

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**  
**CLAIM NO. E701819**

HAROLD MCENTIRE, EMPLOYEE	CLAIMANT
EMERSON ELECTRIC COMPANY, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT CARRIER/TPA	RESPONDENT

**OPINION FILED OCTOBER 8, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Harrison, Boone County, Arkansas.

Claimant was represented by the HONORABLE AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondents were represented by the HONORABLE BILL WALMSLEY, Attorney at Law, Batesville, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on September 12, 2007, in Batesville, Arkansas. A Prehearing Order was entered in this case on July 9, 2007. This Prehearing Order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing, as well as their respective contentions.

**Stipulations**

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including February 10 1997.
3. The claimant's total disability rate is \$348.00.

4. Claimant sustained an electrocution injury on February 10, 1997.

5. The claim has been accepted as a permanent and total claim.

6. At the time of the hearing, the parties stipulated that the claimant's entitlement to the requested physical therapy treatment has been controverted in its entirety. Therefore, if the claimant prevails in this matter, the respondents will owe a statutory one-half attorney fee.

7. At the time of the hearing, the parties also agreed that in the event the requested physical therapy treatment is awarded, the claimant should be ordered to undergo an evaluation in an attempt to determine whether or not an in-home physical therapy plan is a viable option. The parties will mutually agree on an acceptable source for this evaluation.

#### **Issue**

Additional medical treatment in the form of physical therapy treatment for claimant's right leg, back and shoulders.

#### **Contentions**

Claimant contends he is entitled to additional medical treatment.

Respondents contend that claimant has been paid, and is continuing to be paid all benefits to which he is currently entitled. The physical therapy requested by claimant is not reasonable and necessary as a result of his compensable injury.

The documentary evidence submitted in this case consists of

the Commission's Prehearing Order of July 9, 2007, which has been marked Commission's Exhibit No. 1. The claimant's Response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 2. The respondents' Response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 3. The medical packet submitted by the claimant was marked as Claimant's Exhibit No. 1. The Life Care Plan submitted by the respondent was marked as Respondents' Exhibit No. 1. The respondents' GENEX Outpatient Non-Certification Recommendation was marked as Respondent's Exhibit No. 2. The respondents' medical packet was marked as Respondents' Exhibit No. 3. The 2003 Mountaincrest Rehab PT packet was marked as Respondents' Exhibit No. 4. The 2004 Mountaincrest Rehab PT packet was marked as Respondents' Exhibit No. 5. The claimant's deposition was marked as Respondents' Exhibit No. 6.

The following witness testified at the hearing: the claimant.

### **DISCUSSION**

The claimant, age 57 (11/15/49), sustained an admittedly compensable electrocution on February 10, 1997 that rendered him permanently and totally disabled.

The respondents accepted this as a permanent and total claim and have previously paid appropriate indemnity and medical benefits. The respondents have since controverted the claimant's entitlement to additional medical treatment in the form of

physical therapy treatment.

The claimant testified he is currently requesting additional medical treatment in the form of physical therapy treatment. According to the claimant, he was injured/electrocuted when he started to do some welding and someone had wired a welder backwards reversing the polarities, as it threw him off onto some steel injuring his back. The claimant testified that he broke both his shoulders and damaged all the nerves on his right side. This resulted in his left shoulder having to be set and a total right shoulder replacement being performed.

He admitted to having received physical therapy treatment for his shoulders, and he also was placed in a back brace and they did physical therapy treatment on his back, but no surgery was ever performed on his back. According to the claimant, he has treated with Dr. Dave Collins for his shoulders and Dr. Rutherford, a neurologist for the nerve damage. The claimant testified that he sees Dr. Tom Langston the workers' comp doctor, there in Harrison every three months, which he believes has been paid by workers' comp.

The claimant testified the physical treatment he has received for his shoulders and back entailed the following:

A. They did water therapy, muscle, they did therapy to build up the muscle tissue and they used what they call a TENS unit to help stimulate the muscles, hot and cold packs, and massage therapy.

