

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512904/F709399

JOHN HOWARD		CLAIMANT
BIEKER ELECTRIC COMPANY		RESPONDENT
WESTPORT INSURANCE CORPORATION, INSURANCE CARRIER SWISS RE C/O GALLAGHER BASSETT, TPA	NO. 1	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	NO. 2	RESPONDENT

OPINION FILED JANUARY 28, 2008

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

Claimant represented by J. RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by MICHAEL MAYTON, Attorney, Little Rock, Arkansas.

Respondents No. 2 represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 7, 2007, in Fort Smith, Arkansas.

A pre-hearing order was entered in this case on September 18, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the pre-hearing order was amended to reflect that this hearing involved two Commission claim files, the first F512904 and the second F709399. This pre-hearing order was further amended to reflect that the appropriate weekly compensation rates for any compensable injury on May 11, 2007, were \$307.00 for total disability and

\$230.00 for permanent partial disability. Finally, the parties identified the specific amount of an overpayment of TTD, made by respondent Westport Insurance Company, that overpayment was \$858.00. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. On September 8, 2005, the relationship of employee-employer-carrier existed between the claimant, Bieker Electric Company, and Westport Insurance Company.
2. On September 8, 2005, the appropriate weekly wage was \$508.00 with compensation rates of \$339.00 for total disability and \$254.00 for permanent partial disability.
3. On September 8, 2005, the claimant sustained a compensable injury to his low back.
4. Medical expenses were paid through March 23, 2007, by Westport Insurance Company.
5. Temporary total disability benefits, at the weekly rate of \$372.00, were paid from November 25, 2005 through May 24, 2006.
6. On May 11, 2007, the relationship of employee-employer-carrier existed between the claimant, Bieker Electric Company, and Bridgefield Casualty Insurance Company.
7. On May 11, 2007, the appropriate weekly compensation rates were \$307.00 for total disability and \$230.00 for permanent partial disability.

8. Bridgefield Casualty has controverted the claim for a compensable injury on May 11, 2007.
9. The respondent Westport Insurance Company is entitled to a credit for the overpayment of temporary total disability benefits, in the amount of \$858.00.

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

1. Whether the claimant's difficulties with his low back on and after May 11, 2007 are causally related to the compensable injury of September 8, 2005 or represent a new compensable injury on May 11, 2007, both or neither.
2. The claimant's entitlement to additional medical services after March 24, 2007, TPD from May 25, 2006 through a date yet to be determined, and attorney's fees.
3. Liability between the carriers for any benefits they may have erroneously paid.

In regard to these issues, the claimant contends:

"Claimant is entitled to additional medical treatment by his authorized treating physician Dr. Tony Raben, including the provisions of medication prescribed by the physician.

On May 11, 2007, the claimant suffered an accidental injury to the lumbar spine while lifting or in the alternative suffered an aggravation of the lumbar injury occurring September 8, 2005. The claimant is entitled to reasonable and necessary medical care following this event."

In regard to these issues, the respondent-carrier #1, Westport Insurance Company, contends:

1. All benefits to which the claimant is entitled from respondents #1 have been paid and have not been controverted.
2. The claimant is not entitled to any additional benefits from respondents #1.
3. The claimant is currently working for the respondent employer earning the same or greater wages as he was earning at the time of the accident in question.
4. The claimant is not entitled to any additional temporary disability benefits from respondents #1.
5. Respondents #1 are not responsible for any additional medical treatment.
6. Respondents #1 have provided all reasonable and necessary medical treatment for the compensable injury on or about September 8, 2005, for which they are responsible.
7. The medical treatment suggested by Dr. Raben is not a reasonable and necessary medical expense as a result of the compensable injury on September 8, 2005 and respondents #1 are not responsible for the suggested treatment.
8. The claimant's treating physician has released him to return to work with no permanent impairment as a result of the injury on or about September 8, 2005.
9. The claimant did not sustain compensable injuries to his neck and shoulder on or about September 8, 2005, while Westport Insurance Corporation had coverage and these claims are denied and controverted in their entirety.
10. The claimant has reached maximum medical improvement as a result of the compensable injury on September 8, 2005.
11. The claimant's current problems and need for treatment, if any, are not related to the

compensable injury on September 8, 2005, but are related to the claimant's pre-existing degenerative condition or a new injury or aggravation which occurred on or about May 11, 2007, at which time respondent #2 was the workers' compensation carrier for the respondent employer.

12. The claimant sustained a compensable injury or aggravation of his prior injury of September 8, 2005, on or about May 11, 2007.

13. Westport Insurance Corporation was not the workers' compensation carrier for the respondent employer at the time of the injury or aggravation on or about May 11, 2007.

14. Respondent #2 Bridgefield Casualty Insurance Company was the workers' compensation carrier at the time of the new injury or aggravation on or about May 11, 2007. If it is determined the claimant is entitled to any additional benefits of any kind, these benefits are the responsibility of respondent #2 and not the responsibility of respondent #1.

15. In the alternative, if it is determined the claimant is entitled to any additional benefits from respondents #1, respondents #1 hereby request a setoff for all benefits paid by the claimant's group health carrier, all short term disability benefits received by the claimant, all long term disability benefits received by the claimant and all unemployment benefits received by the claimant.

16. Respondents #1 have paid indemnity benefits to the claimant as a result of the injury on September 8, 2005, based on an average weekly wage of \$558.00. Since the correct average weekly wage is \$505.00, respondents #1 have overpaid benefits and hereby request a set off for the overpayment against any benefits they may be required to pay in the future.

By letter dated November 12, 2007, respondents #1 Westport Insurance Company clarified their contentions as follows:

“Respondents #1 have paid temporary total disability benefits through May 24, 2006. The claimant alleges entitlement to temporary partial disability benefits beginning May 25, 2006. It is the position of respondents #1 that the claimant reached maximum medical improvement according to Dr. Capocelli at the earliest on May 18, 2006, or at the latest on June 7, 2006, and that the claimant is not entitled to temporary partial disability benefits after he reached maximum medical improvement. In the alternative, if it is determined respondents #1 are responsible for any temporary partial disability benefits respondents #1 contend their responsibility for any benefits of any kind terminated on May 11, 2007, the date the claimant sustained an aggravation or new injury while Bridgefield Casualty Insurance Company was the carrier.”

In regard to these issues, the respondent-carrier #2, Bridgefield Casualty Insurance Company contends:

“Respondents #2 will contend that the claimant did not sustain a compensable injury on May 11, 2007 while respondent carrier #2 provided coverage for the respondent employer and that if the claimant is entitled to additional medical treatment and indemnity benefits those benefits are the responsibility of respondent carrier #1.”

#### DISCUSSION

\_\_\_\_\_The current hearing involves two separate Commission claims, the first being F512904 and the second F709399. In both of these claims, the respondent employer is Bieker Electric Company. However, these claims involve separate carriers. Westport Insurance Company is the carrier involved in claim F512904 and Bridgefield Casualty Insurance Company is the carrier involved in F709399. In claim no. F512904, there is an admittedly compensable injury to the claimant’s lower back or lumbar spine. In claim no. F709399, there

is a disputed compensable injury to the claimant's lower back or lumbar spine.

#### I. MAY 11, 2007 LUMBAR INJURY

The first issue to be addressed is whether the claimant sustained a "new" or second compensable injury to his low back or lumbar spine, while employed for Bieker Electric Company on May 11, 2007. In order to constitute a "new" injury, the claimant's difficulties, on and after May 11, 2007, must satisfy all of the statutory requirements for a "compensable injury" that are set out in the Act. These applicable requirements are found in Ark. Code Ann. §11-9-102(4)(A)(i) and (D).

Ark. Code Ann. §11-9-102(4)(D) requires that the actual existence of a "compensable" injury must be established by medical evidence, which is supported by objective findings. In the present case, the medical evidence clearly shows that on May 11, 2007, the claimant was diagnosed as experiencing an acute (recent) lumbar strain by personnel at the emergency room of St. Edwards Mercy Medical Center. This same diagnosis was subsequently made by Dr. Randall Carson of Sparks Occupational Medical Services. This condition is objectively supported by the observation, on physical examination, of muscle spasms in the lumbar area. Clearly, this objective finding was not only supportive of the diagnosis reached (i.e. a lumbar strain) but would also be supportive of the conclusion that such a strain was "acute" or recent. Thus, the evidence presented satisfies the statutory requirements for a

“compensable” injury that are contained in Ark. Code Ann. §11-9-102(4)(D).

It next becomes necessary to determine if this medically established and objectively documented physical injury satisfies the definitional requirements for a “compensable” injury that are contained in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The injury must arise out of and occur in the course of the employment.
- (2) The injury must be caused by a specific incident.
- (3) The injury must be identifiable by time and place of occurrence.
- (4) The injury must cause internal or external physical harm to the claimant’s body.
- (5) The injury must require medical services or result in disability.

The claimant testified that, on May 11, 2007, he was performing his employment duties for Bieker Electric and that these duties required him to pick up a concrete block. He stated that when he attempted to pick up this concrete block, he felt a tearing in his lower back and a sudden increased pain in this area. He stated that he reported this incident and his increased difficulties to the appropriate personnel at Bieker Electric and was immediately taken by the respondent-employer to the emergency room at St. Edwards Mercy Medical Center. He was further subsequently seen by Dr. Randall Carson of the Sparks Occupational Medicine Center, who is the respondent’s “company physician”.

The records and reports of St. Edwards Medical Center emergency room and Dr. Carson record a history of an employment related incident and a sudden contemporaneous onset of symptoms that is identical with that given by the claimant in his testimony. These records further show that the claimant was given appropriate medical treatment for the diagnosed injury by the personnel at St. Edwards Mercy Medical Center emergency room and subsequently by and at the direction of Dr. Carson. This treatment was in the form of an initial injection of pain medication, followed by oral pain medication, muscle relaxants, and anti-inflammatories, and also physical therapy. The claimant testified that these treatment modalities had been beneficial in alleviating his muscle spasms and increased lumbar pain.

I find the claimant's testimony, concerning the occurrence of a specific employment related incident on May 11, 2007 and the contemporaneous onset of symptoms indicative of the occurrence of a lumbar strain, to be credible and accurate. Clearly, the activity described by the claimant could have reasonably produced the diagnosed lumbar strain. The evidence presented fails to reveal any other equally or more probable cause for this injury.

Therefore, it is my opinion that the greater weight of the credible evidence proves that the claimant's medically established and objectively documented injury (a lumbar strain), arose out of and occurred in the course of his employment, was caused by a specific incident, and is identifiable by time and place of

occurrence. Therefore, this injury satisfies the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

The claimant's credible testimony concerning the nature and magnitude of his lower back symptoms and the objectively documented muscle spasms in the lumbar area, immediately after the employment related incident on May 11, 2007, are sufficient to prove that the claimant sustained (at least temporarily) internal physical harm to this part of his body. Thus, the fourth definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(i) has been satisfied.

It was obviously the expert medical opinion of the emergency room physician of St. Edwards Mercy Medical Center (Dr. Dannetta Grisham) and Dr. Carson that the May 11, 2007 injury reasonably required medical services. It cannot be presumed that two competent medical specialists would provide services which were unnecessary. Further, the magnitude of the symptoms described by the claimant and the presence of objectively documented muscle spasms in the lumbar area, would further support the conclusion that appropriate medical services were required to relieve these symptoms. It is my opinion that this evidence is sufficient to prove that the claimant's lumbar injury required medical services. Thus, this injury satisfies the final requirement for a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find the evidence presented proves that the claimant sustained an injury to his lumbar spine that is established by medical evidence, which is supported by objective findings, that arose out of and occurred in the course of his

employment, that was caused by a specific incident, that is identifiable by time and place of occurrence, that resulted in internal physical harm to his body, and that required medical services. Thus, the claimant sustained a “compensable injury”, as that term is defined by the Act. The claimant is entitled to appropriate benefits provided by the Act for this compensable injury.

## II. BENEFITS

The next issue to be addressed concerns the claimant’s entitlement to various benefits he is currently seeking for his two compensable lumbar injuries. The burden rests upon the claimant to prove his entitlement to the particular benefits he now seeks.

The first of these benefits is the claimant’s entitlement to additional medical services, after March 24, 2007. In order to be entitled to these medical services, the claimant must prove that additional medical services were necessitated by one or both of his compensable lumbar injuries and had a reasonable expectation of accomplishing the purpose or goal for which they were intended at the time the services were rendered.

The claimant testified that he had no problems with his back before the employment related incident on September 8, 2005. It was this employment related incident that gave rise to his admittedly compensable lumbar injury of that date. He further testified that following this injury he has continuously experienced some degree of difficulties with his lower back and into his lower extremities. It was his testimony that, following the employment related

incident on May 11, 2007, he experienced significant increase in the magnitude of his symptoms, but the type or nature of these symptoms remained unchanged.

The medical evidence shows that the claimant has extensive developmental and degenerative changes that involve all levels of his lumbar spine. These records further show that the claimant has extensive defects that also involve all of his lumbar discs. Some of these defects appear to be degenerative in nature and others appear to be traumatic. The medical evidence further shows that all of these conditions, including the discal defects pre-existed the claimant's compensable injury on May 11, 2007.

As a result of his compensable lumbar injury of September 8, 2005, the claimant underwent extensive testing, evaluations, and treatment by Dr. Anthony Capocelli. Dr. Capocelli is a board certified neurosurgeon with considerable expertise in the area of medicine associated with the evaluation and treatment of spinal injuries and conditions. Based upon his extensive testing and evaluations, it was Dr. Capocelli's opinion that the compensable injury of September 8, 2005, was in the form of a disc herniation with possible neurological involvement into the lower extremities. However, Dr. Capocelli further concluded that this injury did not require surgical intervention, but should be treated by the use of conservative modalities.

The medical evidence shows that Dr. Capocelli instituted an extended period of conservative care. During this period, the claimant received almost every type of conservative treatment

modality commonly employed for the treatment of lumbar injuries, such as that experienced by the claimant. These treatment modalities consisted of extensive use of oral pain medication, anti-inflammatories, and muscle relaxors. The claimant also received a considerable period of physical therapy. The medical evidence and even the claimant's testimony show that this extended course of conservative treatment was actually successful in substantially reducing the magnitude of the claimant's various symptoms (although the claimant testified that these symptoms never totally resolved).

In his report of May 18, 2006, Dr. Capocelli opined that the claimant was probably at maximum medical improvement. However, it was his recommendation that the claimant undergo a Functional Capacity Evaluation prior to his final release from treatment.

This Functional Capacity Evaluation or FCE was performed on May 24, 2006. The examiner concluded that the claimant gave unreliable effort, was self limiting in the testing, and exhibited inappropriate pain responses and behavior during the testing. After his review of the test results, it was Dr. Capocelli's opinion that these results were consistent with malingering. Dr. Capocelli then formally released the claimant from further treatment. He subsequently indicated that, should the claimant require any further medical services, he should seek them elsewhere.

The claimant then obtained a change of physicians to Dr. Cyril Raben, an orthopaedic surgeon. Respondent Carrier No. 1, Westport

Insurance Company, paid for the initial evaluation of the claimant by Dr. Raben. This evaluation took place on March 23, 2007.

Dr. Raben diagnosed the claimant as experiencing an array of difficulties that involved his cervical spine, lumbar spine, and shoulder. Some of these conditions might be related to the claimant's compensable injury of September 8, 2005, and some clearly are not. Dr. Raben noted that the claimant had returned to employment, in a lighter duty capacity, and was apparently doing relatively well. The only medical services by Dr. Raben recommended for the claimant's lumbar difficulties were continued use of anti-inflammatory and non narcotic pain medication. He recommended some narcotic pain medication and medication for muscle spasms, which the claimant refused. Finally, he indicated that physical therapy would be appropriate, if needed. He scheduled the claimant for routine follow up in three months. Before this routine follow up visit occurred, the claimant experienced his second compensable injury on May 11, 2007.

After consideration of all the evidence presented, it is my opinion that the medical services that were recommended by Dr. Raben (in the form of continuing anti-inflammatories and non narcotic pain medication) were necessitated by and connected with the claimant's admittedly compensable lumbar injury of September 8, 2005. I recognize that these medications might also be of incidental benefit for the claimant's various other non compensable conditions. However, such incidental benefit does not relieve the respondents of liability for the services. The long term use of

such oral medications is commonly recognized as standard medical practice in the treatment of injuries such as the claimant's compensable injury of September 8, 2005. Thus, respondent carrier #1, Westport Insurance Company, would be liable for the expense of these medications up to May 11, 2007.

The evidence shows that after the claimant's second compensable injury on May 11, 2007, he received treatment at the emergency room of St. Edwards Mercy Medical Center. He had been taken by the respondent employer. The claimant was subsequently seen by Dr. Randall Carson of Sparks Occupational Medicine Center. Again, the claimant was sent to Dr. Carson by the respondent employer.

The records and reports of St. Edwards Mercy Medical Center emergency room and Dr. Carson reveal that the treatment they rendered to the claimant was for an acute lumbar strain. The greater weight of the evidence shows that this acute lumbar strain was caused by the employment related incident on May 11, 2007, and constitutes a new injury. This new injury, in and of itself, produced additional physical damage, at least temporarily, that resulted in a significant increase in the magnitude of the claimant's symptoms. This additional damage and increased symptoms would be reasonably expected to require more aggressive and frequent medical care to relieve these symptoms, additional medical testing (including a MRI) would also appear to be prudent to determine the nature and extent of this additional damage. The fact that this MRI was ultimately determined to show no new or

increase damage to the claimant's discs or bony structures of his spine does not abrogate its reasonableness or necessity. Clearly, the incident described by the claimant could have produced a new discal injury or significantly increased one of the pre-existing defects.

After consideration of all the evidence presented, it is my opinion that the greater weight of the credible evidence shows that the medical services provided to the claimant by and at the direction of the physicians at the emergency room of St. Edwards Mercy Medical Center and by and at the direction of Dr. Randall Carson, were necessitated by or connected with the claimant's second compensable lumbar injury on May 11, 2007. The evidence presented further shows that the medical services provided by these physicians were medically appropriate to reach a reasonable accurate diagnosis of the nature and extent of the claimant's new injury and to treat the injury ultimately diagnosed (i.e. a lumbar strain). The type and duration of services provided would be in accord with the generally accepted medical practice for the treatment of acute lumbar strains.

Therefore, I find that the medical services provided the claimant for his compensable lumbar injury of May 11, 2007, by and at the direction of the physicians and personnel of St. Edwards Mercy Medical Center and by and at the direction of Dr. Randall Carson represent reasonably necessary medical services for the claimant's compensable lumbar injury of May 11, 2007. Pursuant to the provisions of Ark. Code Ann. §11-9-508, liability for the

expense of such services rests upon respondent #2, Bridgefield Casualty Insurance Company. This liability is subject to the medical fee schedule established by this Commission.

I would further note that the medical evidence presented shows that the claimant had not been released by Dr. Carson from continued care of his compensable lumbar injury of May 11, 2007, at the time of the last visit on July 30, 2007. Therefore, respondent #2 Bridgefield Casualty Insurance Company continues to remain liable for appropriate medical services, until the claimant is released from treatment by Dr. Carson. At that point, if the claimant requires any further long term conservative care for the compensable lumbar injury of September 8, 2005, respondent carrier #1, Westport Insurance Company shall be liable for the expense of the services.

Next, is the matter of temporary partial disability benefits. In order to be entitled to such benefits, the claimant must prove that he continued within his healing period from the effects of a compensable injury and continued to experience a decrease in his average weekly wage or wage-earning capacity, as a result of his compensable injury.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The Act defines the healing period as that period of time necessary for healing of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, at a level

where nothing further in the way of time and medical treatment offers a reasonable expectation of improvement, then the healing period has ended. The mere continuation of chronic symptoms is not sufficient, in and of itself, to extend the healing period.

After consideration of the medical evidence presented in this claim, I find that the greater weight of the evidence proves that the claimant's healing period from his compensable lumbar injury of September 8, 2005, had ended prior to May 25, 2006. Even though Dr. Capocelli did not discharge the claimant from his care until June 7, 2006, he opined that the claimant was probably at MMI (maximum medical improvement) on May 18, 2006. He further indicated that he was only waiting for the FCE to establish the claimant's final work restrictions. There is also no evidence that the claimant received any active medical treatment directed toward the improvement of the actual physical damage caused by his September 8, 2005 compensable lumbar injury after May 18, 2006.

Therefore, I find that the claimant has failed to prove by the greater weight of the medical evidence that he continued within his healing period from the effects of a compensable injury during the period of May 25, 2006, through May 10, 2007. This would prevent him from being entitled to any temporary benefits during this period, either total or partial.

I recognize that during the foregoing period the claimant may have continued to experience some degree of chronic complaints, as a result of his September 8, 2005 compensable lumbar injury. However, as indicated by Dr. Capocelli, some degree of chronic

complaints are to be reasonably expected from the type of injury the claimant sustained. These complaints may persist indefinitely and perhaps even permanently. The subsequent report of Dr. Raben in no way contradicts Dr. Capocelli's opinion that the claimant had reached MMI. The medical services recommended by Dr. Raben for the claimant's lumbar difficulties consist of medical management of chronic symptoms. These medical services for chronic symptom management is not to extend the claimant's healing period.

I also recognize that during this period the claimant had substantial restrictions on his potential employment activities and was not able to return to his preinjury employment. As a result of these restrictions and limitations, the claimant may well have experienced some degree of disability. However, the evidence presented simply fails to show that these restrictions and limitations, together with the resulting disability, was "temporary" in nature. In fact, the medical reports of Dr. Capocelli would clearly indicate that these restrictions and limitations were likely permanent.

The final matter concerns the claimant's entitlement to temporary partial disability benefits from May 11, 2007 through a date yet to be determined. In this instance, the greater weight of the medical evidence presented does establish that during this period the claimant was in his healing period from the effects of his second compensable lumbar injury of May 11, 2007. During this time, the claimant was under continuous active medical treatment (primarily by Dr. Carson) directed toward the improvement or

resolution of any additional physical damage caused by his second compensable lumbar injury.

However, the evidence presented fails to show that the claimant experienced any actual reduction in his average weekly wage after the second compensable lumbar injury of May 11, 2007. Further, the evidence presented fails to show that the claimant has even experienced any increase in his physical restrictions and limitations, following his second compensable injury.

I find that the claimant has failed to prove that he has experienced any temporary partial disability as a result of his second compensable lumbar injury of May 11, 2007. Therefore, he would not be entitled to such benefits from May 11, 2007 through a date yet to be determined.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On September 8, 2005, the relationship of employee-employer-carrier existed between the claimant, Bieker Electric Company, and Westport Insurance Company.

3. On September 8, 2005, the claimant earned an average weekly wage of \$508.00. This would entitle the claimant to weekly compensation benefits of \$339.00 for total disability and \$254.00 for permanent partial disability.

4. On September 8, 2005, the claimant sustained a compensable injury to his low back or lumbar spine. All expenses incurred for

medical services for this compensable injury, which accrued through March 23, 2007, have been paid by Westport Insurance Company.

5. Temporary total disability benefits were paid by Westport Insurance Company for the period of November 25, 2005 through May 24, 2006, at the weekly rate of \$372.00. This has resulted in overpayment in the amount of \$858.00 for which respondent Westport Insurance Company is entitled to a credit against any future indemnity benefits awarded to the claimant.

6. Respondent Westport Insurance Company is liable for the expense of any medical services provided to the claimant by and at the direction of Dr. Cyril Raben for his compensable lumbar injury during the period between March 23, 2007 and May 11, 2007.

7. On May 11, 2007, the relationship of employee-employer-carrier existed between the claimant, Bieker Electric Company and Bridgefield Casualty Insurance Company. On May 11, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$307.00 for total disability and \$230.00 for permanent partial disability.

8. On May 11, 2007, the claimant sustained a second compensable injury to his lumbar spine, in the form of a lumbar strain. Specifically, the claimant has established the existence of such an injury by medical evidence, which is supported by medical findings. He has further proven by the greater weight of the credible evidence that this injury arose out of and occurred in the course of his employment with Bieker Electric on May 11, 2007, was caused by a specific incident, is identifiable by time and place of

occurrence, caused internal physical harm to his body, and required medical services.

9. The medical services provided to the claimant by and at the direction of the physicians of St. Edwards Mercy Medical Center and by and at the direction of Dr. Randall Carson for his compensable lumbar strain, on and after May 11, 2007, represents reasonably necessary medical services under Ark. Code Ann. §11-9-508. The greater weight of the evidence proves that such medical services were necessitated by and were connected with the claimant's second compensable injury of May 11, 2007, and have a reasonable expectation of accomplishing the purpose of goal for which they were intended. Pursuant to Ark. Code Ann. §11-9-508, the respondent Bridgefield Casualty Insurance Company is liable for the expense of these services, subject to the medical fee schedule established by this Commission.

10. The claimant has failed to prove that he is entitled to temporary partial disability benefits for the period of May 25, 2006 through a date yet to be determined. Specifically, the claimant has failed to prove by the greater weight of the evidence that he continued within his healing period from the effects of his compensable lumbar injury of September 8, 2005, on and after May 25, 2006. Although the claimant entered his healing period from the effects of his second compensable lumbar injury of May 11, 2007, he has failed to prove that he has sustained any reduction in his average weekly wage or any actual "disability" as a result of this second compensable lumbar injury.

11. Respondent Westport Insurance Company has controverted the claimant's entitlement to any temporary partial disability benefits and any medical expenses incurred after March 23, 2007.

12. Respondent Bridgefield Casualty Insurance Company has denied the occurrence of any compensable injury, while it provided workers' compensation coverage for respondent Bieker Electric, and controvert the claimant's entitlement to any benefits from Bridgefield Casualty Insurance Company.

13. As no controverted benefits have herein been awarded directly to the claimant, no controverted attorney's fee can be awarded to his attorney.

#### ORDER

The respondent Bieker Electric Company and Westport Insurance Company are liable for any medical expenses provided to the claimant for his compensable lumbar injury of September 8, 2005, by and at the direction of Dr. Cyril Raben, on and after March 23, 2007. Such liability is subject to the medical fee schedule established by this Commission.

The respondent Bieker Electric Company and Bridgefield Casualty Insurance Company shall be liable for the expenses incurred by the claimant as a result of medical services provided him for his compensable lumbar injury of May 11, 2007, by and at the direction of physicians at the emergency room of St. Edwards Mercy Medical Center and by and at the direction of Dr. Randall Carson. This liability shall be subject to the medical fee schedule established by this Commission.

The claimant's request for temporary partial disability benefits must be and hereby is denied and dismissed for the reasons heretofore set forth in this Opinion.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE