

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F700734**

**DELSHON TYOUS, EMPLOYEE**

**CLAIMANT**

**CMC STEEL FABRICATIONS, INC.,  
EMPLOYER**

**RESPONDENT**

**ACE AMERICAN INS. CO. C/O ESIS, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JANUARY 17, 2008**

Hearing conducted before Administrative Law Judge S. Dale Douthit in Texarkana, Miller County, Arkansas.

Claimant was represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by Mr. Gill A. Rogers, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On October 24, 2007, the above captioned claim came on for a hearing in Texarkana, Arkansas. A prehearing conference was conducted on August 22, 2007, and a Prehearing Order was filed that same day. A copy of the Prehearing Order was marked as Commission Exhibit "1" and made a part of the record herein without objection, subject to any modifications made on the record at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including November 15, 2006.
- 3) The claimant was earning wages sufficient to entitle him to TTD benefits at the rate of \$488.00 per week and PPD benefits at the rate of \$366.00 per week.

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- 4) The claimant sustained a compensable right thigh injury on November 15, 2006.
- 5) The claimant was terminated by respondents on November 17, 2006.
- 6) The parties agreed to reserve all issues related to permanent impairment.

At the full hearing, the parties agreed to litigate the following issues:

- 1) Whether the claimant sustained a compensable back injury on November 15, 2006.
- 2) If compensability is overcome, whether claimant is entitled to TTD benefits and/or temporary partial disability benefits from November 17, 2006, to a date to be determined, all associated medical treatment, the additional medical treatment now recommended by Dr. Garrett, and attorney's fees.
- 3) Whether claimant is entitled to A.C.A. § 11-9-505(a) benefits.

At the full hearing, the claimant made the following contentions:

- 1) That he sustained compensable injuries to his back and right thigh on November 15, 2006.
- 2) That all the medical treatment he has received to date has been reasonable, necessary, and related to his compensable injuries and respondents should be ordered to pay for all those medical expenses.
- 3) That he is entitled to all treatment now recommended by Dr. Garrett.
- 4) That he should be awarded temporary total disability benefits or temporary partial disability benefits from the date of his termination to a date to be determined. Alternatively, that he should be awarded benefits pursuant to A.C.A. § 11-9-505(a).
- 5) That respondents should be ordered to pay attorney's fees as permitted by law.

At the full hearing, the respondents made the following contentions:

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- 1) That although the claimant sustained a compensable injury to his right leg with pain into the low back on November 15, 2006, he sustained no compensable back injury.
- 2) That all medical treatment received to date that was properly authorized has been provided, including but not limited to an MRI requested by Dr. Knight.
- 3) That claimant's asserted injuries and claims for need for treatment are not supported by objective findings; and as a result, claimant cannot meet his burden of proof with regard to claims of asserted future medical treatment and claims of disability.
- 4) That claimant's application for unemployment benefits precludes any award of TTD or TPD benefits pursuant to A.C.A. § 11-9-506.
- 5) That claimant is not entitled to any benefits pursuant to A.C.A. § 11-9-505(a).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties at the full hearing and recited herein are reasonable and are hereby accepted as fact.
- 3) Claimant has proven by a preponderance of the evidence that he sustained a compensable back injury on or about November 15, 2006, which was supported by objective medical findings.
- 4) The claimant reached maximum medical improvement from his compensable back injury no later than April 23, 2007.

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- 5) Claimant has failed to prove by a preponderance of the evidence that he is entitled to TTD or TPD benefits since the date of his compensable injury.
- 6) All medical treatment contained in the record between November 15, 2006, and April 23, 2007, related to the claimant's back was reasonable, necessary, and related to the claimant's compensable back injury on or about November 15, 2006, and therefore the respondents' responsibility. Treatment for the claimant's back after April 23, 2007, contained in the record herein was not reasonable, necessary, or related to the claimant's compensable injury.
- 7) Medical treatment now recommended by Dr. Garrett is not reasonable, necessary, and related to the claimant's compensable back injury of November 15, 2006, and therefore not the respondents' responsibility.
- 8) Claimant is entitled to fifty-two (52) weeks of benefits pursuant to A.C.A. § 11-9-505(a) as I find respondents refused to return the injured claimant to work they had available without reasonable cause. Said weekly benefits shall be paid at the claimant's average weekly wage at the time of his compensable injury. Said weekly benefits should have begun November 17, 2006, and are now due in a lump sum.
- 9) The claimant is entitled to maximum attorney's fees allowed by Arkansas law consistent with the findings herein.
- 10) Respondents are entitled to a credit for any unemployment benefits received by the claimant during the period of A.C.A. § 11-9-505(a) benefits awarded herein.

**DISCUSSION**

The claimant began working for the respondent-employer on November 17, 2003.

The claimant testified that he worked in the safety department and as a lead inspector for the respondent-employer at the time of his alleged compensable injury on November 15, 2006.

The claimant testified that on or about November 15, 2006, he was inspecting a joist when the alleged compensable event occurred. The claimant testified as follows regarding the

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accident which caused his compensable injuries:

Q Now, you alleged these injuries as of November 15, 2006, and respondents have admitted to a leg injury but not a back injury. Explain to us what happened. Describe the event that occurred that got you hurt.

A Well, they had brought an inexperienced guy from a different line over, his name was Stanley. He was working on a slower line, they brought him over and tried to speed him up. Anyway, to make a long story short, he banded up a bundle of joists and instead of putting – what was required was the three bands on it. He only put one.

Q So that we can all understand what we are talking about, when you say a joist, what is a joist?

A A joist is like – if you go into a Wal-Mart or an Auto Zone and you look up into the ceiling, you will see joists.

Q Large steel beams?

A Yes, sir.

Q All right. And so as I understand what you have described as a bundle of these large steel beams –

A Not to rudely interrupt you but maybe seven or eight in a bundle, it depends on how many is supposed to go in the bundle.

Q And this gentleman, Stanley, what was he doing with this bundle?

A Well, he was being cross-trained by the line foreman to – since he come off a slower line, he couldn't keep up with production and so he placed one band on it and then he's [sic] ship it out, push it down, and then he'd put the other two bands on it.

Q That wasn't really what he was supposed to do?

A No. He was supposed to put all three of them on there and then roll it out.

Q All right. And so what happened ultimately that caused you to get

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hurt?

A Well, when he let the lift down, the bundle – the band breaks and the joists fall out the bundle.

Q All right. So we are talking about a lift now. Where [sic] these joists hanging on some sort of a crane or something?

A No. We had a joist that was hanging on a gip crane, it was sitting in the floor, and the bundle of joists was here. When the band breaks, one of the joists falls out the bundle and hits the one sitting on the floor, and that's the one that pins me up against the one that is on the airjacks in the air.

Q Okay. Let's take it one step at a time. This bundle of joists, are they on the floor wrapped up or are they hanging from something or how does that work?

A They are on a set of jacks. They tilt back so that they will stay snug and so when you put the bands on them, it will be extra tight. So when you let the airjacks down to roll them out, that's when the band breaks on them.

Q Okay. And so this band breaks?

A Yes, sir.

Q And what hits you when the band breaks?

A The one that was hanging on the gip crane sitting on the floor. The one that fell out the bundle hit it and the other one, the one that was in the floor, pinned me.

(T. pp. 12-15, lines 16-25, 1-25, 1-25 & 1-6).

The claimant testified that other people had to remove the joists in order to get him free from being pinned. After the claimant was unpinned, the claimant testified that it began hurting in his right leg and back. The claimant testified that he was then taken to the breakroom, given a bag of ice; and that he requested to see a doctor. The claimant testified

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that he was not taken to the doctor and stayed the rest of his shift in the breakroom.

The claimant testified the following day he reported back to work and was ordered to take a Breathalyzer and urinalysis by the respondents. The claimant testified that after taking the Breathalyzer and urinalysis he was instructed to return home and that a doctor's appointment would be set for him the next day, November 17, 2006. The claimant testified that upon returning to his employment on November 17, 2006, he was informed that he was being terminated. After being terminated, the claimant was instructed to see Ms. Laranda Clayton, who would take the claimant to the doctor. The claimant was then instructed to go to see Dr. George Garrett, the company doctor. On November 17, 2006, the claimant went to see Dr. Garrett along with Ms. Clayton. Immediately upon reporting to Dr. Garrett's office, the claimant filled out a patient health history, which showed that the claimant complained of pain in his back and legs.(Cl. Ex. 1, pg. 26). At that time, Dr. Garrett ordered a right lower extremity Venous Doppler which came back negative for deep venous thrombosis.(Cl. Ex. 1, pg. 30). On November 17, 2006, Dr. Garrett noted that the claimant had a contusion on his right thigh and placed the claimant on Flexeril for muscle spasms.(Cl. Ex. 1, pg. 28).

Upon being released by Dr. Garrett on November 17, 2006, Dr. Garrett advised the claimant he could come back the following Monday if his problems persisted. According to the medical records and the testimony of the claimant, the claimant could not wait till the following Monday and had to go to the emergency room at St. Michael's Hospital on November 19, 2006. The claimant testified he had to go to the emergency room because he was in "terrible pain" and that "the medicine didn't seem like it was working." (T. pg. 35,

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lines 11-12). At St. Michael's the claimant received more medication and was given an X-ray of his lumbar spine which came back normal.(Cl. Ex. 1, pg. 35).

The claimant testified that he was not able to go back and see Dr. Garrett until December 13, 2006, due to not being approved through workers' compensation. The medical records show that when the claimant returned to see Dr. Garrett on December 13, 2006, he was still complaining of persistent pain in his lower back which radiated down to his right thigh. (Cl. Ex. 1, pg. 47). Dr. Garrett's December 13, 2006, report also shows the claimant still complaining of spasms in his back. At that time, Dr. Garrett continued to prescribe Naprosyn, Lorcet Plus, and Flexeril. At that time, Dr. Garrett also recommended the claimant try and get in for an orthopedic evaluation. The claimant treated with Dr. Norris Knight on December 19, 2006. At that time, Dr. Knight recommended an MRI of the claimant's lumbar spine. Ultimately, an MRI of the claimant's lumbar spine was conducted on April 19, 2007, which showed "no evidence of acute traumatic injury, disc protrusion, or significant arthropathy." (Cl. Ex. 1, pg. 64). Claimant continued to treat with Dr. George Garrett on January 30, 2007, and also on January 30, 2007, the claimant treated with a chiropractor, Marc Hagebusch. Chiropractor Marc Hagebusch diagnosed the claimant with lumbar intervertebral disc injury, lumbar radiculitis, muscular hypertonicity, and right lower extremity contusion. (Cl. Ex. 1, pp. 54-55).

The medical records show that in February of 2007 the claimant went to the Pain Management Institute and saw Dr. Syed. The medical records show that Dr. Syed noted right paralumbar spasms and recommended that claimant continue with medications and receive

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an MRI of the lumbar spine. (Cl. Ex. 1, pp. 56-62). The claimant then went to see Dr. Garrett again on March 28, 2007. In the March 28, 2007, report Dr. Garrett states “He does have bilateral paraspinous muscle spasm in the mid lumbar region.” (Cl. Ex. 1, pg. 63). On April 19, 2007, the claimant received his MRI of the lumbar spine which showed the following impression:

- 1) No evidence of acute traumatic injury, disc protrusion, or significant arthropathy.
- 2) Diffuse congenital spinal canal stenosis is present producing mild spinal canal stenosis at the L3 through S1 levels.

(Cl. Ex. 1, pg. 64).

The claimant returned to Dr. Knight on April 23, 2007, for a report on the April 19, 2007, MRI. At that time, Dr. Knight reviewed the claimant’s MRI and found the claimant at maximum medical improvement with no impairment from the acute industrial injury. (Cl. Ex. 1, pg. 65). During the April 23, 2007, examination, Dr. Knight noted that the claimant refused to allow Dr. Knight to conduct a thorough examination. In his report, Dr. Knight noted that the claimant’s hostility prevented an adequate discussion between he and Mr. Tyous. Following his treatment with Dr. Knight, the claimant continued to treat with Dr. Garrett. The claimant treated with Dr. Garrett on May 24, 2007, and again on July 30, 2007. In those reports, Dr. Garrett notes that the claimant still complained of severe pain in his back and muscle spasms in the inner aspect of his right thigh. Based upon the claimant’s continued complaints of pain, Dr. Garrett recommended that the claimant seek a second opinion from a neurologist and seek additional studies; for example Dr. Garrett

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recommended a nerve conduction study and pain management. Dr. Garrett went on to say in his last report contained in the record herein that it would be reasonable for the claimant to remain off work due to claimant's complaints of severe low back, muscle spasms, and pain radiating down to his right leg.

The claimant is seeking temporary total disability benefits from November 17, 2006, to a date yet to be determined, all associated medical treatment, attorney's fees, 505(a) benefits, and all treatment now recommended by Dr. Garrett in his May and June 2007 reports contained in the record herein at Claimant's Exhibit 1, pages 66 and 68.

The initial issue for consideration involves claimant's contention that he suffered a compensable back injury as a result of the accident on or about November 15, 2006. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in Henry Weaver v. Precision Packaging, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment ;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

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After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable back injury on or about November 15, 2006.

First, it must be noted that the respondents stipulate to a compensable event happening on November 15, 2006, wherein the claimant injured his right lower extremity. There seems to be no dispute in the record that the claimant was physically pinned by steel joists while working for the respondent-employer on November 15, 2006, which caused significant damage to the claimant's right lower extremity. There is also no doubt in this examiner's mind that the claimant complained of back problems almost immediately after the incident. The medical records are also clear in that they show the claimant complained of back pain during his first doctor's visit on November 17, 2006. (Cl. Ex. 1, pg. 26). All the medical records contained herein show that from the claimant's first doctor's visit to his last, he always complained of back pain with muscle spasms. The medical records are somewhat unclear at times as to whether a doctor actually saw muscle spasms or whether the claimant was complaining of muscle spasms. However, there seems to be no doubt that Dr. Syed during his February 19, 2007, examination indicated right paralumbar spasms in his report contained at page 57 of Claimant's Exhibit 1. Additionally, Dr. Garrett in is

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March 28, 2007, examination stated clearly “He does have bilateral paraspinous muscle spasm in the mid lumbar region.” (Cl. Ex. 1, pg. 63). There is also no indication from the medical records that the claimant ever had back problems prior to the November 15, 2006, incident.

It is clear to this examiner that the claimant has proven by a preponderance of the evidence that he sustained a compensable back injury arising out of and in the course of his employment on November 15, 2006. It is also clear to this examiner that the claimant has proven by a preponderance of the evidence that the joists falling accident caused internal physical harm to the claimant’s body which required medical services resulting in disability. The claimant’s compensable back injury is shown by medical evidence supported with objective findings by both Drs. Syed and Garrett, wherein they show and state that the claimant suffered from lumbar spasms.

In summary, I find based upon the evidence presented that the claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable back injury as a result of the joists incident on November 15, 2006. The next issue to determine is whether the respondents are liable for the payment of all medical expenses contained in the record herein. An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury by the employee. A.C.A. § 11-9-508(a). The employee has

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the burden of proving by a preponderance of the evidence that the medical treatment is reasonable and necessary. I reviewed the medical contained in the record herein and find that all medical treatment received by the claimant with regard to his back up through April 23, 2007, to have been reasonable, necessary, and related to the claimant's compensable injury. I find that the claimant reached maximum medical improvement for his compensable back injury no later than April 23, 2007, pursuant to the medical report from Dr. Norris Knight contained in Claimant's Exhibit 1, page 65.

In making the determination of maximum medical improvement, I do not disregard the reports and off work notices from Dr. George Garrett subsequent to April 23, 2007, however I do find that the medical opinion regarding the claimant's back from Dr. Knight should be given the most weight. In making the determination of maximum medical improvement based on Dr. Knight's report, I chose to give Dr. Knight's findings more weight than Dr. Garrett for a number of reasons. First, it must be noted that pursuant to Dr. Knight's report of December 19, 2006, contained at pages 49 and 50 of Claimant's Exhibit 1, Dr. Knight found that the claimant "has gross signs of exaggeration on physical exam." (Cl. Ex. 1, pg. 49). Additionally, it must be noted that the claimant's X-rays and MRIs of his back show virtually no problems. The only conditions noted in the claimant's MRI were of a congenital nature.

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In making the determination of maximum medical improvement, I find that Dr. Garrett's recommendations in May and July of 2007 are based solely upon the claimant's complaints of pain; and once again it must be noted that Dr. Knight found that the claimant's complaints of pain were grossly exaggerated. Further, Dr. Hagebusch in his diagnosis found at page 54 of Claimant's Exhibit 1, stated that the claimant had lumbar intervertebral disc injury, lumbar radiculitis, and muscular hypertonicity, which leads this examiner to find that the claimant has more of a back sprain/strain with spasms than any other type of treatable injury. Of course, I have found that the claimant sustained a compensable injury based upon the lumbar muscle spasms and pain management can be awarded beyond the claimant's MMI date; however, I find that based upon the diagnostic reports available in the record and Dr. Knight's opinion that the claimant has reached maximum medical improvement and that no further treatment is necessary after April 23, 2007. Therefore, I find that respondents are responsible for all medical treatment contained in the record from November 15, 2006, through April 23, 2007, as such treatment was reasonable, necessary, and related to the claimant's compensable back injury; however, respondents are not responsible for any medical treatment after April 23, 2007.

Claimant has requested temporary total disability benefits or temporary partial disability benefits from November 17, 2006, to a date yet to be determined. In order

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to be entitled to temporary total disability benefits claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages. Ark. State. Hwy. & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). Temporary partial disability is that period within the healing period in which the employee suffers only a decrease in his earning capacity. I have found that the claimant sustained a compensable back injury on November 15, 2006, and remained within his healing period until April 23, 2007; however, I did not find that the claimant suffered a total incapacity to earn wages during that period of time or even decrease in his earning capacity. The medical records show that Dr. Garrett originally stated that the claimant could return to work on November 20, 2006, in his November 17, 2006, report contained at page 29 of Claimant's Exhibit 1. Then, St. Michael Health System on November 19, 2006, stated that the claimant should be on light duty until seen by a workers' compensation doctor. (Cl. Ex. 1, pp. 32& 38). Interestingly, no other change in the claimant's work status or restrictions happened until after Dr. Knight found the claimant at maximum medical improvement. The claimant's light duty release from St. Michael's Hospital never changed until Dr. Garrett recommended the claimant be unable to work between November 17, 2006, through July 2007, after Dr. Knight found the claimant at maximum medical improvement. I cannot agree with Dr. Garrett's post MMI

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assessment of the claimant's work status when the record shows clearly that Dr. Garrett saw the claimant numerous times between November 17, 2006, and April 23, 2007, and never recommended that claimant be off work during that period of time in any of those reports.

Further, I find that the claimant did sustain a compensable back injury due to the spasms that are reported in the record, and find that the claimant's back was a sprain/strain that would have caused the claimant to be on light duty per the report from St. Michael's Hospital. This examiner finds that the MRI, X-rays, and other medical reports show that the claimant did not sustain a serious enough back injury to be found to be unable to earn any wages, and I agree with St. Michael's Hospital light duty report. It must also be noted that Dr. Garrett based his off work recommendation on the claimant's complaints of pain which Dr. Knight had found to be grossly exaggerated. It must also be noted that the MRI backs up Dr. Knight's assessment of MMI and gross exaggeration of pain and not Dr. Garrett's assessment. Therefore, I find Dr. Garrett's opinion regarding the claimant's ability to work to be given little weight. The claimant's MRI clearly shows the claimant has no problems with his back that would cause him to be totally incapacitated to work, and the MRI shows that any problems the claimant does have with his back were congenital in nature and not related to the claimant's compensable back injury on November 15, 2006. I further

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find that the nature of the claimant's work was light duty and that he would not have a decrease in earnings due to the light duty restrictions. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits or temporary partial disability benefits.

The claimant has requested benefits pursuant to A.C.A. § 11-9-505(a)(1) which states "Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, or where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding one (1) year."

I find that the respondent-employer, without reasonable cause, refused to return the claimant to work after he was injured in the course of his employment on November 15, 2006. I find that the employer committed such refusal when suitable employment was available within the employee's physical and mental limitations. The record is clear that the respondents terminated the claimant without reasonable cause almost immediately after the claimant sustained his compensable crush type injury to his leg and back.

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The record also shows that just a few days prior to the claimant's compensable injury on November 15, 2006, a written evaluation was conducted that rated the claimant's work abilities as above average. (Cl. Ex. 1, pp. 19-21). That performance evaluation was conducted on November 10, 2006, and the claimant's compensable injury happened on November 15, 2006. Nothing in the claimant's personnel records shows reason for reprimand between 11/10/06 and 11/16/06. Not until after the claimant's injury does anything appear. The respondents gave some vague testimony about the claimant being reprimanded for failing to knock off clamps just a few hours prior to his November 15, 2006, compensable injury; however, the claimant's credible testimony on that issue revealed that the claimant did not receive any verbal reprimands on the day of the compensable event:

Q Okay. And you know this Rodolfo Ramos?

A Yes, sir.

Q Do you recall him telling you on the 16<sup>th</sup> of November, and like I said, I think this may have been the 15<sup>th</sup>, but do you recall him telling you on the day of the incident that you need to knock the clamps off before putting the joists in the bundle rack?

A No, sir.

Q Do you remember seeing him there on the date of the incident?

A No, sir, because his is a floater. He moves around.

Q You don't remember talking to him on the date of the incident?

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A No, sir.

(T. pp. 83-84, lines 22-25 & 1-11).

Respondents would have this examiner to believe that just a few hours before the claimant sustained his compensable injuries that he committed such gross error in his job duties that he was going to be immediately terminated. However, the question then becomes that if the claimant committed such gross error, why wasn't he immediately terminated; why then was he allowed to continue working? Contained in the record is some sort of statement of reasons as to why the claimant was terminated dated November 17, 2006; that statement of reasons are contained in Claimant's Exhibit 1, page 22. This examiner finds it very interesting that the involuntary termination statement dated November 17, 2006, contains an infraction that allegedly happened on November 14, 2006. However, there is no record or report contained in the record dated November 14, 2006, that shows the claimant committed a job infraction. It is clear to this examiner that the statement of reasons for involuntary termination that is dated November 17, 2006, contained at page 22 of Claimant's Exhibit 1, was created after the claimant's compensable event. The timing, nature and content of the November 17, 2006, reasons for termination are highly suspect in this examiner's opinion. If the claimant committed violations on November 14, 2006, that were a serious enough infraction to be terminated, why then is there no separate report

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contained in the claimant's personnel file? If the claimant committed such a gross error in his job duties on the night of his compensable incident that would justify his termination, why then would he not have been immediately terminated? It is clear to this examiner that the claimant was only terminated after he sustained a compensable injury.

I also have found that the claimant was able to engage in light duty employment during his healing period between November 17, 2006, and April 23, 2007. I find that based upon the testimony contained in the record of the claimant's job duties as a safety inspector and lead inspector, that his job duties were inherently light in nature. Therefore, by the employer terminating the claimant immediately after his compensable injury, I find the respondent-employer without reasonable cause refused to return the claimant to work. I also find that claimant's job as a safety inspector/lead inspector was suitable employment within the employee's physical and mental limitations at the time of his termination. Therefore, I find that the claimant is entitled to fifty-two (52) weeks of lost wages, pursuant to A.C.A. § 11-9-505(a)(1). Said weekly amount shall be equal to the claimant's average weekly wage at the time of his compensable injury on November 15, 2006, and should have began November 17, 2006.

**AWARD**

Respondents are to pay all medical expenses contained in the record herein for treatment to the claimant's back and right leg between November 17, 2006, through April 23, 2007.

Respondents are herein directed and ordered to pay the claimant fifty-two (52) weeks of lost wages pursuant to A.C.A. § 11-9-505(a)(1) due to the respondents' failure to return the claimant to work where suitable employment was available. Said weekly benefits shall be equal to the claimant's average weekly wage at the time of his November 15, 2006, compensable injury.

Maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable Gregory Giles, pursuant to A.C.A. § 11-9-715.

This award shall bear interest at the legal rate pursuant to A.C.A. § 11-9-809 until paid.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb