

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NOS. F510086 (02/21/05) & F510084 (09/13/05)**

<b>RODNEY COHNS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>DILLARD'S STORE SERVICES, EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>FIDELITY &amp; GUARANTY INS. CO., CARRIER</b>	<b>RESPONDENT #1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED JULY 15, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on April 24, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE TERRENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents #1 represented by the HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claims to determine the claimant's entitlement to workers' compensation benefits. On February 26, 2008, a pre-hearing conference was conducted in these 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' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The parties further stipulated that the claimant asserts having sustained a neck injury as the basis for the present claim, and not a shoulder injury as previously believed. The shoulder injury was accepted as compensable by respondents #1. Additionally, the parties stipulated that the claimant earned an average weekly wage of \$450.00, which generates compensation benefit rates of \$300.00/\$225.00, for temporary total/permanent partial disability. Finally, the parties stipulated that if the neck injury is deemed compensable, the claimant would be entitled to temporary total disability for the period July 5, 2005 through September 6, 2005.

The claimant contends that he sustained a compensable injury to his neck, for which he is entitled to temporary total disability benefits, and that respondents #1 are responsible for the surgery performed by Dr. Mason. Respondents #1 content that there were no objective medical findings related to the accident as far as the neck. Respondents #1 maintain that the objective findings that were present in the claimant's neck were pre-existing, degenerative and not related to the employment.

The testimony of Rodney Cohns, the claimant, coupled with medical reports and other documents comprise the record in these claims.

### **DISCUSSION**

Rodney Cohns, the claimant, with a date of birth of March 31, 1955, is a high school graduate with one year of college and four years of seminary education. Claimant commenced his employment with respondent #1 on June 2, 1994. Claimant resides in Sherwood, Arkansas. Claimant works at the Distribution Center of respondents #1. On February 21, 2005, claimed injury claimant was the supervisor over the Shipping Department in Mabelvale, Arkansas. The claimant is now the shipping manager.

The testimony of the claimant reflects that he was first employed by respondent in October 1993, in the Receiving Department. Claimant left the employment of respondent #1 in May 1994, and went to work at the airport. Claimant returned of respondent #1 in August 1994, and resumed the same job duties as before he left in the Receiving Department. Claimant performed the job for several years, until 2001, before leaving the Receiving Department and going into a department called Flat Car as a supervisor.

In explaining his job duties as a supervisor, claimant testified:

I was doing what they call Flat Car and the area called Pre-Sort. The department previously I put it to go to the departments to be processed, but once I got there to the area we called Pre-Sort, we had to take the cartons and get them lined up in order and keep the orders together, open them up and push them in so the ladies could work them, so I was still dealing with pulling and pushing on cartons. I was in that department for about six to ten months doing that. (T. 12).

Thereafter, the claimant was assigned to the Shipping Department where he has since remained.

Claimant was a supervisor in the Shipping Department with duties which also included loading trucks. In describing the mechanics of the February 21, 2005, accident, which serves as the basis for the present claim, claimant testified:

Well, in loading a truck, while we do also have cartons that come down the conveyor onto the trailer, all hanging garments come down on a trolley to the truck, and we have to take the hanging garments from that trolley and put them on our hands, and the truck has got beams across the with rope on it to hang the garments, and you have stools that you stand on. And I got the hanging garments and stood on the stool and the stool collapsed and it knocked me back on the wall, and that's how I ended up injured. I was standing up there hanging garments. (T. 14).

Claimant explained that in his fall, which he described as very hard, when he hit the conveyor he bounced off on the wall and sustained his injury. Claimant's testimony further reflects:

Yeah, because of the rope that's on it because I was standing on the stand and when the stand collapsed, I reached for the rope to break the fall and it jerked, but I did fall, I didn't - - I fell. (T. 15).

Following the accident claimant testified that he was hurting in his neck area and his shoulder area. Claimant maintains that he really hurt when he fell although he told his supervisor, Mile Mason- the shipping manager, who was present, that at the time, "well, right now I couldn't tell". Claimant acknowledged that he declined the offer to go to the doctor immediately following the accident. An injury report was prepared.

Claimant testified that when he continued to hurt he went on to the doctor. The testimony in the record reflects that the claimant and Mr. Mason completed the incident report together. Claimant explained the Mr. Mason did the report at his desk in the Shipping Department and that claimant took it on and put it in the front. Claimant asserts that in completing the report he informed Mr. Mason that he was hurting in his back and upper neck area. The testimony in the record reflects that the claimant furnished the completed report to other personnel of respondent, at which time arrangement were made for him to be seen by respondents' designated medical provider, Concentra.

The claimant was seen by Dr. Carle at Concentra on the day of the injury. The testimony of the claimant reflects that while at the outset he had complaints of pain in his left shoulder, by the time he arrived at the doctor his chief complaint was pain in his neck areas. Claimant maintains that during his initial conversation with Dr. Carle he relayed that he was hurting in his neck. Claimant disputed the description of the February 21, 2005, accident as reflected in the clinic notes of Dr. Carle. Claimant denies that he felt his shoulder pop as he grabbed the rope during his fall:

Well, I just said it jerked when I grabbed at the rope, and because it was a hard fall, I jerked and I did let the rope go and I fell on the conveyor, which I bounced off and into the wall. (T. 19).

Claimant concedes that there was a shoulder problem, and he may have said that. Claimant maintains that he told Dr. Carle several times that his neck hurt. Claimant asserts that he was told that he had pulled a muscle in his shoulder so he accepted it. The testimony of the claimant reflects that his medical treatment under the care of Dr. Carle consisted of a prescription for pain pills, , muscle relaxers, and some heat therapy.

The claimant was again seen at Concentra the following day relative to the February 21, 2005, accident. The medical records relative to the visit reflects a traction injury to the right neck, shoulder and arm. Regarding the afore, claimant added that at the time whiled he was hurting all down his arms and shoulder hie main pain was in his neck. The testimony of the claimant and the physical therapy notes reflect the claimant was doing cervical flexion exercises and cervical side bending exercises. Claimant testified that he was provided a pamphlet with the exercises in them that he took home and did. Claimant's testimony reflects that the only therapy he was provided at Concentra was heat pads. In explaining the heat pad therapy as Concentra claimant testified:

I would lay on this table with my face down, and they would take these great big hot packs out and put them in towels and put them on my neck area. (T. 22).

The heat pads were kept in place for fifteen to twenty minutes.

The testimony of the claimant reflects that in addition to Dr. Carle he also saw Dr. Warren at Concentra. The claimant's medical treatment at Concentra covered the period February 21, 2005 through March 7, 2005. In addition to the medication and physical therapy the

claimant was also placed on light duty by the physicians at Concentra. The last physician to see the claimant at Concentra was Dr. Warren. Claimant asserts that at the time of the visit he informed Dr. Warren that he was still hurting in his neck area. The testimony of the claimant reflects that following the physical examination by Dr. Warren during the March 7, 2005, visit he was released to regular duty work.

Claimant returned to his regular duty pursuant to the above release. The claimant did not miss any time from work following the February 21, 2005. The claimant testified that while he was released to light duty following his February 21, 2005, visit to the doctor, he was actually doing what he normally did basically. The testimony of the claimant reflects that at the time of his release to regular duty on March 7, 2005, his neck was still hurting.

The testimony of the claimant reflects that he made an appointment with his family physician, Dr. Jack Somers, because neck was continuing to bother him. Claimant's testimony reflects that he did make mention of his continuing neck problems at work:

Well, yes. I would tell the guys that my neck hurts, like I would my back. They basically knew by the way I'd be moving. When we'd be busy and I'd be on the truck loading, yeah, we talked a lot about pain. (T. 25).

Claimant acknowledged that he did not ask any one at respondent about seeing another doctor or getting more medical treatment after he was released on March 7, 2005. Claimant concedes that he was not prohibited by respondents from returning to Concentra to see either Dr. Carle or Dr. Warren for further medical treatment. Claimant testified that since his neck was still hurting and since he had insurance he simply made an appointment to be seen by Dr. Somers.

The claimant was seen by Dr. Somers in June 2005, and relayed a history of having hurt

his neck. Claimant acknowledged that he has had problems with his back “for a long, long time” for which he had been seeing Dr. Somers. Dr. Somers scheduled an MRI for the claimant and thereafter referred him to Dr. Mason once the results were had.

The testimony of the claimant reflects that he was first seen by Dr. Mason on June 14, 2005, pursuant to the referral of Dr. Somers. Regarding any neck problems prior to February 21, 2005, claimant’s testimony reflects:

No. I was never bothered with my neck in the manner that I bothered with it after I fell. But as far as my back was concerned, I’ve always had back problems, back pain for a long time. (T. 29).

Claimant acknowledged receiving chiropractic treatment relative to his back complaint prior to February 21, 2005. Claimant denies ever receiving chiropractic treatment regarding his neck. Claimant concedes receiving conservative treatment for his back prior to February 21, 2005, to include physical therapy, epidural steroid and oral steroids, along with the chiropractic adjustments. The afore treatment was had pursuant to the directions of the claimant’s family physician, Dr. Somers. Claimant estimates that he has low back problem for ten to fifteen years.

In explaining the history contained in the June 14, 2005, report of Dr. Mason, claimant testified:

When I first went in and he was talking to me and to get a little history, and in my conversation, I responded to him by telling him that I’d had back problems for a long time, and so that may be why he came to that conclusion.

Then I proceeded to tell him based on my current condition at the particular time that what I was experiencing for my neck pain, hurting down my neck, but I had told him that I had, as he reports there, that I’d been having back problems for a long, ling time. (T. 32).

Claimant added:

I told him that the neck - - I do remember the conversation, we were talking, that the neck since it happened hurt quite a bit, and he asked me did I get any relief, and I told him, "No, not at all, none whatsoever."

It seemed to be getting worse. It looked like it was getting numb in my fingers. (T. 33).

The claimant underwent surgery on July 5, 2002, under the care of Dr. Mason from which he obtained a good result. The claimant continued to work up to point of surgery. Claimant was off work following the surgery from July 5, 2005 through September 6, 2005.

Claimant acknowledged that prior to February 21, 2005, he had another workers' compensation injury, to his knee at respondents in 1997/98. The injury resulted in surgery to the knee and the claimant being off work for approximately six (6) weeks.

The testimony of the claimant reflects that since the February 21, 2005, injury he has had another episode at work:

Yes. After being released to go back to work, after a truck is filled, it pulled away from the door, and our driver at that particular time because merchandise was on the line still - - when the truck pushed the line out, the brake on the line was broke which we didn't know when we pushed it back, and the line was filled with merchandise and still coming down the line, and our driver asked me did I want another truck in that door, and while he was asking, I was in front of the door and the conveyor come loose and hit me from behind my knee and knocked me over the dock door, but he was there to catch me, and all the guys grabbed me and set me back inside to keep me from falling all the way out of the door. (T. 35).

Claimant testified that he did not have any medical treatment as a result of the second incident nor did miss any time from work. The testimony of the claimant reflects that he has continued to work since September 6, 2005, and has been promoted to the position of Shipping Manager since February 2008.

During cross-examination the claimant acknowledged that both he and his wife had group

health insurance which paid on the medical bills associated with the treatment on his neck. Claimant also received some short term disability payments during the time he was off from work following his neck surgery.

The claimant concedes that while he was having chest pain the main purpose for the March 9, 2005, visit to Dr. Somers was his neck complaint. The records of Dr. Somers reflect that when the claimant's neck was examined on March 9, 2005, it was normal and supple. Claimant testified that he was uncertain if he complained to Dr. Somers about his neck during a March 21, 2005, visit. Likewise, the claimant's testimony reflects that he is uncertain if he made mention of his neck complaint during a visit to Dr. Somers of April 14, 2005.

The June 2, 2005, medical record of Dr. Somers does reflect that the claimant registered complaints regarding his neck. In explaining the absence of notations regarding his neck in the records of Dr. Somers between March and June 2, 2005, claimant testified:

Sometime I referred to my back, too, sometimes. I would refer to as in my neck area as my back area. But when I went to see him after the first visit and he gave me some pain medication and some muscle relaxers and gave me some other kind of pill that had something to do with - - mind-altering, some kid of mind-altering drug [mood elavator].

Yeah, at that particular time. And I took that a couple of times and didn't like the way it made me feel, and I went back and told him I didn't like it. (T. 41).

The testimony in the record reflects that following the June 2, 2005, visit the claimant underwent the MRI on June 3, 2005, and had a June 7, 2005, follow-up visit. Thereafter the referral to Dr. Mason was had.

The medical in the record reflects that the claimant received medical treatment at Concentra from February 22, 2005, through March 7, 2005. The February 22, 2005, report of Dr.

Scott Carle with Concentra reflects that the claimant complained of pain along the right superior shoulder, right neck and trapezius area relative to a February 21, 2005, work-related fall. The record further reflect not prior history of similar problems. The February 22, 2005, report reflects that the claimant's neck was examined along with the right shoulder. The medical reflects that the claimant's complaints were assessed as a shoulder strain, acromioclavicular strain, and shoulder strain - trapezius/ehomboid. (JX. #1, p. 1-2).

The initial therapy evaluation relative to the claimant, generated by Eric Holifield, a physical therapist, reflects, in pertinent part:

#### HISTORY OF PRESENT CONDITION

The patient relates their chief complaint to a fall from a height catching himself with his right arm causing a traction injury to his right neck, shoulder and arm. The patient's chief complaint is pain described as aching right cervical area, shoulder and upper arm.

The report further reflects, in terms of assessment:

The cause of symptoms is consistent with the above mechanism of injury. The subjective report is consistent with objective findings. The patient presents as an appropriate therapy candidate to resolve the functional deficits noted above. The plan of care was discussed with the patient, who voiced understanding and agreed to proceed. (JX. #1, p. 3-4).

The records reflects that after having undergone physical therapy relative to the injury growing out of the February 21, 2005, accident, the claimant was again seen by Dr. Carle on February 25, 2005. The transcription of the notes from the claimant's February 25, 2005, visit to with Dr. Carle is a regurgitation of the history recorded in the initial February 22, 2005, visit. Further, the record reflects that Dr. Carle directed his attention to the claimant's shoulder in terms of any physical examination, despite the history recorded by physical therapist Holifield on the February 22, 2005, and the area of attention during the physical therapy. (JX. #1, p. 10-11).

A review of the record of Concentra reflects that the physical therapist directed the claimant to perform exercises relative to his cervical spine. Claimant credibly testified that the hot pack applied by the physical therapist to the area of his neck and upper back. Nevertheless, the medical record of Dr. Carle reflects that the focus of his examination of the claimant was geared to the right shoulder.

Following his March 7, 2005, discharge by the physicians at Concentra, the record reflects that the next treatment the claimant received was had under the care of his family physician, Dr. Jack Somers, on March 9, 2005, in follow-up to a visit for complaints of chest pain. The claimant was thereafter seen on several other occasions, however there is not an indication of complaints associated with his neck until June 2, 2005.

The June 2, 2005, chart notes relative to the claimant's visit reflects, in pertinent part:

The patient is a 50 year old male who presents with a complaint of Back pain. The onset of the pain has been sudden and has been occurring in a persistent pattern for 2 weeks. The course has been increasing. The pain is characterized as sharp, shooting and throbbing. The pain is described as being located in the upper back and lower back. The pain does not radiate. Back pain notes: WANTS STRONGER MEDS. (JX. #1, p. 25).

The June 2, 2005, chart notes also reflect medications provided in connection with the claimant's complaints included Flexeril, Prednisone and Darvocet. (JX. #1, p. 26).

On June 3, 2005, the claimant underwent MRIs of his cervical spine and lumbar spine. (JX. #1, p. 27). Upon obtaining the results of the diagnostic studies the claimant was referred to Dr. J. Zachary Mason, a Little Rock neurosurgeon, by Dr. Somers. The claimant was initially seen by Dr. Mason on June 14, 2005, and underwent an anterior cervical discectomy on July 5, 2005, for a diagnosed cervical spondylosis with cord compression at C5-6. (JX. #1, p. 31-34).

The claimant was seen in follow-up by Dr. Mason on July 26, 2005. The report relative to the afore visit reflects that the claimant relayed that overall he was doing well and had no complaints. The report reflects a discharge diagnosis of anterior cervical discectomy and arthrodesis. During the July 26,2005, visit, the claimant was released to return to work with no restrictions effective September 6, 2005. (JX. #1, p. 36-37).

The evidence in the record reflects that MetLife paid short term disability to the claimant totaling \$1,590.00, gross, for the period July 15, 2005, through September 5, 2005. The document further reflects that the last day the claimant worked was June 30, 2005, and the claim being approved July 7, 2005. (RX. #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documents, application of the appropriate statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 21, 2005, the relationship of employee-employer-carrier existed among the claimant and respondents #1, when the claimant earned an average weekly wage of \$450.00, which generated compensation benefit rates of \$300.00/\$225.00, for temporary total/permanent partial disability.
3. On February 21, 2005, the claimant sustained an injury to his cervical spine arising out of and in the course of his employment, which rendered him temporarily totally disable for the period June 30, 2005, through September 6, 2005.
4. Respondents #1 shall pay all reasonable hospital and medical expenses in

connection with and growing out of the claimant's February 21, 2005, cervical spine injury.

5. Medical treatment rendered to the claimant under the care of Dr. Jack Somers and Dr. J. Zachary Mason, was reasonably necessary in connection with the claimant's February 21, 2005, cervical spine injury.

6. Respondents #1 have controverted the compensability of the claimant's February 21, 2005, cervical spine injury in its entirety.

### **CONCLUSIONS**

The claimant asserts that he sustained an injury to his cervical spine in a February 21, 2005, work-related accident which required medical treatment, to included surgery, and resulted in a period of total incapacitation. Claimant seeks corresponding temporary total disability and medical benefits as well as controverted attorney fees. Respondents #1 deny that the claimant sustained a compensable injury to his cervical spine on February 21, 2005.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In the instant claim, the claimant asserts the occurrence of a specific accidental incident as the basis for his claim for workers' compensation benefits.

An accidental injury is caused by a specific incident, identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A)(i). In order for an accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that the injury caused physical harm to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. *Id.* Further, the

claimant must establish a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. §11-9-102 (4)(D). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102 (16). A claimant has the burden of proving the compensability of his claim by a preponderance of the evidence. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

In the instant claim, the occurrence of claimant’s accidental fall while discharging employment duties is undisputed. The credible testimony of the claimant reflects that following the afore he was experiencing pain through the areas of his body which impacted the conveyor line and wall of the truck in the accidental fall, which included his shoulder, upper back, and cervical area.

The claimant was initially seen by respondents’ designated medical provider, Concentra, on February 22, 2005. Dr. Scott Carle of Concentra assessed the claimant’s injuries as a shoulder strain, acromioclavicular strain, and shoulder strain - trapezius/rhomboid. It is patently clear that Dr. Carle focus his attention relative to the claimant’s injury growing out of the February 21, 2005, accident, based on his reports, on the claimant’s shoulder. In addition to providing medication, Dr. Carle referred the claimant to physical therapy.

The claimant’s physical therapy program was under the direction of Eric Holifield, a physical therapist at the same Concentra facility as Dr. Carle. A review of the physical therapy records clearly reflects that the claimant relayed complaints regarding his upper back and neck,

cervical spine, as products of the February 21, 2005, accident. During the physical therapy evaluation of February 22, 2005, the claimant relayed his chief complaint as aching pain in the right cervical area, along with the shoulder and upper extremity. The physical therapy records further reflect that the claimant was given instructions in therapeutic exercises which included cervical flexion, cervical rotation, and cervical sidebending.

While the claimant acknowledged experiencing difficulty with his low back for a number of years for which he had received medical treatment and chiropractic adjustments, the record is devoid of any reports, medical or chiropractic, evidencing receipt of similar treatment or complaints relative to the claimant's cervical spine prior to the February 21, 2005, accident.

Since Dr. Carle was focus on the claimant's right shoulder during the time he provided medical treatment in this claim, with the claimant having been told that he had a muscle strain in his shoulder, with no medical treatment being rendered or geared to the continuing symptoms in his neck, it is completely understandable that the claimant would seek treatment from his family physician following the March 7, 2005, release by the physicians at Concentra. The credible evidence in the record reflects that the claimant's neck symptoms/complaints which had their onset with the February 21, 2005, accident, never abated.

A June 3, 2005, MRI of the cervical spine disclosed objective findings establishing an injury. During his physical examination on June 14, 2005, Dr. Mason noted of the cervical spine "tenderness over the shoulders", "decreased strength in the bilateral hands", "cervical flexion, extension, and rotation is 80% of normal". The claimant was diagnosed with cervical stenosis, C5-6 by Dr. Mason. In his June 14, 2005, report, Dr. Mason concluded:

High complexity. As conservative management has failed and he

has positive findings both on radiographic and physical exam, I have recommended that we proceed with an anterior cervical discectomy, arthrodesis, and possible platings at C5-6. . . (JX. #1, p. 32).

The evidence preponderates that any pre-existing degenerative disc disease process in place relative to the claimant's cervical spine was asymptomatic prior to the February 21, 2005, work-related accident fall. 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. *Williams v. L & W. Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). 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).

There will be times when a claimant's account of a work-related incident and the resulting injury is the only evidence available as to the causation between the two. In such instances, the issue of causation resolves down to a matter of credibility. The weight and credibility of the testimony are matters exclusively within the province of the Commission. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 742 (1997). The claimant has sustained his burden of proof by a preponderance of the credible evidence that he sustained an injury to his cervical spine on February 21, 2005, arising out of and in the course of his employment which caused harm to the body requiring medical services and resulting in disability; further that there is medical evidence supported by objective findings establishing the injury, and that the injury was caused by a specific incident and identifiable by time and place of occurrence. The respondents have controverted this claim in its entirety.

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. In the instant claim, the evidence preponderates that the claimant sustained an injury to his cervical spine, in the form of an aggravation of a pre-existing asymptomatic condition, during the February 21, 2005, work-related fall. The treatment rendered to the claimant relative to his cervical spine injury was reasonably necessary in connection with same, and for which respondents are liable.

Entitlement to temporary total disability benefit for an uncheduled injury is contingent upon a showing that the claimant is completely incapacitated from earning wages and remains within his healing period. *Arkansas State Highway Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The evidence further preponderates that the claimant was temporarily totally disabled and within his healing period as a result of the February 21, 2005, compensable cervical injury from June 30, 2005, through September 6, 2005. Respondents have controverted the claimant's entitlement to temporary total disability benefits.

The claimant acknowledge that group health insurance paid portions of the medical expenses incurred in the treatment of his cervical injury. The claimant also received short term disability benefits totaling \$1590.00, during the period of his recovery following the July 5, 2005, cervical disc surgery. Pursuant to Ark. Code Ann. §11-9-411(a), respondents #1 are entitled to a dollar-for-dollar offset on those benefits described therein.

### **AWARD**

Respondents #1 are herein directed and ordered to pay to the claimant temporary total disability benefits as the weekly compensation benefit rate of \$300.00, for the period June 30, 2005, through September 6, 2005, as a result of the claimant's February 21, 2005, compensable

cervical injury. Said sums accrued shall be paid in lump without discount. Respondents #1 may claim credit for sums heretofore paid to the claimant in short term disability benefits, pursuant to Ark. Code Ann. §11-9-411 (a).

Respondents #1 are further ordered and directed to pay all reasonably necessary medical, hospital, nursing, and other apparatus expenses in connection with the claimant's compensable cervical injury of February 21, 2005, to include medical related milage. Respondents #1 may claim credit pursuant to Ark. Code Ann. §11-9-411 (a) for sum paid by the third party group carrier.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted portion of 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**