

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610486

CHRISTOPHER A. CARDEN, EMPLOYEE	CLAIMANT
JETT SEAL, INC., EMPLOYER	RESPONDENT
UNION INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 25, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on August 13, 2007 at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. J. Mark White, Attorney-at-Law, Bryant, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney-at-Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted August 13, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on April 25, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to some further clarification from the claimant concerning additional medical requested. A copy of the Prehearing Order was introduced without objection as "Commission's Exhibit 1."

It was stipulated that the employee/employer/carrier relationship existed at all relevant times, including June 30, 2006; that the claimant sustained compensable injuries as the result of an electrical shock incident on said date; that he earned

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sufficient wages to entitle him to the maximum applicable compensation rates of \$488.00 per week for temporary total disability and \$366.00 per week for permanent partial disability; that respondents paid various medical and related expenses, as well as temporary total disability benefits for any appropriate dates through on or about January 5, 2007; and that respondents had controverted all benefits beyond those previously paid.

By agreement of the parties, the following issues were presented for determination:

1. Respondents' liability for unpaid medical expenses.
2. Claimant's entitlement to additional medical treatment.
3. Claimant's entitlement to additional temporary total disability.

Claimant contends, in summary, that he was entitled to additional temporary total disability benefits from the date indemnity benefits were terminated and continuing through a date yet to be determined, maintaining that his healing period had not ended. The claimant further contended that respondents should be held responsible for all outstanding medical expenses, including reimbursement of prescription medication bills, together with continued, reasonably necessary, additional medical treatment, including, but not limited to follow-up medical treatment by Dr. Joseph Chacko, a treating ophthalmologist. The claimant specifically reserved the issue of additional medical and/or psychiatric treatment for

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alleged mental injuries, as well as entitlement to vocational rehabilitation and permanent disability benefits. At the hearing, claimant's attorney pointed out that the claimant had recently been diagnosed with a heart arrhythmia which the doctors allegedly link to the claimant's injury. Because the medical evidence had not been developed on that issue, and, rather than continue the claim, the parties agreed to reserve the causal connection of any alleged cardiac problem and proceed with the agreed issues.

The respondents acknowledged that the claimant sustained an electrical shock injury for which he received initial medical treatment, including treatment by Dr. Suffridge for traumatic iritis, an inflammation of the eye, together with follow-up treatment by Dr. Lawton, a neuro-ophthalmologist. In addition, respondents pointed out that the claimant was then sent to Dr. Reginald Rutherford for additional diagnostic testing and that Dr. Rutherford referred the claimant to Dr. Judy White-Johnson for evaluation of possible organic brain injury and post-traumatic stress disorder, and that the claimant was subsequently sent back to work without restrictions or impairment. Respondents contended that the claimant's continued problems were related to long-standing medical problems, unrelated to the admitted work-related injury.

The claimant testified in her own behalf. His wife was called as a corroborating witness. Darrell Jett, the owner of Jett Seal, Inc., testified for the

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respondents. The record is composed solely of the transcript of the August 13, 2007 hearing containing volumes of exhibits, together with the evidentiary deposition of Dr. Joseph Chacko which was introduced as "Joint Exhibit 1" and retained in the Commission file in bound form.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On June 30, 2006, the claimant sustained a compensable injury arising out of and during the course of his employment with Jett Seal, Inc., as the result of a specific incident identifiable in time and place of occurrence, an electrical shock incident which caused internal and external physical harm and which required medical services and resulted in disability.
3. Respondents paid temporary total disability benefits at all appropriate times through on or about January 5, 2007, as well as provided the claimant with reasonably necessary medical treatment prior to controverting all additional benefits.

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4. Respondents are responsible for the payment of unpaid and/or unreimbursed prescription medications prescribed by authorized treating physicians, including, but not limited to reimbursement of the prescription medications Maxalt and Depakote, prescribed by Dr. Reginald Rutherford.
5. The claimant has shown, by a preponderance of the evidence, that he is entitled to additional, continued reasonably necessary medical treatment required to stabilize and maintain the claimant's status, including, but not limited to refills of necessary prescription medication for the claimant's migraine headaches, as well as prescriptions for headache prophylaxis.
6. The claimant's healing period ended on or before January 5, 2007.
7. The claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional temporary total disability after January 5, 2007.
8. Respondents have controverted all benefits beyond those previously paid.
9. All additional issues have been specifically reserved.

DISCUSSION

This is an extremely unusual claim. It is undisputed that the claimant sustained injuries as the result of an electrical shock incident which arose out of and during the course of his employment on June 30, 2006. The claimant's course of conduct following the incident, including his failure to seek or request medical treatment for several days, as well as his work history for the employer herein following the incident makes his claim for temporary total disability benefits

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extremely suspect. Admittedly, there was conflicting testimony concerning why the claimant did not immediately seek medical treatment. The claimant stated that Mr. Darrell Jett encouraged him to wait before seeking medical treatment. Mr. Jett testified that he promptly offered medical treatment, but that the claimant declined. For reasons set out further below, I found the claimant's testimony lacked credibility. I found Mr. Jett to be a most credible witness. Further, the record reflects that once the claimant requested medical treatment, respondents exercised good faith in meeting its obligations under our workers' compensation laws by providing the claimant with prompt reasonably necessary medical treatment. In addition, after the claimant voluntarily left the employer's employment after working for several weeks, respondents again showed good faith in meeting its obligations by paying the claimant temporary total disability from the date of the voluntary termination until on or about January 5, 2007. Clearly, arguments could have been raised that the claimant was not entitled to temporary total disability benefits. Rather, respondents paid temporary total disability at all times while attempting to diagnose the nature and extent of the claimant's injuries. Finally, I feel compelled to point out that despite the stipulation that the claimant earned sufficient wages to entitle him to the maximum applicable compensation rates, I cannot accept this proposed stipulation. The record reflects that the claimant earned \$120.00 per day and was paid for the number of days worked without any agreement that he would be a full-time employee. The record reflects that the claimant worked whatever number of days

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work was available, both before and after the admitted incident on June 30, 2007. It appears that if the claimant worked a full work week, he would earn \$600.00 per week, which would yield a rate of \$400.00 per week for temporary total disability. Accordingly, I cannot accept the stipulation. Respondents are not entitled to any reimbursement for possible overpayment of the appropriate compensation rate. However, respondents may be entitled to a future credit should subsequent indemnity benefits be awarded.

The claimant was employed as a HVAC technician for the respondent. His duties consisted of diagnostically testing heating and air conditioning units, replacing and repairing duct, pulling and cleaning coils, including general maintenance. The claimant worked for the respondent a total of five (5) or six (6) months. He sustained an admitted injury which the claimant described as follows:

Q All right. What happened on June 30th, 2006?

A The ground on one of the electrical plugs, a 220 wire, grounded out. When I plugged it in, it used me as a circuit. When I plugged it in, it shocked me and burned me, not a bad burn but burned my hands, my face, and my eyes. It threw me back about eight foot. I hit the two by four stud on the inside of my head and my shoulder, and it gave me a concussion. It gave me posttraumatic stress disorder and heart arrhythmia, too.

Q And you say you were working with a 220 unit?

A Yes, sir.

Q What is that?

A It si a huge - looks like a huge hair dryer, and its [sic] got a stem that sticks out that blows the sealant up inside the duct work.

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Q So you were shocked by this unit?

A Yes, sir.

Q Do you have what voltage of electricity shocked you?

A No, I don't now as far as voltage. I just know how many watts was running through it.

Q Did you black out from this injury?

A Yes, I blacked out for approximately four to five minutes, is what Jeremy told me.

Q Who's Jeremy?

A He was my partner that was working with me at the point in time.

Q What happened next?

A Jeremy found me lying on the ground, drug me out. From what his story told me, my heart was completely stopped. Now, whether or not that was true, I don't know. He drug me out, pulled me in front of the computer, and that air conditioning upstairs still had air conditioning in it, the downstairs didn't. We were doing the lower unit. He drug me out there. He said the left side of my face wasn't working, and I could not stand up. He tried to stand me up and I couldn't. So he laid me in the floor, and he brought me some water. I laid there for I bet 30, 45 minutes, and I don't remember anything after the explosion, truthfully, without somebody recounting it to me until I got to the house. I don't remember anything.

Q Got to whose house?

A To my house. (Tr. 15-17)

As reflected above, most of the claimant's description of the accident is based upon hearsay and is not supported by the record as a whole. I found much of the claimant's testimony to be hyperbole. I do not believe that the employer who came to the scene following a report of the incident would have permitted the

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claimant to go home if the nature and extent of his injury appeared serious. Further, and as an example of exaggeration, the claimant's wife, who was called as a corroborating witness, described the claimant's appearance as being white or extremely pale rather than burned. While the shock incident is undisputed, the claimant by his own admission has no recollection for the events following the incident.

The claimant's personal course of conduct both before and after the admitted injury of June 30, 2006 is illuminating. The claimant stated that following the incident, he went home and slept off and on for a couple of days. He described his symptoms as severe headaches that caused nausea, muscle twitching in his shoulders and arms, erratic heartbeat that felt like it was going to explode out of his chest, as well as sensitivity to light, and inability to focus. Nevertheless, the claimant did not seek any medical treatment until July 5, 2006. The claimant was first examined and treated by Dr. Phillip Suffridge, an ophthalmologist in Benton, Arkansas. Dr. Suffridge diagnosed the claimant as having sustained traumatic iritis. Dr. Suffridge noted that the claimant developed migraine headaches when outside in the sun. Dr. Suffridge released the claimant on July 17, 2006, indicating that the iritis had resolved and that no further treatment was necessary. (Resp. Ex. A, P. 50)

The claimant was next examined by Dr. Nick Cavanaugh at the Baptist Health Center in Bryant, Arkansas. Again, the claimant's primary complaint was

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severe headaches, as well as nausea caused by the headaches. Dr. Cavanaugh prescribed Maxalt for migraine headaches, as well as pain medication and Phenergan for nausea. During his testimony, the claimant repeatedly stated that the prescription Maxalt was the only effective medication for controlling his migraine headaches. Dr. Cavanaugh subsequently referred the claimant to Dr. Joseph Chacko, a board certified ophthalmologist in Little Rock, Arkansas, with a subspecialty as a neuro-ophthalmologist. Dr. Chacko began treating the claimant on September 20, 2006. He has continued to treat the claimant since that time. The claimant has seen a number of physicians since being evaluated by Dr. Chacko, all of which have released the claimant to return to work. In fact, Dr. Chacko is the only physician that has not given the claimant's a full release to return to work without restrictions. As will be set out further below, it appears that the only reason Dr. Chacko has not released the claimant is because of the claimant's own insistence that he cannot work because of continued symptoms. At the hearing the claimant described his continued symptoms as depression, anxiety, nightmares, flashbacks, severe headaches, nausea, nervous twitches, and poor eyesight. Respondents paid temporary total disability through January 5, 2007. The claimant has not worked since that time, apparently relying on the lack of a full release by Dr. Chacko (Tr. 22).

The claimant's testimony simply lacks credibility. On direct examination, claimant denied ever having any vision problems. However, on cross-examination,

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the claimant acknowledged that he had been treated at the Benton Ophthalmology Clinic in August 2002 with symptoms identical to those made following the immediate claim. The claimant was also seen at the Benton Ophthalmology Clinic in December 2005 and March 21, 2006, as well as for his initial treatment on July 5, 2006 after his work-related incident. A portion of the claimant's self-contradicting testimony is set out below:

Q Mr. Carden, you indicated that you had not had any eye problems before. Did I understand that?

A Yes, sir. As far as vision, I've never had a problem at all.

Q And at the time of your deposition I asked you what your symptoms were from this most recent injury, and I think you told me that you've had loss of vision, correct?

A Yes, sir.

Q Sensitivity to light?

A Yes, sir.

Q Flashing light type problems?

A Yes.

Q Dots?

A Yes, sir.

Q And eye pain?

A Yes, sir.

Q And you had never had those types of problems before, is that correct?

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A Yes, sir.

Q This was back in August of 2002, and it's page 16 . It says, "Review of systems [sic]. We need to know if you had any of the following within the last six months." Do you remember filling out one of these charts?

A I could have, I don't remember.

Q Would you agree with me that under eyes, that you have checked loss of vision, correct, up here?

A Yeah, I see that.

Q You've checked sensitivity to light, is that correct?

A Yes.

Q You have to speak up.

A Yes.

Q Flashing lights?

A Yes.

Q Black dots?

A Yes.

Q And eye pain? Those are the same symptoms that you have now, aren't they?

A Yes. I don't remember filling that sheet out, though.

Q Okay. And then you, in December of '05, went back in to the Ophthalmology Associates Clinic, didn't you?

A Yes, sir.

Q And told them that you had a pressure sensation behind the eye. Do you remember telling them that?

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A Not behind the eye, I don't remember.

Q Okay. By the way, at that time you were on lorazepam, which is a depressive medication, isn't it?

A No, sir, it's not.

Q What is it?

A Anti-anxiety.

Q Okay.

A It's for nerves.

Q Nerves.

A Yes, sir.

Q So you've been taking medicine for anxiety and those types of problems for how long?

A Two years at most.

Q Well, what do you recall going to the ophthalmologist for back in December of '05?

A A sty on my eye.

Q Okay. Then you also went to the ophthalmologist on March 21st, '06. Do you remember that?

A The dates to me, I couldn't tell you the dates. (Tr. 23-26) (See also Resp. Ex. A, P. 16)

Respondents have also provided the claimant with a number of further evaluations to determine the nature and extent of his injury. First, because one of the claimant's chief complaints has been decreased vision in his left eye since June

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30, 2006, respondents referred the claimant to Dr. Andrew W. Lawton, another neuro-ophthalmologist, at the Little Rock Eye Clinic. Dr. Lawton performed an eye examination on December 1, 2006. He concluded that the claimant did not have any organic, functional visual loss of the left eye. He recommended a visual evoked response test to further evaluate the left visual function, which was normal.

Respondents next sent the claimant to Dr. Reginald Rutherford, a neurologist with Arkansas Specialty Centers in Little Rock, Arkansas, for a neurological consultation because of the claimant's complaints of post-traumatic headaches. Dr. Rutherford initially evaluated the claimant on December 13, 2006. Although Dr. Rutherford's report stated that the claimant was currently on leave for headaches and post-traumatic stress disorder, I feel compelled to point out that no diagnosis of post-traumatic stress disorder has ever been given. Dr. Chacko, an ophthalmologist, did diagnose what he described as "post-traumatic syndrome," which he maintained was a subset of claimant's functional visual loss, and which will be discussed later. Dr. Rutherford's December 13, 2006 report states in part:

Mr. Carden's examination demonstrates subjective findings without objective neurological abnormality identified. Some features suggest functional overlay specifically splitting of vibration across the midline on testing level of the forehead and complete loss of position sense left hand without evidence for pseudoathetosis which would be anticipated if the loss of position sense was organic in etiology. Further investigation will be undertaken to clarify whether or not there is any evidence of injury to the central nervous system. This will comprise PET CT of the brain and neuropsychological testing with Dr. Judy White Johnson. The latter will also serve to address the issue of post-traumatic stress disorder. For present headaches Mr. Carden

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will discontinue current use of Amitriptyline and substitute Nortriptyline 25 mg at bed time. He will also substitute Relpax 40 mg strength for current use of Maxalt 10 mg strength. He will be seen in follow up upon completion of the above investigations. For present Mr. Carden should remain off work pending completion of his diagnostic work up. (Resp. Ex. A, P. 79)

Respondents also provided the claimant with a neuropsychological evaluation, including personality testing, pursuant to the referral by Dr. Rutherford to Dr. Judy White Johnson, a clinical psychologist and clinical neuro-psychologist in Little Rock, Arkansas. The claimant was seen over a two-day period for assessment. Dr. Johnson did not find any evidence of post-traumatic stress disorder. Dr. Johnson did note symptom magnification as reflected below:

Personality testing on Mr. Carden was completed via MMPI-2 and PAI. Mr. Carden's test taking attitude and approach to the inventories resulted in clinical profiles consistent with symptom magnification, exaggeration of his problems, and all true response set which results in questionable validity limiting interpretation. His endorsement pattern indicates he is reporting symptoms consistent with both conversion and somatization disorders. He also resists the idea that personal change is needed. Due to this response pattern, any psychological problems or emotional discomfort that may be present is masked by his test taking attitude. (Resp. Ex. A, P. 93)

The claimant was seen for follow-up examination by Dr. Rutherford on January 5, 2007. Dr. Rutherford's final clinic note is set out in its entirety:

Mr. Carden is seen in follow up. He has completed his neuropsychological testing with Dr. Judy White Johnson. I have received verbal communication fro Dr. Johnson that there is no evidence for traumatic brain injury and no convincing evidence for post-traumatic stress disorder. I await hard copy of the report for personal review. PET CT of the brain has proven normal. This further substantiates Dr. Johnson's observations. Results of VEP

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testing remain outstanding. Mr. Carden will require a follow up appointment with Dr. Lawton for this to be finalized. He continues to experience headache. He reports three to four headaches per week. He reports Maxalt to be superior to Relpax. He is not taking Amitriptyline or Clonazepam at present. Mr. Carden will resume use of Maxalt. Depakote ER will be prescribed for headache prophylaxis. He will take 500 mg once daily for one week and then 1000 mg once daily thereafter. He will require a follow up appointment in one month to review his response to medication. At this juncture there are no neurological restrictions. (Resp. Ex. A, P. 85)

Respondents terminated disability benefits apparently based on Dr. Rutherford's report. Again, respondents offered no explanation concerning why it terminated the medications prescribed by Dr. Rutherford for his headaches. The claimant stated that the Maxalt did a good job of controlling his migraine headaches. He continued to take the medication at his own expense. He reported a significant decrease in the number of headaches since he last saw Dr. Rutherford. It should be noted that in addition to the various diagnostic studies ordered by Dr. Andrew Lawton, Dr. Reginald Rutherford, and Dr. Judy White Johnson, Dr. Cavanaugh, claimant's primary care physician, had earlier ordered a MRI of the claimant's brain, which was normal, and that Dr. Cavanaugh returned the claimant to work without restrictions in August 2006.

However, it must be noted that even before Dr. Cavanaugh released the claimant to return to work without restrictions, the claimant had already returned to work for Jett Seal. Despite the claimant's testimony that he quit working because of headaches and nausea and his inability to perform the work, he in fact worked

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when work was available for the week beginning July 7, 2006 through August 18, 2006, including a full work week the week of August 4 and four days the week of August 18, which is apparently the last day that the claimant worked. (Tr. 29-30)

The claimant's testimony appeared at times to be self-contradicting. Although the claimant stated that he was taken off work by Dr. Chacko, he also acknowledged that he voluntarily terminated his employment with Mr. Jett because he was not getting to work full time. I feel compelled to further point out that the claimant did not see Dr. Chacko until on or about September 20, 2006, following a referral by Dr. Cavanaugh, which was well after he voluntarily left his employment.

A portion of the claimant's testimony concerning his reasons for leaving work follow:

Q Now, why did you leave Mr. Jett's employment?

A I was taken off of work. Dr. Chacko said I was not allowed to go back to work doing those kinds of duties.

Q Did you not indicate to Mr. Jett that you had another job and then it fell through?

A No, sir, I told him I was going to try to find another job because he wasn't able to work me the hours I needed. I was going to try to find one. I never told him that I'd quit.

Q So if he indicated that you came back and said your wife wanted you to make more money and that you had found a different job, he would be mistaken?

A In the wording, yes, that would be a mistake. I did tell him that I was looking for another job, but I also did not tell me I quit. And, yes, it was due to my wife wanting me to make more money. I mean, when you're expected to make \$600 a week and you were only getting paid \$320, it gets a big out of hand, you know, over a period of time. And I went to him and asked him if I could have a lighter duty job and he said he didn't have such a thing. (Tr. 49-50)

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Darrell Jett, the owner of Jett Seal, testified for respondents. He stated that the claimant was paid a flat fee of \$120.00 per day and that he only worked the days that work was available. His testimony concerning the claimant's return to work following the injury as well as the reason for the claimant's leaving his employment is set out below:

Q The next week did he return to work for you?

A Yes.

Q And did he work his regular job?

A Yes.

Q Okay. How long did he wear glasses for his eyes?

A I would say probably a couple of weeks.

Q And then after that did he wear them anymore?

A No.

Q Was there any part of his job that he could not do?

A Not that I was aware of.

Q well, would you have been aware of that as the boss?

A I think he would have definitely told me, yes.

Q Okay. And why did he quit working for your company?

A He told me since we didn't have full weeks, that he had to make more money. His wife wanted -- needed him to make more money, that he thought he could get a job for a local heating and air company, and I said, "I can't blame him for that, I understand." And he was going for an interview the next day.

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Q And did he show back up for work?

A No.

Q How many days did he not show up?

A I think there was six days. He told me, "I'll be in. I'm going for my interview," and then he'd leave me a message even when he didn't show up saying, "Well, looks like I'm going for my orientation. It looks like I've got the job, but I'll be there to help you. I know you've got a weekend job coming this weekend, Saturday and Sunday, I'll be there." Every day he'd just call. Never showed up again.

Q Did his leaving your company have anything to do with his injury or his --

A Not that I was aware of. Didn't have any idea any of this was going on.

Q Did he make any complaints to you about his eyesight or about any other health issues during that month and a half he worked?

A Other than right at first, you know, the brightness of the eyes, that's why he had to wear sunglasses because he was sensitive.

Q And did he mention anything about his eye and having previous problems with it?

A Yes. I had questioned him why, you know, after two or three days. He said, you know, the doctor said he'd be okay in a couple of days. And after a couple of days, why he was still putting medicine in, and he said, "Well, I had a tumor removed out of this eye, so I don't have the tear duct in this eye, and that's why it's taking a little bit longer for it to heal. If I had the tear duct, it would have healed right away and wouldn't have been an issue." (Tr. 63-65)

In response to questions from this administrative law judge, Mr. Jett stated that the fee arrangement both before and after the claimant's injury remained the same and that he was never guaranteed work each day. He further stated that the claimant never complained about an inability to do the work following his return from the injury, and that the only reason given for leaving was in order to earn more

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money. He stated that the claimant subsequently came to his house and reported that his other job had fallen through and requested another position, which Mr. Jett declined to provide. Mr. Jett stated he later learned that the claimant filed for disability benefits, which was handled by his workers' compensation insurance carrier.

The claimant has been examined and treated by a number of physicians. The only physician that has continued to keep the claimant off work has been Dr. Joseph Chacko, his treating ophthalmologist. Dr. Chacko first saw the claimant on September 20, 2006 by referral of Drs. Cavanaugh and Mayfield, the claimant's PCP in Bryant, Arkansas. Dr. Chacko opined that the claimant's problems were in his brain, acknowledging that the claimant's eyeballs were perfectly healthy. (Jt. Ex. 1, P. 13). Dr. Chacko admitted that the claimant's visual acuity was 20/20 in each eye. Dr. Chacko appeared to indicate that the claimant's ongoing problems were psychological, although he repeatedly acknowledged that any such diagnosis was outside his area of expertise. Dr. Chacko ultimately diagnosed post-traumatic syndrome. Suffice it to say that the diagnosis is based solely upon the patient's complaints and responses and are not based upon any objective criteria. Further, Dr. Chacko has not offered any course of treatment other than follow-up examinations. A portion of Dr. Chacko's testimony follows:

Q And I saw the diagrams that you're referring to in your notes. Is this test something that relies on his response, or can you measure this by looking at the eye, or how do you measure that?

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A Yes, it's a subjective test, depending on the patient's response.

Q What diagnosis did you reach for his condition?

A Since we didn't find anything wrong -- I think he came with an MRI that had been done also of his brain on 7-31-06 and it was recorded as normal, okay? Since we didn't find any organic lesion at that exam, no structural lesion or structural abnormality, we called this functional vision loss or non-organic vision loss. And since he had had a trauma, we put it into a subset called Post Traumatic Syndrome.

Q Is that similar to Post Traumatic Stress Syndrome, or are you talking about something different from the psychiatric condition?

A It's similar, but the Post Traumatic Stress Disorder is a psychiatric diagnosis that needs to be made by them, but it's similar.

Q But it is distinct from the psychiatric condition?

A Right.

Q And you described it as Post Traumatic?

A Syndrome.

Q Syndrome.

A As a subset of this functional vision loss.

Q And when you say "functional," what do you mean by that?

A "Functional" meaning to differ it from structural. There is no structural abnormality found, but there is a problem with function of the vision.

Q Would it be fair to say that you're saying he has problems with his eye function but you can't pinpoint the exact physical cause?

A There is no structural cause that we can find on exam or MRI.

Q What treatment have you provided to him for this diagnosis?

A In my history of this patient, other than what we've said about functional

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vision loss and the subset being the Post Traumatic Syndrome, this Post Traumatic Syndrome encompasses also headaches, poor sleep pattern, and these constructed visual fields. And he, on questioning he had a history of anxiety prior to this injury, and he also stated he had a history of situational depression in his early twenties that he remarked occurred when his ex-wife took his kids out of state. Anyway, so that's what I had down for him, and the treatment for this condition is, number one is reassurance that there isn't a structural abnormality, there is no damage that we can see and that vision can improve, so that was the first thing. (Jt. Ex. 1, PP. 8-10)

Rather than conduct a further analysis of Dr. Chacko's deposition, suffice it to say that with the exception of migraine headaches, all of the claimant's current symptoms preexisted his June 30, 2006 injury. Despite the claimant's assertion that Dr. Chacko is keeping the claimant off work, it is apparent that the only reason that Dr. Chacko has not returned the claimant to work is at the claimant's own urging because the claimant did not feel safe as reflected below:

Q Now, are there any restrictions on Mr. Carden's ability to work right now?

A Well, from our standpoint, the eye function is very good. It haws improved quite a bit, and he can see pretty well to work in a job, but I would think it would be more in the neurologist's standpoint now, their viewpoint whether he can coordinate himself in order to climb ladders and do his job in precarious situations, and he might need a psychiatric evaluation about that as well, because I think it's all brain-related whether he can do his job. His vision is good enough. The brain has to use both eyes and put them together in order to do his job.

Q At any point have you instructed him to remain off work?

A He stated to me that he didn't feel safe doing his job, so I was happy to give him an excuse for work until he could be retrained for a safer job. (Jt. Ex. 1, P. 22)

The claimant has undergone a neurological examination and has not been restricted from returning to work. He has undergone a psychological evaluation as

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well. There is no credible medical evidence which prevents the claimant from working.

TEMPORARY TOTAL DISABILITY

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department v. Breshears*, 272 Ark. App. 244, 613 S.W.2d 392 (1981); *Johnson v. Rapid Die & Molding*, 46 Ark. App. 244, 878 S.W.2d 790 (1984).

“Disability” means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant’s physical capabilities and evaluate his ability to engage in any gainful employment. The claimant bears the burden of proving both that he remains with his healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. *See, Palazolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

I find that the claimant’s healing period ended on or before January 5, 2007. The claimant has a long history of preexisting complaints similar to those voiced since his June 30, 2006 electrical shock injury. The only new symptom that the claimant developed has been migraine headaches, which have been treated and improved with medication. The claimant’s course of conduct and work history reflect that he was never totally disabled within the meaning of the Arkansas Workers’ Compensation laws. Respondents exercised good faith in meeting its

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obligations by paying the claimant temporary total disability during an extensive and exhaustive evaluation of the claimant's condition. The claimant has been released by numerous providers with the only current recommendation being medication to treat the symptoms related to his recurring headaches which have diminished over time. The burden of proving entitlement to additional temporary total disability lies with the claimant. A preponderance of the credible evidence reflects that he is not temporarily totally disabled.

MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. Ark. Code Ann. § 11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under Ark. Code Ann. § 11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Speciality Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Dr. Rutherford and other physicians have prescribed the use of Maxalt as well as medications for headache prophylaxis. Such medications are reasonably necessary and are directly related to the claimant's shock injury. Respondents were

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not justified in unilaterally terminating the claimant's medication needs. The law provides that respondents remain responsible for medical treatment required to stabilize and maintain the injured worker's status. Accordingly, I find that respondents remain responsible for all outstanding prescription medications prescribed by an authorized treating physician for the claimant's compensable injury, together with continued reasonably necessary treatment.

By necessity, all issues not addressed herein which have been specifically reserved must be deferred pending further requests by the parties. Because no indemnity benefits have been awarded, no attorney's fee is appropriate pursuant to Ark. Code Ann. § 11-9-715.

AWARD

Respondent, Union Insurance Company, is hereby directed and ordered to pay and/or reimburse to the claimant for any prescription medications prescribed by authorized treating physicians, and respondents remain responsible for continued reasonably necessary medical treatment.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge