, the respondents contend:

"Respondents contend that claimant received a low back injury in October or November 2002. Claimant did not receive an additional injury and/or aggravation in January 2006. Claimant did not file a claim with the Arkansas Workers' Compensation Commission until more than two years after his 2002 injury and, as such, the claim is barred by limitations."

DISCUSSION

_____The central issue in this case is whether the claimant's difficulties with his lower back or lumbar spine constitutes a "compensable injury". The burden rests upon the claimant to prove this fact. In order to meet this burden, the claimant must show that his current back difficulties satisfy all of the statutory requirements for a "compensable" injury.

The first of these requirements are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection of the Act mandates that the claimant must "establish" by medical evidence the actual existence of the physical injury or condition which is alleged to be

compensable. It further requires that the actual existence of the physical injury or condition must be supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The current medical record is sufficient to “establish” the actual existence of physical injury or damage to the claimant’s lumbar spine. Further, the actual existence of this physical injury or damage is supported by purely objective abnormalities that have been noted on various radiographic testing and by the visual observation of muscle spasms of the lumbar musculature. Thus, in regard to his lumbar spine, the claimant has satisfied the statutory requirements for a “compensable” injury that is contained in Ark. Code Ann. §11-9-102(4)(D).

The claimant has alleged that his compensable injury was not the result of any specific incident and is not identifiable by time and place of occurrence. Therefore, he must next prove that his medically established and objectively documented physical injury or damage to his lumbar spine satisfies all of the definitional requirements for a “compensable injury” that are found in Ark. Code Ann. §11-9-102(4)(A)(ii)(b). These definitional requirements are that the physical injury or damage must have arisen out of and occurred in the course of his employment, that the physical injury or damage must have caused internal or external physical harm to the claimant’s body, and the physical injury or damage involved the claimant’s back or neck.

In order to prove that his injury arose out of and occurred in the course of his employment, the claimant must show a causal relationship between his employment activities and the medically established and objectively documented physical injury or damage to his lumbar spine. However, he need not prove the existence of this causal relationship to a mathematical or absolute certainty, but need only show that such a causal relationship is likely or probable.

It is at this point that this case begins to become somewhat complicated. The record reveals that the claimant has been employed by this respondent since August 16, 1993. During his period of employment, the claimant appears to have experienced three significant episodes of difficulties with his low back or lumbar spine. These episodes occurred in 2001, 2002, and 2006. The respondent contends that, even if the claimant can establish that he sustained "compensable" injuries to his back in 2001 and 2002, he is barred from receiving any benefits for these injuries by the statute of limitations, found in Ark. Code Ann. §11-9-702(a)(1).

In late September or early October of 2001, the claimant had an onset of severe pain in his lower back. In his various medical histories, the claimant gives somewhat conflicting statements concerning the event or activity that caused or precipitated these difficulties. He mentioned that he was required to lift heavy motors at his employment, but initially stated that the onset of his symptoms began while he was sitting in the stands at a football game. He later related to his treating physician that he simply

“woke up” in a great deal of pain in his lower back. He also indicated to his physician that he had experienced similar problems, even prior to this episode of difficulties.

This episode of difficulties, in October of 2001, clearly necessitated medical treatment. Further, this episode of difficulties caused the claimant to miss work for a sufficient period of time to have entitled him for temporary disability benefits, under the Act. Thus, any compensable injury would have “occurred”, for the purpose of the statute of limitations, in October of 2001.

However, the claimant did not elect to file a workers’ compensation claim. Instead, he chose to seek benefits under the respondent’s group insurance for both his medical expenses and loss of wages. However, he did indicate on the application for group disability benefits that his difficulties had an accident date of September 28, 2001, and were work related.

The next episode of significant back difficulties appears to have occurred in November of 2002. At that time, the claimant also complained of pain radiating down in his right leg and stiffness in his neck. These difficulties were sufficiently severe to cause the claimant to seek medical treatment and resulted in a period of disability that would have been sufficient to entitle him to temporary total disability benefits under the Act. Thus, any compensable injury would have “occurred”, for the purpose of the statute of limitations in November of 2002.

However, the claimant again chose to file for benefits under his group medical insurance for the payment of his medical expenses and his loss of work. Following the claimant's onset of difficulties in 2002, he did cause a form N to be filed, which gave a time and date of accident as 9:30 a.m. on November 14, 2002. He also gave the cause of this injury as repetitive lifting of motors, but again he took no further steps to pursue a workers' compensation claim.

The claimant testified that his symptoms, which began in 2002, never completely resolved, but that he was able to manage these symptoms with over the counter medication. There is no evidence that, after December 2, 2002, he sought or received any further medical services, or missed any further work, until January of 2006.

It is apparent that by November 23, 2002, the claimant knew or should reasonably have known the nature and extent of his back injuries. By that date, he was also aware that such injuries could potentially be employment related or "compensable". By that date, he had required medical services and had on two occasions missed sufficient work to entitle him to temporary total disability benefits under the Act. Thus, the claimant's 2001 and 2002 potentially compensable injuries had "occurred", for the purposes of Ark. Code Ann. §11-9-702(a), on or before November 23, 2002.

Pursuant to the provisions of Ark. Code Ann. §11-9-702(a), the statute of limitations for such an injury would have expired by January 23, 2004. Even if the benefits the claimant received under

his group policy of insurance were deemed a payment of benefits by the respondent, these payments would not have tolled the statute of limitations so as to cause it to extend beyond November 23, 2004. Therefore, I find that the claimant is barred from receiving any benefits that would be attributable to any possible compensable injuries to his lower back or lumbar spine that occurred in September of 2001, and/or November of 2002.

It appears that the claimant may be arguing that the respondents are somehow estopped from ascertaining the statute of limitations, in regard to these prior potential compensable injuries. Both the claimant and his wife testified that, in May of 2006, they met with Perry Goines, the occupational health and safety specialist for the respondent. The purpose of this meeting was to file a workers' compensation claim. They both testified that Mr. Goines specifically told them that any claim for a workers' compensation for an injury in 2002, would not be barred by the statute of limitations. Mr. Goines denies making such a statement.

I find it immaterial whether or not Mr. Goines made such a statement. Clearly, the respondent has timely raised the issue of the expiration of the statute of limitations, in regard to the 2001 and 2002 potential employment related injuries. In order to invoke the doctrine of estoppel, the claimant must show that he detrimentally relied on Mr. Goines' 2006 statement. This he simply cannot do. The statute of limitations on the 2001 and 2002 potential employment related injuries had run long before this

statement was allegedly made. Any claims for benefits attributable to these two possible compensable injuries were long since barred. Once a claim is barred by the expiration of the statute of limitations, it cannot be revived by any subsequent conduct on the part of the respondent (except, the failure to raise such a defense in a timely manner).

The claimant also testified that he did not file a claim for workers' compensation benefits in 2002, because Perry Goines told him that he would be off work until the claim was investigated and that workers who filed claims for cumulative trauma injuries, would be fired. Perry Goines testified that in 2001 and 2002 the claimant did advise him that the claimant thought his work had caused his back problems. Mr. Goines further testified that he only told the claimant that if he filed under workers' compensation, he would have to go to the company doctor. This the claimant did not want to do. Instead, the claimant voluntarily elected to see his own physician and file for group benefits. It is my opinion that the testimony of Mr. Goines concerning the conversations and actions surrounding the incidents in 2001 and 2002, is the more credible. These statements and actions of Mr. Goines in 2001 and 2002 were neither inaccurate or misleading and would not form the basis for estopping the respondent from asserting the defense of the expiration of the statute of limitations as a bar against any claims for benefits attributable to alleged employment related injuries in 2001 and 2002.

The actual claim form (AR-C), which gives rise to this case, was filed with this Commission on June 13, 2006. Therefore, the claimant can only be entitled to benefits attributable to a compensable injury that occurred within two years prior to that date. This leaves only the alleged compensable injury in January of 2006. Thus, the claimant must prove by the greater weight of the credible evidence the existence of a causal relationship between this alleged injury and his employment related activities for this respondent within two years prior to that date.

The issue of causation, in regard to the alleged employment related back injury in 2006, has its own complicating factors. The most significant of these factors, is that there is no clearly established physical source of the claimant's lower back and lower extremity complaints, during and after January of 2006. Further, the evidence shows that, after the claimant ceased working for the respondent, in January of 2006, the claimant's subjective complaints and even his physical findings appear to have worsened and even changed. The evidence also shows that the claimant's continuing subjective complaints appear to far out weigh his objective physical findings. Another complication is that the medical record reflects that the majority of the claimant's objective findings or defects are of a degenerative or arthritic nature. Finally, it must be noted that the record indicates that the claimant's prolonged and extensive treatment involving multiple modalities has provided, at best, only limited benefit.

When the claimant was initially seen at Sparks Preferred South walk-In Clinic, on January 23, 2006, he was complaining of lower back pain of six days duration. On physical examination, he was noted to be tender in the mid and right lower back. No muscle spasms were recorded. The claimant was also noted to be able to touch below his knees and to walk on his heels and toes without difficulty. Although a positive SLR was noted on the right, this report expressly stated that there were no radicular type symptoms. At that time, the claimant was diagnosed as suffering from a simple lumbar strain.

The claimant was next seen by Dr. Thomas Cheyne, a sports medicine specialist. Dr. Cheyne recorded that the claimant was complaining of lower back and right leg pain that had been going on for a couple of weeks. He further noted that the claimant did not report any specific injury, but only mentioned that he lifted heavy motors at work and thought this may have aggravated his back. On physical examination, Dr. Cheyne observed that the claimant was tender in his right lower back, but was otherwise normal. Based upon his examination, Dr. Cheyne diagnosed the claimant's difficulties as being of a lower back strain with possible radiculopathy. X-rays, which were taken at that time, showed only degenerative changes throughout the claimant's lumbar spine.

On February 3, 2006, an MRI of the claimant's lumbar spine was performed at the request of Dr. Cheyne. This test was interpreted as showing degenerative changes in the form of disc dessication at L3-4, L4-5, and L5-S1. It was also interpreted as showing a small

left foraminal disc protrusion with mild left foraminal stenosis at L4-5, and a small right foraminal disc protrusion with right foraminal stenosis at L5-S1. On the basis of this test, Dr. Cheyne diagnosed the claimant's complaints as being likely caused by the small right foraminal disc protrusion at L5-S1. Due to the lack of left sided complaints, Dr. Cheyne appears to have considered the small left sided protrusion at L4-5, as only an incidental finding.

The claimant was next seen by Dr. Arthur Johnson, a neurosurgeon, upon referral by Dr. Cheyne. Dr. Johnson recorded a history that the claimant had been experiencing back pain for approximately two and a half years, following an injury at work, that had gotten worse since January. He noted the claimant's complaints as low back pain, mid thoracic pain, pain in the intrascapular region, posterior neck pain, bilateral hip and thigh pain, and occasional tingling in the right arm. Dr. Johnson ordered a battery of tests to investigate these complaints.

This testing included a full body radionuclide bone scan. This test was interpreted as showing no increased activity that would be indicative of any recent or ongoing injury or inflammation involving the claimant's lumbar spine or sacroiliac joint.

A cervical and lumbar myelogram with accompanying enhanced CT scans was also performed. This test is recognized by the general medical community as being the "gold standard" in assessing injuries or damage to the spine. This test was interpreted as showing no significant defects in the cervical spine. In regard to the lumbar spine, the test was interpreted as showing only mild

diffuse disc bulging at the L3-4 level, that abutted the anterior aspect of the thecal sac, but did not appear to restrict the spinal canal or the bilateral neuroforamina. No defect was noted at the L4-5 level. At the L5-S1 level, this test was interpreted as showing mild diffuse disc bulging with slight asymmetry to the left. However, there appeared to be no restriction of the spinal canal or the bilateral neuroforamina.

Based upon his examination of the claimant and the requested testing, it was Dr. Johnson's opinion that the claimant had no significant nerve root compression, disc herniations, or neuroforaminal stenosis. He diagnosed the claimant's complaints as being muscular in origin and in the form of fibromyalgia. He returned the claimant to the care of his family physician, Dr. Vikki Sutterfield.

When the claimant saw Dr. Sutterfield, she too recorded a history that the claimant had hurt his back two and a half years prior, when he went to pick up a part at work. She further noted that in January of 2006, the claimant had a different job that required different lifting. She further noted that the claimant's difficulties became worse on January 18, 2006. Dr. Sutterfield appears to have either ignored or been unaware of the results of the myelogram with enhanced CT scan and the expert opinion of Dr. Johnson. She attributes the claimant's difficulties to the disc bulging at L3-4 and L5-S1 with a disc herniation at L5-S1. She referred the claimant to Dr. Michael Standefer, another neurosurgeon.

However, the claimant was not seen by Dr. Standefer. Instead, he was seen by Dr. Larry Armstrong, yet another neurosurgeon. Unfortunately, none of the initial reports and records of Dr. Armstrong were introduced. At Dr. Armstrong's request, another lumbar MRI was performed on January 10, 2007. This test was interpreted as showing a disc desiccation with a central disc protrusion at L3-4 that was producing moderate stenosis or narrowing of the spinal canal, bilateral facet hypertrophy, with a broad based disc protrusion and mild to moderate left neuroforaminal narrowing at L5-S1, and facet hypertrophy and broad based disc bulging at L5-S1 that produced mild to moderate bilateral neuroforaminal narrowing. When Dr. Armstrong reviewed this test, he concluded that it showed degenerative changes of three discs (L3-4, L4-5, and L5-S1) and a new defect in the form of a disc herniation at L3-4. Dr. Armstrong noted that, according to the claimant, this new disc herniation had occurred without any specific event or activity.

During his course of treatment of the claimant, Dr. Armstrong had referred the claimant for treatment by Dr. Kathy Luo, a chronic pain management specialist, and for physical therapy at Performance Physical Therapy Clinic. Finally, Dr. Armstrong concluded that he did not personally have anything further to offer the claimant in the way of treatment and referred the claimant for evaluation by Dr. James Blankenship, yet another neurosurgeon.

When the claimant saw Dr. Luo, she recorded a history that the claimant had been complaining of back pain since 2001. She further

recorded that he stated that during his job, he had to do repetitive lifting and “tracing” (?) and that his back pain gradually became worse. She also noted that even though he had changed to another department, he still had to do repetitive “tracing” (?) and lifting and that he felt that his back pain was getting worse. She noted the claimant’s complaints as pain from his back that radiated into his lateral anterior thigh down to the medial aspect of his calf to his big toe and that this was stabbing, shooting pain. Dr. Luo diagnosed the claimant’s difficulties as multi-level degenerative disc disease at L3-4, L4-5, and L5-S1, a lumbar radiculopathy, myofascial pain involving the lumbar spine, and possible sacroiliitis that were most likely related to his job. In her report of January 23, 2007, Dr. Luo stated that the most recent MRI study showed significant changes in the claimant’s various lumbar defects. She interpreted this study as showing that the neuroforaminal narrowing at L4-5 had moved from the right side to the left side and that mild bilateral neuroforaminal narrowing was now noted at L5-S1. During her course of treatment of the claimant, Dr. Luo provided him with multiple epidural steroid injections into the facets and discs at both L4-5 and L5-S1 levels. These injections are generally considered to be both therapeutic and diagnostic in nature. Had the defects noted at these levels been the cause of the claimant’s subjective complaints, these injections would be expected to have provided at least noticeable temporary relief of the claimant’s symptoms. However, the evidence shows that these injections provided no

relief of the claimant's reported symptoms and, in fact, were reported by the claimant as increasing his difficulties.

When the claimant was seen for physical therapy, a history was recorded of an injury on January 22, 2006, when he was working and had to twist/push/pull a lot and his back "went out". A physical examination, at that time, was noted to show moderate tenderness and guarding upon palpitation of the lumbar paraspinal muscles with mild edema over the lumbosacral region. Straight leg raising tests were also reported as positive for hamstring tightness, apparently in both lower extremities. Various other tests were performed, although essentially subjective in nature, and were all interpreted as positive. A decrease in the lumbar lordosis and muscle guarding of the lumbar and thoracic region was observed. However, the examiner opined that the claimant's postural habits may have been contributing to these findings. Again, the medical record shows that the claimant gained no benefit from physical therapy and again reported that this treatment also increased his symptoms.

The claimant was initially seen by Dr. James Blankenship, on February 28, 2007. Dr. Blankenship recorded a history that the claimant first received a work injury in 2001, but did well with a short course of treatment. He further recorded that the claimant was again injured at the end of 2002, and following conservative treatment, did fairly well, although he continued to have pain "off and on". Dr. Blankenship noted that, in January of 2006, the claimant awoke with significant lower back pain which was severe and has been increasing ever since. Finally, he recorded that the

claimant did not give any specific event that created his pain and that the pain he is now having is similar to the pain that he had in 2001 and then in 2002. At that time, the claimant was again complaining of neck or cervical pain. On physical examination, Dr. Blankenship noted essentially normal reflexes and no radicular findings involving his lower extremities. Dr. Blankenship recommended a cervical MRI, a discogram, and a psychiatric evaluation.

Only the cervical MRI was performed. This test revealed numerous extensive degenerative changes involving the claimant's entire cervical spine, but none that Dr. Blankenship felt would be the potential cause of the claimant's low back and right lower extremity complaints. For some reason, the claimant appears to have abandoned treatment by Dr. Blankenship and sought the services of Dr. Richard Rowe, a neurosurgeon at the University of Arkansas School for Medical Sciences.

The claimant was seen by Dr. Rowe on April 23, 2007. Dr. Rowe recorded complaints of low back pain and mid back pain between the scapula. He also noted complaints of pain radiating into the right leg with numbness and tingling that lasts approximately 20 to 30 minutes together with complaints of pain and tingling in the right arm. Dr. Rowe, upon review of the MRI scan from January of 2007, interpreted this study as showing diffuse spondylosis of the lumbar spine that was most prominent at L3-4, L4-5, and L5-S1. He also noted disc bulging at L3-4 that was slightly eccentric to the right side. He also indicated that he had reviewed the claimant's MRI

and myelogram from 2006. Based upon his examination of the claimant and review of these studies, it was Dr. Rowe's expert opinion that the claimant was suffering from spondylitic disease. Dr. Rowe also appeared concerned by what he felt to be exaggerated responses on the part of the claimant during the physical examination and the fact that the various objective studies did not support such exaggerated subjective complaints.

However, due to the reported failure of all conservative treatment modalities and the claimant's report that his symptoms were having a life altering effect, Dr. Rowe agreed to perform a multi-level decompression and fusion, if the claimant was willing to undergo the risks of this procedure. A presurgical CT scan of the claimant's lumbar spine, which performed at the request of Dr. Rowe, was interpreted as showing degenerative changes with some bulging of the discs of the lower lumbar spine. A presurgical MRI of the claimant's lumbar spine was interpreted as essentially normal. The operative report of Dr. Rowe shows that both his preoperative and postoperative diagnosis of the etiology of the claimant's complaints were degenerative disc disease of the L3-4, L4-5, and L5-S1 intervertebral discs.

The only direct evidence to connect the claimant's lower back difficulties and right lower extremity difficulties, during and after January of 2006, with his employment activities, is the claimant's own testimony. Although the testimony of a party is never considered to be uncontradicted, neither can it be arbitrarily disregarded. If such testimony is credible, it may be

sufficient, in and of itself, to establish any fact it is legally competent to address.

The claimant testified that, in August of 2005, he changed positions with the respondent from the "bolt down" job to a "builder" job. The "builder" position required the claimant to slide trays that contained various components of the motors off of a roller line to an assembly station. The claimant would then grease the bearings and end plates of the motors, stand the motors on end, put a band on the motor, beat the band down with a hammer, put a washer into the motor, pick up the rotor and shaft, insert the rotor and shaft into the motor, put on the other end plate, beat the end plate down, insert and tighten the bolts necessary to hold the assembled motor together. This job required repetitive lifting and movement, but would not appear to require the heavy lifting that the claimant performed in the "bolt down" position.

The claimant testified that he had continuously experienced some degree of discomfort in his lower back and legs, following the onset of his difficulties in November of 2002. However, he was able to manage these chronic difficulties with the use of over the counter medication. It was his testimony that on January 18 and January 19, 2006, he experienced the "usual" discomfort with his back and took ibuprofen. On Saturday, January 21, 2006, he could only remember taking his grandson to the thrift store. On Sunday morning, January 22, 2006, he awoke with pain in his back and tingling in his leg that was so severe that he couldn't get out of bed". On Monday, January 23, 2006, he sought medical treatment at

Sparks Preferred South walk-In Clinic. This testimony by the claimant was corroborated by that of his wife.

Throughout his course of treatment, the claimant has given a history of his difficulties with his back and lower extremity to his various physicians. Some similarities and some differences appear in the histories.

The record of Sparks Preferred South walk-In Clinic recorded a history of lower back pain for "six days". However, no particular event or activity was noted as causing or precipitating these symptoms. Dr. Cheyne initially recorded a history of lower back and right leg pain "for a couple of weeks". Subsequent records of Dr. Cheyne give a date of injury as January 15, 2006. Dr. Cheyne noted that the claimant lifted heavy motors at work and thinks that this caused his difficulties.

Dr. Johnson recorded a history of low back pain for approximately two and a half years, which had worsened since January of 2006. However, no specific precipitating event or activity is noted.

Dr. Sutterfield also recorded a history that the claimant had hurt his back at work two and half to three years prior, when he picked up a part at work. She subsequently observed that the claimant had changed jobs and that his new job required a different type of lifting. Finally, she recorded that the claimant's chronic difficulties became worse, starting about January 18, 2007, but noted no triggering activity or event.

The records of Dr. Luo contain a history that the claimant's back had been painful since 2001, but had gradually worsened. She, too, stated that the claimant attributed this worsening to repetitive lifting and "tracing" (twisting ?) that was required by his work.

The records of Dr. Blankenship contain a history of a January '06 injury "at work", then the phrase "at work" is crossed out. Dr. Blankenship then noted that the claimant simply woke up with low back pain and that this pain had increased since January of 2006. The subsequent records of Dr. Blankenship contain a history that the claimant awoke with rather significant low back pain in January of 2006, which has been severe ever since and increasing.

Dr. Rowe noted a history that the claimant simply awakened in January of 2006, with both mid back pain and lower back pain. No identifiable activity or event is recorded as precipitating or causing these difficulties.

On the short term group disability claim, filed by the claimant on February 3, 2006, the claimant specifically indicated that the injury or illness that was producing his disability was not caused by his job. On the form N, completed by the claimant on May 3, 2006, he gives the date of his accident and injury as the second week of July of 2002 and the cause of his injury as lifting heavy motors on the conveyor line.

I am convinced that the claimant sincerely believes that his employment activities for this respondent have caused his current

lumbar condition. However, such belief, no matter how sincere, is not a substitute for proof.

There is no doubt that the heavy lifting required of the claimant in the "bolt down" job could reasonably have played a causal role in producing his current lumbar condition. However, for the reasons heretofore stated in this opinion, the claimant would not be entitled to any benefits for such an injury.

It is also possible that the claimant's employment activities on the "builder" job, although lighter than the "bolt down" job, could also have contributed to the current condition of his lumbar spine and his current difficulties. However, it is also possible that the current condition of his lumbar spine and his current difficulties are simply the natural progression of his degenerative disc disease and arthritic changes (spondylosis) resulting from the day to day activities of life and the aging process. It is also possible that his current difficulties could have been precipitated by relatively minor and insignificant trauma or stress to his spine that was unrelated to the claimant's employment and which went unnoticed by the claimant. It is also possible that his current difficulties are primarily psychosomatic in nature.

After consideration of all the evidence presented, I find that the claimant has failed to prove the existence of a causal relationship between his employment activities for this respondent and the episode of difficulties with his lower back and right lower extremity, which apparently began in January of 2006. As previously noted, the evidence shows a multitude of equally possible or likely

causes for the claimant's lumbar condition, some of which are employment related and some of which are not. To attribute the claimant's current lumbar difficulties to his employment with this respondent would be purely speculative. In fact, due to the continued worsening of the claimant's complaints and the changes in the nature and extent of the objective defects involving the claimant's lumbar spine (particularly the new disc herniation at L3-4), long after the claimant ceased his employment with the respondent, the more likely or probable cause would appear to be merely a natural progression of his degenerative disc disease and arthritic spondylosis.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. From February of 1993 through January of 1996, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. In October of 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$376.00 for total disability and \$282.00 for permanent partial disability, should such benefits have been appropriate.

4. In January of 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefit of \$467.00 for total disability and \$350.00 for permanent partial disability, should such benefits have been appropriate.

5. The claimant is barred by the statute of limitations, contained in Ark. Code Ann. §11-9-702(a), from receiving any benefits attributable to alleged employment related injuries to his low back or lumbar spine in 2001 and 2002.

6. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a compensable injury to his low back or lumbar spine, within the meaning of Ark. Code Ann. §11-9-102(4)(A)(ii)(b). Specifically, he has failed to prove by the greater weight of the credible evidence that his difficulties with his lumbar spine during and after January of 2006 represent an injury that arose out of and occurred in the course of his employment for the respondent within two years prior to January 23, 2006.

7. The respondent has controverted this claim in its entirety. The respondent has denied the occurrence of any compensable injury to the claimant's lower back or lumbar spine within two years prior to January 23, 2006, and has timely raised the defense of the expiration of the statute of limitations in regard to any alleged employment related injuries occurring in 2001 and 2002.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE