

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F413280 (11/24/04)**

<b>JACK C. COLE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>NETWORK OF COMMUNITY OPTIONS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>COMMERCE &amp; INDUSTRY INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 31, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 16, 2007, at Ash Flat, Sharp County, Arkansas.

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to additional workers' compensation benefits. On May 8, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties respective position relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Jack C. Cole, the claimant, and Carol Jean Morris, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Jack C. Cole, the claimant, with a date of birth of November 15, 1948, resides in Viola, Arkansas, which is in Fulton County. Claimant obtained a GED and was in the U.S. Army for eight (8) years. Claimant commenced his employment with respondent-employer on June 4, 2004, as a driver. Prior to his employment by respondent-employer claimant worked for Triple A Transport Company as a driver transporting railroad personnel from one area to another. Claimant has been licensed as a certified nursing assistant for five to six years, having obtained the license while working at the nursing home in Fulton County. Claimant also worked at Ozark Medical in West Plains at a sleep lab where his duties entailed preparing people for their sleep study by attaching he electrodes to check for sleep apnea. Claimant's testimony reflects regarding his past work history:

My MOS [military operation skill]? I was a wheel and track mechanic. And then I was also in the infantry. There was very little form work. The only jobs I've ever really had was a manual laborer type situation, a welder's helper, construction, carpentry, that sort of thing. (T. 39).

Claimant acknowledged that in his work history he has had a couple of workers' compensation injuries. The testimony of the claimant reflects that he sustained a meniscal tear to the left knee which was repaired by Dr. Angle, a Batesville orthopedic surgeon. In 1998 claimant testified that he sustained a back injury when while coming out of a room he hit a wet spot on the floor and fell flat on his back. Claimant received conservative medical treatment for the injury and testified that there were no long term consequences for the injury.

Claimant estimates that he was employed by respondent-employer approximately one and one half (1 ½) years. In describing his job duties during the afore employment, the testimony of

the claimant reflects:

My job entailed picking up clients, taking them to the Martin Center, doing, you know, we were working with pretty well mentally challenged people so we would do activities with them. Nothing more than, sometimes no more than to keep their minds stimulated, help them to the restroom because we had people that were not able to go by themselves.

It was kind of a babysitting job. That's a poor term but to try to take care of the folks, to keep them fed and happy and clean. (T. 8-9).

The claimant's job did not require a CDL. Claimant had a regular drivers' license and was not under any restrictions.

The claimant was operating a vehicle within the course and scope of his employment at the time he suffered the injury which serves as the basis for the present claim. In describing the vehicle he was operating at the time of the accident, claimant offered that it was a one-ton or a one-half ton chassis Chevrolet - - a regular school bus with the capacity to haul 18 to 20 passengers, a small commuter type van. Claimant noted that the front end of the vehicle was configured as a van with the rest of it being a regular school bus.

With respect to the November 24, 2004, motor vehicle accident, claimant's testimony reflects that his vehicle was struck on the rear right side/corner by light-weight Ranger pickup which was a telephone maintenance truck. The accident occurred on Ash Flat west at Mariposa Estates. In describing the mechanics of the motor vehicle the testimony of the claimant reflects:

I was turning right from the right hand lane and into a driveway or a road to go pick up a client and slowing down, you know, turn signal on. We check all the safety equipment every morning before we left out of the shop, you know, just to make sure everything was working. And I slowed down. I had my turn signal on. You can't take a real fast curve, corner, because it is a bus. And just slap run over me. (T. 11-12).

Claimant noted that at the time of the accident he was belted in as was all of the clients on the

bus. Claimant had no recollection of a blow to the head but noted that he knocked a left rear jaw tooth loose which later had to be extracted.

The testimony of the claimant reflects that the Century Telephone truck's radiator was blown out and that its air bag was deployed. The vehicle had to be towed from the accident scene. Claimant testified that the driver of the Century Telephone truck acknowledged that he was not paying attention when the accident occurred.

Claimant did not go to the emergency room following the accident. The testimony of the claimant reflects, in that regard:

No, sir, I didn't. In fact, I went - - I think Ms. Morris came and helped get some of the clients out or back to the Martin Center. And I stayed with the vehicle until, you know, until the law showed up. They had to bring the law out of Yellville. (T. 13).

The State Police investigated the accident. Claimant testified:

Well actually after the accident, the first person to show up, the law from Ash Flat was, the guy that hit me, his brother showed up as the lawman. And then we had a DOT man stop and he couldn't do anything so they called the highway boy out of Marion County. (T. 13-14).

Claimant concedes that while his first clinic visit for treatment associated with the accident was the first week in December 2004, it was his impression that he had been seen earlier. Claimant testified that he had an immediate onset of pain, however tried to continue driving but was unable to do so and eventually had to call his wife to come get him. Regarding the afore, claimant testified:

That would be Friday. Or we might have been closed Thursday and Friday and it might have been that coming Monday. (T. 14).

Claimant's testimony reflects that the first doctor that he saw in connection with his injury

growing out of the accident was Dr. Kauffman in Salem. Claimant testified the respondents sent him to Dr. Green, a neurologist, in West Plains.

The testimony of the claimant reflects that he was also sent to Dr. Stephen Eichert, a Jonesboro osteopath. . Claimant noted that until he was seen by Dr. Eichert he had been receiving temporary total disability benefits. Claimant added that following the report by Dr. Eichert his temporary total disability benefits were discontinued. Regarding the extent and duration of his contact with Dr. Eichert claimant testified:

Well, he was running people through his office there pretty good. But that's all, you know, it didn't take but 10 minutes - - I doubt if I was in there 10 minutes. (T. 15).

Claimant testified that at that point he requested a change of physician and was sent to Dr. Chan in Searcy. Claimant was seen by Dr. Chan on August 9, 2006. Claimant's testimony reflects that since the one time examination by Dr. Chan the respondents have refused to pay for any additional medical care.

Claimant testimony reflects that he is pursuing a third party claim. Claimant noted that he has also applied for been approved for Social Security disability benefits based on the injuries growing out of the November 24, 2004, accident. As a consequence of the afore the claimant has been seen by Dr. Gregory Ricca, a Jonesboro neurosurgeon. Claimant notes that Dr. Ricca has made a surgical recommendation relative to his cervical spine. The testimony of the claimant reflects that he saw Dr. Ricca in February 2007. Claimant testified that has been seen by Dr. James Park, a Jonesboro chiropractic physician, on at least two (2) occasions. Claimant explained that the visits to Dr. Park were in furtherance of his efforts to be seen by Dr. Ricca.

On May 24, 2007, claimant underwent a functional capacity evaluation at HealthSouth, in

Little Rock. On May 29, 2007, claimant was seen by Dr. Yuan at NEA Clinic in Jonesboro. Claimant maintains that Dr. Yuan recommended some initial diagnostic testing, to include a nerve conduction study and an EEG, as well as an MRI of his head. The testimony of the claimant reflects that at the time of his examination by Dr. Yuan he was experiencing symptoms which included headache, numbness, pain down his neck and back, and numbness in his hands and feet. Claimant noted that the symptoms has not improved.

Claimant testified that one of the symptoms that has been persistent since the November 24, 2004, accident is a problem with his equilibrium. In describing the afore, claimant notes that he is “dizzy headed” and “stumbly footed”. Claimant acknowledged that in 2003, prior to November 24, 2004, accident, he was seen by Dr. Monty Barker in Mountain Home, a ear, nose and throat specialist. At the time claimant relayed experiencing some progressive severe tilting that was accompanied with nausea and vomiting sometimes.

Claimant elaborated regarding the 2003 episode of severe tilting and accompanying nausea and vomiting:

Actually the episode that you are referring to in September[2003] happened in June [2003], I think it was. When I went to the ER with this.

The deal was, I went to my regular doctor. He wasn't in. He was running the ER at the hospital. I went across the parking lot to the ER. Whenever I had this episode in June I mean it was just like flying an airplane. I mean I had to sit in the middle of my car because it felt like the car was going, banking like an airplane turning. You look at everything and everything just kind of laid down, you know. Really I've never been that dizzy headed in my life. (T. 21).

Claimant maintains that the above symptoms has ceased prior to the November 24, 2004, accident. Claimant explained that he had been seen by Dr. Paul Kauffam for the complaints:

No, this is before the accident. This is back whenever I was having tilty world. He said it was resolved. I went to Dr. Barker there in Mountain Home mainly to have my ears checked. I've got hearing loss to some extent. And he looked at my ears and says the problem was resolved in September [2003] about the, you know. This is after the fact, this was two months after I missed my work at OMC because of the dizzy spell. During the dizzy spell I only missed two days of work. (T. 22).

In describing his symptoms since the November 24, 2004, accident, the testimony of the claimant reflects, regarding the progression of same:

Yes, sir, I can. I started having a headache and my neck was bothering me. Since then, the right side of my face is numb. My headache runs from about my eye level to my center point over to my left. In my headache it runs down the back of my head into my left shoulder blade, down the left side of my back to right above my waist. My ring finger and my little finger on both hands are numb. The three middle toes on both feet are numb. I have pain in my right testicle. My wrist and around my hand with my thumb area bother me. I can't pick up anything where I have to leverage with my thumb as a counterbalance, like using a pot, you know, handle. I have dizzy spells but they are not, and I stumble like I'm, like I've had too much alcohol. I mean I can't function in a straight line. (T. 25-26).

Claimant distinguished his current symptoms attributable to the November 24, 2004, accident from those he previously experienced:

Well, whenever I had this episode in '03. Everything just laid over. My eyes would kind of flutter to my right or something other. This here is just, my head feels like I've got water in my ears or something other. I don't know. It's hard to explain. But it's totally two different sets. (T. 26).

Claimant maintains that since shortly after the accident he has had to utilize a cane to assist in walking. Claimant added regarding the use of the cane:

Yes, sir, shortly after the wreck. Just to keep from bouncing around and having to feel myself across walls and stuff like that I use my friend [cane]. (T. 26).

Claimant noted that he has fallen a couple of times, however has not injured himself in doing so

to the extent that he had to seek medical treatment. Further claimant testified that he sometimes has trouble walking forward. Claimant explained, regarding the afore, that while he knows that he need to walk forward, he will instead go backwards. Claimant's testimony reflects that his symptoms have remained about the same since their onset shortly following the November 24, 2004, accident.

The testimony of the claimant reflects that he has access to medical treatment through Medicare, however he is not currently seeing his family doctor. Claimant testified that the last time he was seen by a physician was when he went to Dr. Ricca, approximately six months earlier. Claimant concedes that he has been going to his regular doctor for treatment of his hypertension. The testimony of the claimant reflects that the only prescription medication he is taking is for the hypertension

The claimant testified that he took a couple days off for Thanksgiving following the November 24, 2004, accident. Claimant testified that when he attempted to return to work driving he was unable to do so and that his wife had to come get him. In explaining why he was unable to drive, claimant testified:

I just felt so lousy. I mean I was just hurting all over and I just didn't feel like driving. (T. 29).

Claimant asserts that he was at work for two to three hours before his wife came to pick him up. Claimant's testimony reflects that he drove and picked the clients up at the group home and took them to the Martin Center, however he did not take them back to the group home. Claimant has not worked since the above effort following the accident.

During cross-examination claimant's testimony reflects that in addition to being belted in

at the time of the accident, the seat of the vehicle was a high back type seat. Claimant has no knowledge of hitting his head on anything during he accident. Claimant testified that there were approximately eight (8) clients on the vehicle at the time of the accident. Regarding any injury to the clients on the vehicle growing out of the accident claimant testified:

I don't know. We didn't - - as far as I know, no one was taken to the hospital. After the accident, I didn't notice any badly damaged people. They are fairly retarded. They are functional but they are retarded, they are challenged. (T. 30-31).

Claimant testified that he did not know whether either one of his knees was hurt in the November 24, 2004, accident. Claimant offered that he may have "jammed one" in the process of bracing during the accident. Claimant testified that he is currently having a little bit of trouble with his right knee. Claimant concedes that he has had prior problems with one of his knees. Indeed, claimant testified that he had a torn meniscus in his left knee. The medical records reflect that in 2000 claimant had problems with his right knee. Claimant testified that in the present claim, he is not complaining about his knees. (T. 31).

Regarding the spontaneous of dizziness in the past, claimant acknowledged that the time frame could have been July 2003, as reflected in the medical records, rather than June 2003. The July 9, 2003, emergency room report reflects that the claimant provided a history of an onset of the dizziness at 7:00 a.m. Claimant testified:

It started earlier than that I'm sure. But I got up and started trying to get to the hospital about seven. My wife had already gone to work. (T. 32).

Claimant maintains that between the July 2003, onset and the September 2003, visit to Dr. Barker he only missed two days from work. Claimant confirmed the history in the clinic notes of

Dr. Barker of a “past otologic history is positive for chronic motion sensitivity”. Claimant asserts that he told Dr. Barker that he never could walk a railroad track. Regarding the afore claimant testified:

Well I, my balance is good enough to motivate but I can't balance myself on a railroad track. (T. 33).

The claimant does offer in terms of any problem he had with his balance prior to July 2003, his military service and his employment with Brown and Root:

Not to any extent. I had worked in, for Brown and Root in the pipe racks and, you know, walking everything from a six inch to a 24 to a 48 inch pipe you've got to be able to walk on them. And I did that for about a year or so - -

- - as a welder's helper back in '71, right after I got out of the military. You know, if you're working in a pipe rack you don't want to make a misstep and come out of it. (T. 33).

Claimant concedes that he has had ringing in both ears since childhood. Claimant observed regarding the afore, however:

As far as I know, yes, sir. Since the accident, it has increased 10, 12-fold, I think. It used to be where a radio would drown it out. There's no way in the world a radio would drown it out now. (T. 34).

Claimant acknowledged that at the time of his December 2, 2004, visit to Dr. Kauffman following the November 24, 2004, motor vehicle accident his dizziness symptom may not have yet manifested:

I, possibly not. But it did come on afterwards, like I said. It started in my head, my neck pain coming down my left side into my shoulder blade and as time progressed everything happened, you know, the numbness in the hands and stuff. (T. 34).

The December 2, 2004, and December 7, 2004, reports of Dr. Kauffman, relative to visits by the claimant, do not reflect symptoms of dizziness, shoulder pain or numbness. Likewise a followup

visit to and report by Dr. Kauffman of December 13, 2004, is also devoid of complaints other than neck pain and stiffness. Claimant maintains that by December 13, 2004, he was also having complaints or problems with dizziness and low back pain in addition to the neck pain and stiffness.

The claimant's testimony reflects that he had 22 visits to physical therapy. A December 17, 2004, physical therapy note does reflect complaint of rhomboids and mid trapezius - - shoulder pain. Claimant asserts that the physical therapy did not help his complaints. Claimant offered that the physical therapy "instigated more problems". (T. 36). Claimant was seen by Dr. Kauffman on January 3, 2005.

Claimant testified that he was referred to Dr. Green by respondents. Claimant was seen by Dr. Green on February 25, 2005. Claimant explained that while Dr. Green had a physician assistant, Alice Mills, he was examined by Dr. Green. The testimony of the claimant reflects that he provided his medical history to Ms. Mills, the PA. Claimant's testimony reflects that he saw Dr. Green on two or three occasions, however he is uncertain if he only saw Ms. Mills on the first visit. Claimant testified that he did not recall if he informed Ms. Mills, PA, of his dizziness/balance problem.

Regarding the conditions that prevents him from working, claimant's testimony reflects:

I would say the dizziness, the constant headache, the pain in my neck, my shoulder, down in my waist. There's things I can't do because of the pain in my wrists and my thumbs. I have trouble motivating, I think because, some of the problem is because of the numbness in my feet. (T. 38).

Claimant concedes that he had previously had pain in his wrists, prior to the November 24, 2004, accident:

Yes, sir, I have had some, we was doing, working on computers. And I wore a hand brace. And they took me off of the job and put me on a, in another part of the plant where I wouldn't be using my wrists in such a manner. (T. 38).

Claimant denies ever having prior complaints with his feet. Regarding any unusual sensations in his legs, claimant testified:

Well, I've got a place on my left lower calf that it feels like a razor burn or something. It feels like a hot spot. (T. 39).

Claimant denies that at the time he fell and hurt his back in 1999, that he had any odd sensations in his legs.

The claimant's testimony reflects that in his present physical condition, which he attributes as residuals of the November 24, 2004, accident, he is unable to perform any of prior manual labor jobs. Further, claimant testified that he is unable to perform the job that he performed at the sleep lab explaining:

Well, for one thing what I was doing was manual labor. I mean, I was the man that went up there and did the hookups and would help people on and off the pot. The rest of them were ladies and one was pregnant about half the time I was there. She couldn't do any lifting. She couldn't do anything like that. (T. 39).

While the claimant testified that he would prefer to work outside he added that the same was not the reason he has not applied for work:

No, sir, that's not the reason. I don't feel like I'm capable of going out in the public and, you know, selling lumber or loading shingles or being a welder's helper. (T. 40).

The testimony of the claimant reflects that he would be afraid to attempt to perform his old job with respondent-employer due to the physical limitation and restrictions regarding his neck. Claimant acknowledged that he continues to his personal vehicle.

Claimant testified that he has not pursued further medical treatment because he is uncertain who would be responsible for paying for the bill. Claimant is uncertain if he has access to Medicare or Medicaid although he is receiving Social Security Disability benefits. Claimant expressed the belief that he needs additional medical care, explaining:

Well, I 'd like to know what in the world is going on. You know, why am I having the problems? What would it take to fix it, you know. All I can say is, if you've got workmen's comp, don't get hurt on the job, man. (T. 43).

Claimant acknowledged that while he has access to a governmental agency that may pay for the tests recommended by Dr. Ricca which may determine the source of his complaints, claimant explained the reason he has not availed himself for the test:

Well, I agree with you but they're not responsible for the problem that I'm having. (T. 44).

The claimant has not received any indemnity workers' compensation benefits since August 2005. Claimant testified that to his knowledge he has not been released to return to work by any physician since he was seen by Dr. Kauffman in August 2005, and taken off work.

Ms. Carol Jean Morris, a six-year employee of Network of Community Options at the Martin Center, is currently employed as head instructor. In November 2004 Ms. Morris held the position of Pre-vocational trainer and was the claimant's supervisor. Regarding the clients on the van at the time of the November 24, 2004, accident Ms. Morris testified that their disabilities included some cerebral palsy and that everyone there had a diagnosis to some extent of mental retardation, and autism. Ms. Morris' testimony reflects that to her knowledge none of the clients were injured in the accident.

The earliest medical in the record subsequent to the claimant's November 24, 2004,

motor vehicle accident is a December 2, 2004, chart note of Dr. David Kauffman. A history of the motor vehicle accident is recited as the basis for the visit, with corresponding neck pain. The claimant's injury was assessed as a cervical spine strain for which claimant was prescribed medication. (JX. #1, p. 12). Claimant remained under the care and treatment of Dr. Kauffman through January 3, 2005. While under Dr. Kauffman claimant was referred to physical therapy at Fulton County Hospital. Claimant underwent twenty-two (22) physical therapy sessions from December 17, 2004, through February 11, 2005.. (JX. #1, p. 29).

Dr. Kauffman's chart note of December 20, 2004, regarding the claimant reflects that the claimant was continuing to have myofascial cervical spine with intense spasm. (JX. #1, p. 18). A January 3, 2005, chart note of Dr. Kauffman relative to the claimant reflects that the claimant registered complaints of chronic neck pain, headaches and neck stiffness, which was assessed as myofacial cervical spine strain. The January 3, 2005, off-work note of Dr. Kauffman directed the claimant to remain off work until released by a specialist. (JX. #1, p. 21-22).

A February 25, 2005, report of Ozarks Neurosurgical Associates, LLC., reflects that the claimant was seen at that facility at the request of Dr. Kauffman as a consultation. During the February 25, 2005, visit, the claimant was seen by nurse practitioner Alice Mills, who worked under the supervision of Dr. K. Douglas Green. The February 25, 2005, report relative to the claimant's visit of the same date reflects, in pertinent part:

**HPI:**

He complains of neck pain. This is an acute episode with no prior history of neck pain. The event that precipitated this pain was a motor vehicle accident (he was struck from behind; he was the driver; was wearing a seat belt; 11/2004 while on the job). The patient can described his pain. The location is primarily in the bilateral, posterior cervical

spine. He characterizes it as constant, severe, burning, and grating. The pain radiates to the posterior skull, scapular area (bilateral), shoulder (bilateral), upper arm (bilateral), elbow (bilateral), forearm (bilateral). Associated symptoms include numbness in the hands, tingling in the hands, nausea, vomiting, sleeping disturbance, disruption of normal activity (driving; walking), neck stiffness that is persistent, crepitus, headache, radicular bilateral arm pain and dizziness, staggering, "feels like I'm walking on a 30 degree slant". He denies changes in bowel function or changes in bladder function. The pain worsens with head movement, lifting, pushing heavy objects, and pulling a load. He notes some pain relief with rest. He states that he has tried medications such as an IM steroid injection with poor results; He states that he has tried Physical Therapy with good results primarily from the e-stim treatments. His last treatment was 2 weeks ago. He states that no Pain Clinic treatment has been tried.

He complains of back pain. The event that precipitated this pain was the MVA described above. The location is primarily in the bilateral thoracic spine and in the bilateral lumbar spine. He characterizes it as intermittent, moderate in intensity, dull, and aching. The pain radiates to the foot (right plantar), toe (s) (right second, right third, right fourth). Associated symptoms include unsteady gait. The pain worsens with sitting or lying for prolonged periods. He has not found anything that helps relieve the pain. He states that he has tried medications such as indicated above; He states that no Physical Therapy has been tried; he states that no Pain Clinic treatment has been tried. (JX #1, p. 30).

Following the claimant's physical examination during the February 25, 2005, visit, additional diagnostic studies were recommended relative to his neck pain, low back pain and imbalance.

The claimant was directed to remain off work until his follow-up visit. (JX. #1, p. 34). On April 19, 2005, the claimant underwent the afore diagnostic studies - which included CT scan-cranial, MRI of the lumbosacral spine, MRI of the cervical spine, x-ray-cervical spine and x-ray-lumbosacral spine- at Baxter Regional Medical Center. (JX. #1, p. 36-40).

The claimant was seen in follow-up by nurse practitioner Mills on April 29, 2005, with the results of the diagnostic studies being detailed in the report:

## **ASSESSMENT:**

722.71 Intervertebral disk disorder with myelopathy, cervical region  
Patient with persistent neck and bilateral upper extremity complaints following a motor vehicle accident. Imaging studies demonstrate no definite fracture or areas of significant neural impingement. C5-C6 level does appear to demonstrate a disc osteophyte complex lateralized toward the right, although it is not felt adequate to explain all symptoms. Recommend further conservative treatment interventions with consideration of elector-diagnostic studies if symptoms fail to improve. Additional CT imaging is recommended to better evaluate area of occipitocervical junction for abnormalities that could contribute to patient's widespread neurologic complaint. No surgical treatment recommended at this time.

722.10 Displacement of lumbar intervertebral disc  
Persistent low back and lower extremity complaints following a motor vehicle accident. Imaging studies demonstrate no obvious fracture or areas of significant neural impingement. Right L5-S1 disc herniation, could be an acute finding but does not appear to be adequate to explain all reported symptoms. Discussed treatment options with patient with recommendations made for a trial of conservative treatment. No surgical intervention recommended at this time. As above.

### 781.2 Imbalance

Uncertain etiology. CT scan of the head did not identify obvious source for symptoms. Occipitocervical junction is not felt to have been adequately evaluated with imaging studies to date. Recommend CT scan with reformatted images as discussed above.

### 719.46 Knee pain

Patient complains of right knee pain and desires further evaluation. Plain film evaluation seems reasonable although physical exam and history do not suggest acute knee injury related to motor vehicle accident. (JX. #1, p. 42).

The April 29, 2005, report reflects was prescribed Neurontin, scheduled for a CT scan Cervical spine with thin axial slices from the Foramen Magnum through C2 with Coronal/Sagittal reformatted images, and referred to Pain Treatment Associates. (JX. #1, p. 43).

The follow-up May 18, 2005, CT of the cervical spine disclosed degenerative changes of the cervical spine especially severe at C5-C6 and C6-C7. (JX.. #1, p. 45). Claimant was seen in

follow-up at Ozark Neurosurgical Associates on May 20, 2005, at which time a release to return to modified duty effective May 23, 2005, was entered. (JX. #1, p. 44). Claimant was seen on June 7, 2005, at ONA. The report relative to the visit reflects, in pertinent part:

CT films demonstrate disc osteophyte complexes at C5-C6 and C6-C7 levels without acute disc herniation apparent. Some sclerotic changes/ligamentous thickening at C1-2 also suspected, possibly representing remote trauma. Recommend Bone Scan to exclude a more acute process. If Bone Scan unremarkable and no significant improvement in symptoms noted with Neurontin and / or Pain Clinic interventions, consider scheduling electrodiagnostic studies.

\* \* \*

Persistent disequilibrium with gait disturbance. If no significant findings noted on Bone Scan, consider referral to ENT/Neurology. (JX. #1, p. 48).

Pursuant to the referral of ONA the claimant was seen at Pain Treatment Associates, in West Plains, Mo., on June 20, 2005. (JX. #1, p. 50-53). Claimant underwent an epidural steroid injection on June 20, 2005. The Epidural Steroid Injection Report reflects that claimant was scheduled for another ESI on June 30, 2005. (JX. #1, p. 53). A June 21, 2005, Medical Treatment Report from ONA noted that the claimant was unable to return to work. (JX. #1, p. 54).

On August 4, 2005, the claimant was evaluated by Dr. Stephen J. Eichert, a Jonesboro osteopath, at the request of respondent. The August 4, 2005, report of Dr. Eichert relative to his evaluation of the claimant reflects, in pertinent part:

I examined Jack Cole in the presence of his wife today. . . . on or about November 24, 2004. At that time he was restrained driver driving a van. He was stationary and getting ready to make a turn. He was struck from behind by a truck. There was no loss of consciousness. Several days later he noted a crick in his neck and a headache. The headache was on the left side. It burns on the right side of the face. There is pain in the left suboccipital

region, neck, and superior thoracic region. His wrists hurt, his thumbs hurt, he has pain at the beltline, three toes on the right are numb, and he has pain in the right foot. He has some pain in his right testicle, groin, and leg. His lip is numb. He feels as if there is pressure over him forcing him down. He has poor balance. Current medicines are Flexril, Hydrocodone, Meclizine, and Toprol. . .

On his physical exam his height is 6' and his weight is 185 lbs. He walks with a cane and switches hands with it easily. Despite this, Romberg's test is negative. Heel and toe walking are performed well. Neck is supple. Weber's localizes to the right and Rinne's is physiologic. Extraocular movements are full. Fundi are unremarkable. Visual fields show inconsistencies. Deep tendon reflex are brisk. Plantar responses are flexor. There is no focal weakness. Straight leg raising is unremarkable. MRIs of his lumbar spine and cervical spine performed at Baxter Regional Medical Center on 4/19/05 show minimal degenerative change at each level.

Jack Cole has a variety of complaints related to a motor vehicle accident in November of 2004. There are no objective neurologic abnormalities.

Mr. Cole is at MMI. No further medical treatment is warranted. (JX. #1, p. 55).

Dr. Eichert's Medical Treatment Report of August 4, 2005, reflects that the claimant was released to full duty with no restriction. (JX. #1, p. 57).

The claimant returned to Dr. Kauffman following the August 4, 2005, visit to Dr. Eichert.

A August 19, 2005, correspondence from Dr. Kauffman relative to the claimant reflects:

Jack Cole continues to have objective neurological abnormalities as a result of a MVA on 11/24/04. It is my professional opinion that he is still disabled and deserves a complete neurological exam by a board certified medical doctor (not an osteopath). (JX. #1, p. 58).

The testimony of the claimant reflects that following August 4, 2005, the report of Dr. Eichert respondents ceased payment of workers' compensation benefits, both medical and indemnity.

Pursuant to claimant's a change of physician request on July 5, 2006, a Change of Physician Order was filed by the Medical Cost Containment Department of the Commission

change the claimant treating physician from Dr. K. Douglas Green to Dr. Patrick Chan, a Searcy neurosurgeon. (JX. #1, p. 60-61). In accordance with the afore the claimant as seen by Dr. Chan on August 9, 2006. The August 9, 2006, report of Dr. Chan reflects that he performed a physical examination of the claimant during the visit. After reciting the results of the physical examination along with the results of the April 19, 2005, MRIs of the claimant's lumbar and cervical spine, Dr. Chan prescribed anti-inflammatories and pain medication to include Voltaren, Robaxin, and Medrol Dose Pak, recommended another MRI of the cervical spine and of the lumbar spine. The August 9, 2006, report reflects that Dr. Chan planned to see the claimant in follow-up after the MRIs. Respondents declined to authorized further medical treatment for the claimant as not being reasonably necessary.

On November 3, 2006, claimant was seen by Dr. James Park, a Jonesboro chiropractic physician, for complaints attributable to the November 24, 2004, accident. The complaints relayed by the claimant to Dr. Park are in accordance with those previously registered by the claimant with respect to this cervical spine, upper extremity complaints, low back and lower extremity complaints and difficulty with his balance. The November 3, 2006, office note of Dr. Park details the claimant's medical treatment in connection with the November 24, 2004, accident. The November 3, 2006, Office Notes of Dr. Park further reflect regarding the claimant:

The patient walks with a cane due to altered gait. Postural evaluation indicated a head forward rounded shoulder type of posture and the patient evidently had great difficulty sitting a neutral position relative to his upper body and head and neck. He had to be asked consistently to sit up straight and hold his head in a neutral position. He stated that it was far more comfortable to flex forward than to assume a neutral posture. He did not appear to be in acute distress.

\* \* \*

I have reviewed Mr. Cole's records from Drs Douglas Green, Patrick Chan, Stephen Eichert and David Kauffman as provided me. It appears that Drs Green and Chan's impression was that Mr. Cole has sustained an intervertebral disk disorder involving the cervical and lumbar spine with associated numbness and paraesthesias of the upper and lower extremities as a result of his work related auto accident. Chan reported in the plan portion of his report on August 9, 2006 that he was going to schedule another MRI of the cervical and lumbar spine, but I have not been provided a radiology report to know if those studies were performed. Therefore it is difficult for me to know conclusively if there are disk lesions present currently. However, based on his current subjective complaints and objective finding from my exam it appears obvious that the patient continues to experience significant residual effects from his auto accident. Dr. Chan seem to agree with Dr. Eichert that Mr. Cole was at MMI but went on to state that he was permanently disabled.

I reviewed my exam findings with Mr. Cole and explained to him my impression of his current status, particularly in regard to his residual effects. It would appear based on the length of time since the accident that he is at MMI. However, I have reservations that accepting at this point that there is nothing else to be done for him considering the level of his symptomatology and the significant way it is affecting his activities of daily living. Due to my reservations I would recommended that he be evaluated by Dr. Gregory Ricca, a local neurosurgeon. (JX. #1, p. 73-75).

In accordance with the recommendation of Dr. Park the claimant was seen by Dr. Gregory Ricca, a Jonesboro neurosurgeon, on February 19, 2007. Dr. Ricca's report regarding his evaluation of the claimant reflects a detailed history/description of the complaints claimant attributes to the November 24, 2004, accident. The February 19, 2007, report of Dr. Ricca reflects, in pertinent part:

GENERAL: WDN gentlemen in NAD. HEENT: Normocephalic, atraumatic. EOMI, PERLL. NECK: Supple with FROM. No adenopathy. No JVD. No thyromegaly. Negative Spurling's and Brachial Plexus Stretch Signs Bilaterally. . . . .EXTREMITIES: Grossly normal with FROM. BACK: nl lordosis with FROM. GAIT: is very unsteady. Mr. Cole had very poor balance. SLR is negative bilaterally. FABER is negative bilaterally. NEUROLOGIC: Mental status is normal. CN II-IV and VI-XII grossly intact. Mr. Cole has mild diminished PP in the V2

distribution on the right. MOTOR: 5/5 throughout the UEs and LEs including deltoids, biceps, triceps, ECRL, Finger extension, Finger flexion, Grip, Intrinsic, hip flexion/extension, knee extension/flexion, dorsiflexion, plantarflexion, and EHL. SENSORY: Patchy diminished PP in the UEs and LEs, affecting the LEs more. Intact vibratory sense all extremities. CEREBELLAR: poor coordinated movements and poor RAM in all extremities. Romberg is positive and Mr. Cole tends to fall to the right. REFLEXES: 1-2+ and symmetric in the deltoids, biceps, brachioradialis, KJs and AJs. Babinski and Hoffman signs are absent.....

STUDIES: I reviewed the AP and Lateral C-spine with odontoid view done at Fulton County Hospital in Salem. These films are not dated. These show mild degenerative changes with loss of disc space height at C5-6. There is also a slight spondylolisthesis of C4 on C5. This is not impressive. The remainder of the study is normal. I reviewed the Cervical Flexion/Extension done at Baxter Regional on 4/19/5. There is mild anterior subluxation of C4 on C5 with mild posterior widening. This is abnormal. There is mild diminished posterior disc space height at C5-6. I reviewed the Cervical MRI done at Baxter Regional on 4/19/5. This shows mild spondylosis C5-6 eccentric to the right with facet arthropathy on the right and mild foraminal stenosis. I reviewed the AP and Lateral Lumbar X-rays with Flexion/Extension done at Baxter Regional on 4/19/5. This shows loss of disc space height at L5-S1. There is no instability. I reviewed the Lumbar MRI done at Baxter Regional on 4/19/5. This shows mild DDD at L3-4 and L4-5 with loss of water content. There is also loss of disc space height at L5-S1 with a mild disc bulge. No neural compression is seen. . . . .

DISCUSSION: I talked at length with Mr Cole and his spouse and reviewed all of the above. His symptoms are difficult to figure out. I suspect his marked dizziness is from dislodgement of an otolith. I think this needs to be evaluated by an ENT specialist. His neck pain could be from the mild instability of C4 on C5. If this is so, then this could be treated with an ACDF. The instability is mild and I recommend that reasonable nonsurgical Rx be exhausted first. I cannot explain the tingling in his hands and feet but recommend an EMG/NCV of the extremities to better evaluate this. His right burning face pain could be related to the trigeminal nerve. If Mr. Cole were to pursue this further than I recommend the following: 1) ENT evaluation for his dizziness and tinnitus. . . 2) EMG/NCV of all 4 extremities. . . 3) Current cervical Flexion/Extension X-rays. . . I also recommend that Mr. Cole try Neurontin but not Lyrica. . . . . Based on his examination, I do not believe he can work at this time because of his very unsteady gait. (JX. #1, p. 80-81).

The claimant was seen by Dr. Park following the February 19, 2007, evaluation by Dr. Ricca. A February 28, 2007 Office Note of Dr. Park reflects that his office obtained the flexion-extension x-rays of the claimant cervical spine as recommended by Dr. Ricca. (JX #1, p. 82).

On May 24, 2007, the claimant underwent a functional capacity evaluation at HealthSouth in Little Rock, pursuant to the directions of respondents. The report concluded that the claimant demonstrated the ability to perform work in the sedentary category according to U.S. Department of Labor (DOT) Work Classification Level in an 8 hour time period. The Functional Capacity Evaluation report reflects, in pertinent part:

. . . The client self limited at occasional levels of positional tolerance except crouching and overhead reach, which he attempted but was unable to maintain the positions. The client demonstrated limited abilities in the light work category as he self limited occasional levels of dynamic lifting 10 pounds shoulder to overhead and inability to walk beyond occasional. He also self limited at occasional levels of dynamic lifting at 20 pounds floor to knuckle, and 15 pounds knuckle to shoulder and 100 foot lift and carry. All limitations due to increased complaint of neck, back and leg pains with appropriate increased in heart and respiratory rates, and increased ataxia with transitional movements. The client was consistent on 24 of 26 static validity tests. (JX. #1, p. 83).

On May 29, 2007, the claimant was seen at the NEA Clinic -Neurology by Dr. Yuanyuan Long, pursuant to a referral of Dr. Ricca. After reciting the claimant's complaints attributable to the November 24, 2004, accident, the May 29, 2007, report of Dr. Long reflects, in pertinent part:

He has had numerous workup, including MRI of cervical spine, lumbar spine, MRI of the femoral bones, knee joints, CT of the spine, and they are all negative or unremarkable. Some degenerative change was seen in both the cervical spine and lumbar spine of the discs. Also, he has mild disc bulging seen. He has mild foraminal narrowing seen in the lumbar spine, but no nerve impingement, cord compression or spinal stenosis.

The patient has not been working since the accident. He has been applying for Workman's Compensation since then. The patient has been seen by

neurosurgeons, including Dr. Green in West Plains, Dr. Chan in Searcy, Dr. Eichert at St. Bernard's Medical Center, Dr. Ricca in Jonesboro and Dr. Abraham in Mountain Home. So far, no major or serious objective neurological deficit has been identified.

The patient is referred here for further evaluation for symptoms and possible workup.

Review of systems is positive for headache, ringing in the ears, numbness, trouble walking, neck pain and back pain, daytime drowsiness, snoring and insomnia. No fever, chills, diarrhea, sweating or shortness of breath.

#### ASSESSMENT:

1) This is a 58-YO white male with multiple neurological symptoms that occurred after a motor vehicle accident. The symptoms include constant headache, tingling in the right face, dizziness and tinnitus (this was old but got significantly worse after the event), neck pain, shoulder pain, tingling and numbness of the finger and pain radiating to the thighs with multiple sensation abnormalities. The patient also has some gait instability.

#### PLAN:

- 1) Recommend EMG/NCV to evaluate peripheral nerves integrity.
- 2) EEG to rule out possible seizure activity, especially given the patient's episodic projectile vomiting, numbness and tingling in the face, and change in character of the headache from time to time.
- 3) Recommend MRI of the head to rule out possible intracranial pathology, because of the constant headache and worsening of the tinnitus and dizziness.
- 4). Also recommend checking hemoglobin A1C, vitamin B-12, vitamin B-6, vitamin E, sed rate, CBC and BMP.
- 5) ENT consult to rule out ear problem.
- 6) Further recommendations will be based on the result from the above tests accordingly. The patient will let us know if he would like to go further to do the test. (JX. #1, p. 102-103).

After a through consideration of all to the evidence in this record, to include the

testimony of the witnesses, review of the medical records and other documentary evidence, application of the appropriate statutory provision and case law, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On November 24, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On November 24, 2004, the claimant earned wages sufficient to entitle him to workers' compensation benefits at the rate of \$189.00/\$154.00, for temporary total/permanent partial disability.
4. On November 24, 2004, the claimant sustained an injury arising out of and in the course of his employment.
5. The claimant was temporarily totally disabled for the period beginning November 25, 2004, through August 4, 2005, and continuing thereafter through the end of his healing period, a date to be determined.
6. The evidence preponderates that the claimant remained in need of medical treatment in connection with his compensable injury of November 24, 2004, subsequent to August 4, 2005.
7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of November 24, 2004.
8. Pursuant to a July 5, 2006, Change of Physician Order, Dr. Patrick Chan, a Searcy neurosurgeon, was designated the claimant's treating physician. Subsequent to the August 9, 2006, initial visit by the claimant, Dr. Chan was rendered unavailable to provide medical

treatment to the claimant. Dr. Gregory Ricca, a Jonesboro neurosurgeon, has seen, examined, and recommended a course of medical treatment in connection with the claimant's November 24, 2004, compensable injury, and is herein designated the claimant's authorized treating physician henceforth.

9. The respondents have controverted the claimant's entitlement to medical and indemnity benefits subsequent to August 4, 2005.

### **CONCLUSIONS**

There is not a dispute that the claimant was involved in a motor vehicle accident on November 24, 2004, while within the course and scope of his employment with respondent. The claimant's claim was accepted as compensable and respondents paid corresponding temporary total disability and medical benefits to and on behalf of the claimant. Save for the cost associated with a one-time visit to Dr. Patrick Chan on August 9, 2006, pursuant to a Change of Physician Order, respondents ceased the payment of workers' compensation benefits in this claim on August 4, 2005.

Claimant maintains that he continues to experience residuals from the injuries sustained in the November 24, 2004, motor vehicle accident, such that he remains within his healing period and in need of continued medical treatment. Claimant seeks corresponding temporary total disability and medical benefits subsequent to August 4, 2005, as well as controverted attorney fees. Respondents maintain that the claimant has been paid all appropriate workers compensation benefits in connection with the minor injury suffered in the November 24, 2004, accident.

The present claim is one governed by the provisions of Act 796 of 1993, in that the

claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The claimant commenced his employment with respondent as a driver on June 4, 2004, and successfully discharged his assigned duties through November 24, 2004, when, while within the course and scope of his employment, he was involved in a motor vehicle accident. Claimant provides credible testimony regarding his prior health history, which is supported by the medical reports in the record. Specifically, approximately fourteen months prior to the November 24, 2004, compensable motor vehicle accident, claimant experienced a single episode of dizziness which, when seen by an ENT specialist, Dr. Monty R. Barker, approximately 2 to 3 months later had completely resolved and was assessed as most likely secondary to labyrinthitis type of pathology. Claimant also acknowledged suffering from tinnitus. It is noteworthy that the tinnitus was stable and nonfluctuating at the time of the September 10, 2003, visit to Dr. Barker.

Neither of the above complaints adversely impacted the claimant's employment with respondents prior to the November 24, 2004, motor vehicle accident. Claimant previously sustained injuries to his low back and neck in a November 1999, work-related accident. Claimant also suffered a work-related injury to his right knee on July 20, 2000. Further, in June 2001, claimant sought treatment relative to his left knee, and underwent surgery regarding same on June 29, 2001.

The record is devoid of the claimant receiving medical treatment for any complaints between the time of his September 10, 2003, visit to Dr. Barker, the ENT specialist, and his June 4, 2004, employment by respondents. Claimant suffered injuries, the admitted November 24, 2004, compensable motor vehicle accident. Claimant first received medical treatment for

complaints growing out of the November 24, 2004, motor vehicle accident on December 2, 2004.

A review of the medical in the record reflects that the claimant's complaints attributable to the injuries growing out of the November 24, 2004, accident have been consistent. Further, the evidence reflects that the claimant's symptoms progressed from the initial complaints of neck pain to complaints of shoulder, upper extremity, low back and lower extremity complaints. The credible evidence further reflects that the claimant's tinnitus worsened subsequent to the November 24, 2004, motor vehicle accident.

While the claimant was restrained by seatbelt at the time of the November 24, 2004, motor vehicle accident, there is credible testimony which reflects that the impact of the accident was such as to result in the claimant having loose teeth, which eventually were removed.

The respondents paid medical and temporary total disability benefits in this claim until the claimant was seen by Dr. Stephen Eichert, at their request, on August 4, 2005. Prior to the claimant's August 4, 2005, visit to Dr. Eichert, his medical treatment was being provided by and at the directions of Dr. K. Douglas Green. At the time of the claimant last visit to Dr. Green on June 21, 2005, a bone scan recommended as well as a x-ray of the right of the right knee. Further, the claimant was provided a prescription for narcotic medication. Finally, Dr. Green noted that the claimant was unable to return to work. Dr. Green did not find that the claimant was at maximum medical improvement.

Dr. Eichert's August 4, 2005, report does not dispute the claimant's complaints, which had their onset subsequent to the November 24, 2004, motor vehicle accident. Dr. Eichert simply concluded that there were "no objective neurologic abnormalities", and as such concluded that the claimant was at maximum medical improvement with no further treatment being warranted.

The claimant was again seen by Dr. David Kauffman subsequent to his August 4, 2005, evaluation by Dr. Eichert. Dr. Kauffman who had treated and directed the claimant's medical treatment initially following the November 24, 2004, accident opined that the claimant was still disabled and in need of a complete neurological examination by a board certified medical doctor rather than an osteopath as was Dr. Eichert.

Claimant petitioned the Commission for a change of treating physician and was granted a one-time change to Dr. Patrick Chan, a Searcy neurosurgeon. Dr. Chan examined the claim on one occasion and recommended additional diagnostic studies as well as prescribed medications. Respondents declined to provide further medical treatment to the claimant beyond the one-time visit to Dr. Chan. Dr. Chan did not declare that the claimant was at maximum medical improvement, only that it had been declared pursuant to the August 4, 2005, report of Dr. Eichert.

Since being denied access to follow up treatment with Dr. Chan, claimant has been seen by several other medical provider. Dr. Park, D.C., referred the claimant to Dr. Gregory Ricca, a Jonesboro neurosurgeon, who in turn referred the claimant to Dr. Yuanyuan Long, a neurologist. Dr. Ricca has recommended the same diagnostic studies that were recommended by Dr. Chan and Dr. Green, which respondents refused to authorize. The credible evidence in the record reflects that the claimant continues to experience debilitating symptoms attributable to the November 24, 2004, accident, which require further medical treatment. Claimant has undergone a Functional Capacity Evaluation which yield credible results regarding his physical limitations.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville*

*Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990); *Arkansas Power & Light Co., v. Scroggins*, 230 Ark.936, 328 S.W.2d 79 (1959). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

Respondents' assertions that the claimant's present complaints relative to dizziness, neck and low back pain, as well as upper and lower extremities, are attributable to recurrences of pre-existing non-work-related conditions are not persuasive. The evidence preponderated that the claimant was successfully discharging his employment duties with need for medical treatment, restrictions or limitations prior to the November 24, 2004, compensable motor vehicle accident. The claimant's symptoms relative to the afore complaints are the product of the November 24, 2004, compensable motor vehicle accident. An aggravation is a new injury from an independent incident. *Maverick Transportation v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). The aggravation of a pre-existing, non-compensable condition by compensable injury is itself compensable. *Hublely v. Best Western-Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The aggravation of a pre-existing condition by a specific work-related incident need not be the major cause of a claimant's disability in order to be compensable. *Farmland Insurance Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996).

The healing period is defined as that period for healing of an injury resulting from and accident. Ark. Code Ann. §11-9-102 (13). The healing period ends when the employee is as far restored as the permanent character of the injury will permit. *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998). Temporary total disability is that period within

the healing period in which a claimant suffers a total incapacity to earn wages. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

A claimant does not have to support a continuing need for medical treatment with “objective medical findings”. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997). Ark. Code Ann. §11-9-508 (a) mandated that the employer provide such medical services as may be reasonably necessary in connection with the employee’s injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W. 3d 764 (2000).

The evidence preponderates that the claimant remains within his healing period relative to the November 24, 2004, compensable accident and correspondingly entitled to both temporary total disability and medical benefits. Claimant was not released as having reached maximum medical improvement at the time he was last seen by his treating physician, Dr. Green, on June 21, 2005. Claimant had been referred to Dr. Green by Dr. Kauffman, who provided and directed the claimant’s medical care relative to the November 24, 2004, compensable motor vehicle accident beginning December 2, 2004. Claimant was seen by Dr. Kauffman on August 19, 2005, following his one time August 4, 2005, respondent-directed visit to Dr. Eichert, at which time he opined that the claimant required further medical treatment and was unable to return to work.

At the time of the claimant one-time visit to Dr. Patrick Chan pursuant to the Change of Physician Order, further medical treatment and diagnostic studies were recommended.

Regarding the claimant’s maximum medical improvement Dr. Chan simply noted that the same had been declared, presumably by Dr. Eichert. The respondents refused to authorize further medical treatment for the claimant following the August 4, 2005, visit to Dr. Eichert. Further, beyond the single one-time visit to Dr. Chan in accordance with the July 5, 2006, Change of

Physician Order, respondents refused to authorized additional medical treatment in accordance with the recommendations generated pursuant to the one-time visit.

The evidence preponderated that the medical treatment received by the claimant following respondents' refusal to authorize further treatment after the one-time visit to Dr. Chan, was reasonably necessary in connection with the claimant's November 24, 2004, compensable injury. The afore treatment include that of Dr. Park, Dr. Ricca, and Dr. Long. The claimant 's authorized treating physician, pursuant to the July 5, 2006, Change of Physician Order, Dr. Patrick Chan, is no longer available. Dr. Chan was not available to provide medical treatment to the claimant at the time the claimant was seen by Dr. Park, who referred claimant to Dr. Ricca. In light of the unavailability of Dr. Chan, who was a neurosurgeon, the claimant further medical treatment may be directed by and under care of Dr. Ricca, a Jonesboro neurosurgeon.

#### **AWARD**

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$189.00, for the period commencing November 25, 2004, and continuing through the end of his healing period, a date to be determined, as a result of his compensable injury of November 24, 2004. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the afore obligation.

Respondents are further ordered and directed to pay all reasonably necessary, and related medical, hospital, nursing and other apparatus expenses growing out of and in connection with the claimant's compensable injury of November 24, 2004, to include medical related travel.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809,  
until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**