Q. And where have you received the majority of this treatment?

A. MountainCrest.

Q. Did you receive any benefit from this physical therapy?

A. Yes, I did.

Q. I'm sorry?

A. Yes.

Q. What kind of benefit?

A. It helped with my balance and my strength, my mobility.

Q. Did you receive any benefit regarding your pain?

A. Yes, I did. It lowered my pain level a lot where I didn't have to take near as much pain medicine.

Q. Did you notice any improvement in your walk, your gait?

A. Yes.

Q. How so?

A. My balance was a lot better where most of the time I didn't have to use a cane.

Q. How about range of motion?

A. Yes. I had a much better range of motion.

Q. And, Harold, the benefit you described to us, was that benefit permanent?

A. No.

Q. How long did this benefit last?

A. Usually it would last three to five months.

Q. Sir, when you went in for these physical therapy treatments that you described, would you go in just for your shoulders, just for your back or would it be mixed together?

A. It would be mixed together.

He admitted to discontinuing his physical therapy treatment in 2004, by mutual agreement with Dr. Langston. According to the claimant, at this point, he felt he was in pretty good shape and thought he could go without physical therapy. However, the claimant testified that after he discontinued the therapy in 2004, his condition worsened with respect to his range of motion and pain. He specifically testified his pain level started to increase, his balanced worsened and he started to fall. The claimant admitted to being given home exercises, which included but was not limited to walking and pulley systems for his shoulders. According to the claimant, he followed these exercises as prescribed.

The claimant testified:

Q. Did you notice the same benefit from these home exercises as you receive from this physical therapy?

A. No.

Q. What was different?

A. It, you don't have the resistance, you don't have the machines to help you with the resistance, the motion. With the pool you have a lot of the different steps, it's just there's so much more with therapy like the TENS units, the hot and cold packs, the different things that they can do there and massage it. It just helps so much more that you don't have.

Q. Did you return back to physical therapy in 2005?

A. Yes, sir.

Q. When you returned to physical therapy in 2005 after this hiatus, did you notice any improvement?

A. Yes.

Q. What improved?

A. I was able to gain some strength. My pain level went down. And my gait, my leg got stronger and my range of motion got better.

Q. And again, when you are referring to range of motion you are talking about your shoulders?

A. Shoulders.

Q. It looks like in 2005 you returned to physical therapy and later that year you went to, is it Mountaincrest?

A. Yes.

Q. Okay. What happened when you tried to go back?

A. I was turned down.

Q. From 2005, from this point on, I guess, did you notice a change in your condition?

A. Yes, it steadily got worse.

Q. What has gotten worse?

A. My strength and my shoulders are getting worse. My range of motion, my pain level is a lot worse now.

Q. What about with your gait, your walk?

A. I have to use my cane pretty much anytime I'm out on any uneven surface or anything.

He admitted to being given a series of home exercises thereafter, which were similar to those previously given him, which he complied with. However, the claimant testified he continues with those symptoms previously described. He also testified that these symptoms have affected his daily activities. Specifically, the claimant essentially testified he is less

mobile, has fallen and his range of motion has been affected, as it makes it hard for him to perform simple tasks like tying his shoes. He denied having these problems while undergoing physical therapy treatment, as things were a lot easier.

On cross examination, the claimant essentially admitted that although during his deposition testimony, he may have testified he only walked, this was not correct, as his testimony on direct is what he has actually done at home. The claimant admitted to doing aqua therapy at Mountaincrest in 2003 and 2004.

The claimant admitted he has used a cane a little less than 50% of time since 2005. The claimant explained his less use of the cane may have resulted from "stubbornness." He admitted he has been instructed by his doctors to try and wean himself off the cane.

The claimant further admitted that his unsteadiness, gait, balance problems, and the nerve damage that resulted down along the right side of his leg were caused by him being electrocuted. According to the claimant, he subsequently developed tremors in his right leg, which are generally worse when he has hot flashes and is under stress. He admitted that the nerve damage is permanent and that the physical therapy treatment will not cure it. He admitted that the tremors and other nerve damage has not gotten any better over the last 10 years, but he did admit that his balance, gait, range of motion in his shoulders, and pain has been helped by the therapy during the last two or three years. According to the claimant, this has been temporary and within

three months he would be right back where he was before.

The claimant testified he has not had therapy in nearly two years. The claimant testified he walks about a mile, and climbs the stairs in his house. He admitted Dr. Rutherford has recommended therapy three times a week for six weeks to improve his strength and balance.

The claimant's deposition was taken on July 26, 2007. The claimant gave extensive testimony concerning his prior work history, injury and treatment, and the activities he has been performing. The claimant specifically gave testimony concerning his symptoms of vertigo, balancing and tremors, which have resulted since his compensable injury. He admitted that he sustained nerve damage to his right arm and right leg, which is permanent.

He testified he has used a cane off and on since 1997, and all the time up until about 2005, but since this time, he has used the cane probably only 50% of the time. The claimant admitted physical therapy cannot fix his nerve damage. He admitted he would be willing to undergo home therapy. According to the claimant, prior therapy has primarily focused on the strengthening of his shoulders and right leg. The claimant specifically testified that he has received physical therapy from Healthsouth in Little Rock and Mountaincrest in Harrison, both have been primarily geared to improve his strength and balance. The claimant admitted his balance has remained the same since being electrocuted. He admitted that his relief from the

unsteadiness and problems with his balance has not been permanent. The claimant admitted home exercises have helped, but have not kept him from reverting back to poor balance. According to the claimant, the hardest activity for him to perform is sweeping because of the twisting, and pushing of the broom or dust mop.

A review of the medical records demonstrates that on February 7, 2005, the claimant saw Dr. Thomas Langston for continued complaints of shoulder pain, for which he recommended six weeks of physical therapy three times a week to restore ROM.

The claimant continued to return for follow-up care with Dr. Langston. On October 16, 2006, the claimant saw Dr. Langston for continued complaints of shoulder pain. He also noted that both the claimant's hands had increased numbness, and that his right leg continued with pain and numbness, which required the use of a cane for balance due to loss of proprioception his ankle and foot. Dr. Langston wrote, "He continues to lose ROM without therapy. He reports consultation with Dr. Rutherford and with Dr. Collins and that both have concurred with need for further PT to restore ROM in the shoulders and quad strength particularly in the right leg." Dr. Langston recommended that the claimant resume physical therapy treatment for both his shoulders, to help with pain control and to help with restoring/maintaining ROM.

Dr. Collins reported the following on December 6, 2006:

Mr. McEntire returns in follow up of both shoulders. These were injured in an electrocution event with resultant posterior dislocation. This was back in

1997. His pain is moderate, sharp, dull, aching, burning, affecting his sleep and somewhat getting worse lately. Symptoms fluctuate from time to time.

PHYSICAL EXAMINATION: Both shoulders are carefully examined. Motion is fairly well preserved on the left. I detect no crepitation. Power is good. Slightly weak on the right, especially internal rotation. I detect no crepitation. Passive better than active range.

RADIOGRAPHS: Show no change over time. He is metal on bone on the right side. There is no arthritis on the left.

Mr. McEntire show no deterioration over time. His symptoms fluctuate depending on activities and time of year. He is not immune to other conditions about the shoulder.

It would be to his benefit to be able to see a physiotherapist from time to time. Four to six times a year would not be unreasonable, in which he could have supervised therapy including modalities. This would be directly related to the condition of his shoulder as a result of his work related injury and not otherwise.

I will see him back in 12-24 months. Repeat films of both shoulders upon return.

On March 28, 2007, the claimant saw Dr. Langston due to continued worsening complaints of shoulder pain over the last six months. He reported that the claimant was "still doing the ROM exercises with pulleys at home, but ROM was still decreasing...." Therefore, Dr. Langston recommended that the claimant resume PT for both shoulders (for which he issued another prescription) to help with pain control and to help restore/maintain ROM.

Dr. Langston reported, in pertinent part, the following on May 2, 2007:

Harold McEntire presents with continued loss of ROM despite his continued efforts at home physical therapy program. His shoulder orthopedist and neurologist both concur with the need for resumed physical therapy to

preserve function.

Having been denied these services over the last 9 mo. I expect that he will be authorized to resume his rehab services that are clearly both medically indicated and necessary at the request of 3 independant [sic] physicians.

On May 3, 2007, Dr. Rutherford reported the following:

Mr. McEntire suffers from multiple orthopedic problems comprising severe injury to both shoulders and compression of his spinal cord related to spondylosis cervical spine. He also suffers from carpal tunnel syndrome. A course of physical therapy has been requested to address difficulty with gait related to his myelopathy. This the only measure available to Mr. McEntire which might improve his current clinical situation. This is non-invasive in nature and considered both reasonable and necessary to address Mr. McEntire's current complaints.

### **Adjudication**

The sole issue for determination is whether the claimant is entitled to additional medical treatment in the form of additional physical therapy treatment.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that he is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The claimant who was rendered permanently and totally disabled by an electrocution injury, has undergone extensive

conservative treatment and some surgery for his compensable injury of February 10, 1997. The claimant now essentially contends that he is entitled to resume physical therapy treatment for his shoulders, back and right leg in an effort to improve his balance, gait, mobility, strength in his right leg, range of motion in his shoulders, and to decrease his symptoms of pain. Considering the recurring nature of the claimant's symptoms and loss of function after the discontinuance of prior physical therapy treatment, the fact that the claimant credibly testified that physical therapy treatment has previously decreased his symptoms of pain and improved his ROM and helped his unsteadiness (with the same being corroborated by the medical evidence of record), and based on the recommendations of his three treating physicians (Drs. Langston, Rutherford and Collins), that additional physical therapy treatment is necessary to improve the claimant's current function, I find that the additional physical therapy treatment recommended by these experts is reasonable and necessary in connection with his compensable injury of February 10, 1997. As a result, I also find that the respondents are liable for this course of treatment, and owe a statutory one-half attorney's fee to the claimant's attorney.

By agreement of the parties, the claimant is hereby ordered to undergo an evaluation in an attempt to ascertain whether or not an in-home physical therapy plan is a viable option. The parties shall mutually agree on an acceptable source for this evaluation.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including February 10 1997.
3. The claimant's total disability rate is \$348.00.
4. Claimant sustained an electrocution injury on February 10, 1997.
5. The claim has been accepted as a permanent and total claim.
6. The claimant has proven by a preponderance of the evidence that the recommended physical therapy treatment for his right leg, back and shoulders is reasonably necessary in connection with his compensable injury of February 10, 1997.
7. The claimant is ordered to undergo an evaluation in an attempt to determine whether or not an in-home physical therapy plan is a viable option. The parties shall mutually agree on an acceptable source for this evaluation.
8. The claimant's entitlement to the requested physical therapy treatment has been controverted by the respondents. Therefore, the respondents owe the claimant's attorney a statutory one-half attorney fee on the benefits awarded herein.

### **AWARD**

The claimant has proven by a preponderance of the evidence that he is entitled to additional physical therapy treatment for his compensable injury of February 10, 1997. The claimant is hereby ordered to undergo an evaluation to determine whether or not home therapy is a viable option. The respondents are directed to pay benefits in accordance with the Findings of Fact cited above. Respondents are further ordered to pay claimant's attorney a statutory one-half attorney's fee on the benefits

awarded herein.

IT IS SO ORDERED.

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CHANDRA HICKS  
Administrative Law Judge