

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F000884

DAVID WRIGHT, EMPLOYEE

CLAIMANT

TYSON FOODS, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED SEPTEMBER 30, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE RONALD CHAUFY, Attorney at Law, Texarkana, Texas.

Respondent represented by HONORABLE DAVID WALL, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and Reversed in part.

OPINION AND ORDER

The claimant appeals and the respondent cross-appeals a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment to follow-up with diagnosing and possibly treating his erectile dysfunction; a finding that the claimant failed to prove by a preponderance of the evidence that additional medical treatment of his compensable thoracic spine injury was reasonable and necessary medical treatment; a finding that the claimant failed to prove that he was permanently and totally disabled; and a finding that the claimant proved by

a preponderance of the evidence that he was entitled to a 10% loss in wage-earning capacity over and above his 15% physical anatomical impairment rating. Based upon our de novo review of the record, we affirm in part and reverse in part the decision of the Administrative Law Judge.

Specifically, we affirm the finding that the claimant failed to prove by a preponderance of the evidence that he was entitled to additional medical treatment for the treatment of his compensable thoracic spine injury and the finding that the claimant was not permanently and totally disabled. However, we reverse the decision of the Administrative Law Judge finding that the claimant was entitled to diagnostic and possible treatment of his erectile dysfunction and the award of the 10% loss in wage-earning capacity.

The claimant sustained an admittedly compensable injury on September 23, 1999. The claimant was born on November 28, 1965, and is a high school graduate. He began working for a living immediately upon graduation from high school. The claimant began working off and on for the respondent employer in 1984 in sanitation. From 1984 through 1988, the claimant performed factory work at Poulan. The claimant attended truck driving school in 1988, but has never worked as a truck driver. The claimant worked for approximately one year for North Anson Reel factory, prior to securing a job with the respondent employer in 1990. The

claimant has held several positions with the respondent employer prior to his compensable injury. At the time of his injury, claimant was employed as a jack or forklift driver. The claimant testified that as a jack or forklift operator, he was required to lift boxes that sometimes weighed as much as 70 pounds.

The claimant initially sought medical treatment for his injury from Dr. Lowell Harris on December 15, 1999. Upon Dr. Harris' retirement, Dr. Michael Downs took over the claimant's care. The claimant was treated conservatively by Dr. Harris and Dr. Downs. An MRI was performed on December 27, 1999, which revealed a "right paracentral moderate protrusion of disc material at the T6-T7 level." The MRI scan of the claimant's lumbar spine was negative or normal. Dr. Downs referred the claimant to Dr. Reginald Rutherford, a neurologist in Little Rock, Arkansas, for an evaluation.

Dr. Rutherford examined the claimant on January 20, 2000. Dr. Rutherford noted in his report that the claimant complained of numbness involving his trunk and legs. Dr. Rutherford further noted, "...when Mr. Wright walked down the hall and entered a room that his gait was spastic." Dr. Rutherford's examination of the claimant revealed findings consistent with spinal cord dysfunction; thus, he referred the claimant to Dr. Anthony Russell for an immediate evaluation.

Dr. Russell examined the claimant on January 20, 2000 as well. Dr. Russell noted that the claimant's findings were "certainly consistent with a myelopathy secondary to spinal cord compression in the thoracic region." Dr. Russell advised the claimant that he was a "semi-urgent" candidate for surgery. The claimant underwent the surgery on February 16, 2000.

In his first post-operative follow-up appointment with Dr. Russell on February 24, 2000, Dr. Russell noted that the claimant's gait was "much improved," as was the claimant's pain. The claimant testified that the surgery was beneficial with regard to his ability to walk, but that he continued to suffer from pain. When asked about the pain, the claimant identified his pain as being in his neck and lower back. Dr. Russell testified in his deposition that the cervical and lumbar complaints are not related to the claimant's compensable injury.

In March of 2000, Dr. Russell noted that the claimant was having minimal to mild problems with impotency. Dr. Russell further noted at that time that the claimant's improvement had been excellent and that the claimant would continue to make progress over the next few months. Dr. Russell continued to note the claimant's complaints with impotency over the next few months.

On July 27, 2000, the claimant was seen by Dr. D. Keith Mooney, a urologist in Little Rock, Arkansas. Dr. Mooney recorded in the claimant's history that the claimant maintains that he can attain an erection but that he is unable to sustain it. Dr. Mooney outlined the following plan:

1. At this point, it is not clear the etiology of his erectile dysfunction just yet. I do not see any signs of abnormality of the perineal area to suggest perineal injury. Certainly he voids well with a good stream. At this point, we will start him on Viagra 50 mg samples. Viagra information sheet, as well as, details of usage, potential risk associated with this have been discussed. The patient will call back to report appropriate dosage ranging from 25 mg to 50 mg to 100 mg.
2. I will have him return in six weeks and see where we need to go from there. If he continues to be symptomatic, we will likely obtain a screening testosterone level. We may consider penile Doppler study, but also may consider sleep study in view of his Workman's Comp nature to ensure that he does indeed have erectile dysfunction that is objectively observed.

The claimant did not follow-up with Dr. Mooney's office regarding the dosage of Viagra samples, nor with the

possible screening and sleep study. The claimant testified that the respondent employer cancelled the follow-up appointment in order for the claimant to undergo a psychological evaluation.

Hermina Wilson, the medical case manager assigned to the claim by the respondent, testified at the hearing. Ms. Wilson's testimony regarding the claimant's failure to return to Dr. Mooney's office is inconsistent with the claimant's testimony. Ms. Wilson testified that the claimant failed to keep his follow-up appointment; that it was not cancelled by the respondent employer. Ms. Wilson further testified that she arranged for the claimant to be examined by Dr. Brent Wren, a psychiatrist who specializes in spinal cord rehabilitation. Dr. Wren made several recommendations, but the claimant did not want to try many of them.

Dr. Russell never released the claimant to return to work. Dr. Russell testified in his deposition that the claimant kept advising him that he was not ready to return to work. Therefore, Dr. Russell did not want to be responsible for releasing the claimant. Dr. Russell further testified that he did not want the claimant to be re-injured from being placed in a position in which the claimant would be unable to quickly respond in an emergency or unforeseen accident.

After Dr. Russell refused to release the claimant to return to work, the claimant was re-examined by Dr. Rutherford at the respondent's request. In a report dated November 21, 2000, Dr. Rutherford noted the following:

... Mr. Wright reports that he underwent surgery in mid-February 2000. He is improved following this pertaining to function of his legs and ability to walk. Current complaints comprise neck pain, pain and stiffness of the whole of the back, sharp pain radiating anteriorly right mid chest, throbbing and burning low back, sensitive stomach and sexual dysfunction. He advised that he has not yet returned to work by virtue of complaints of pain and stiffness. Mr. Wright's examination was repeated. He demonstrates normal, unrestricted ambulation. There is no evidence of spasticity in observing gait on current examination which is clearly improved from when Mr. Wright was last seen in January 2000. There is evidence of inconsistency in range of motion testing of the cervical and lumbar spine. With respect to the cervical spine, passive range of motion was noted to be well in excess of active range of motion. With respect to the lumbar spine on formal testing, there was at least moderate restriction on forward bending during formal testing with observed range of motion watching Mr. Wright change position and remove his socks revealed greater unrestricted range of motion than was evidence on formal testing. Neurological examination revealed normal muscle bulk all four extremities. There was unsustained clonus at each ankle. Manual muscle testing revealed collapsing pattern weakness all major muscle groups all four extremities indicative of functional or non-organic weakness. Reflex examination was normal

both upper extremities. Knee and ankle jerks were brisk with unsustained clonus noted at both ankles. Plantar responses was flexor bilaterally.

Mr. Wright is clearly improved from previous. His current examination demonstrates clear evidence of functional overlay. This is likely inhibiting his recovery. From my perspective, there is no role for consideration of further thoracic spinal surgery via either clinical or serial MRI parameters. With respect to his complaints of low back pain [illegible] substantive abnormality. He was noted to have a small disk bulge at L4/5 which would be considered clinically inconsequential. With respect to his cervical spine, at least screening imaging in the context of his thoracic MRI proved normal with current clinical examination failing to demonstrate any features of clinical concern. It is thus recommended that consideration be given to further testing referable to the functional overlay noted on examination, specifically an FCE and psychological examination....I did receive a job site analysis from Ms. Wilson pertaining to designation of shipping clerk. Mr. Wright's current neurological examination is considered compatible with the job description provided.

During his deposition, Dr. Russell was asked about Dr. Rutherford's findings. Dr. Russell explained that the collapsing pattern of muscle testing "can be a sign of some attempt to manipulate the results of the physical exam." With regard to Dr. Rutherford's recommendation for an FCE and psychological examination, Dr. Russell testified that they were appropriate.

The claimant underwent a functional capacity evaluation (FCE) on November 30, 2000, which was conducted by Jerry Daniel, a physical therapist. The claimant was deemed to have passed only 14 of 36 validity criteria during the FCE. The claimant did not pass the validity profile, "suggesting very poor, voluntary submaximal effort not related to pain, medical improvement, or disability." In a report to Dr. Rutherford, Mr. Daniel noted:

Mr. Wright's performance today is characterized by over reaction, inconsistent effort, improvement with distraction and many significant discrepancies.

On the merit of his willingness to lift and carry 10 pounds, his work classification is technically placed in the Sedentary Physical Demand Range. He was unwilling to reach below 27 inches from the floor during lifting tests....

Pursuant to Dr. Rutherford's request, the claimant underwent a psychological evaluation by Dr. Judy White Johnson, a clinical psychologist and neuropsychologist. Dr. Johnson concluded from her evaluation that the claimant possessed a clinical profile of one interested in secondary gain. Moreover, she noted:

As a medical patient, Mr. Wright will not accept the role that his psychological functioning has in his physical functioning. Whatever physical problems are present will be complicated and magnified due to the underlying psychological factors. He does not believe that he is going to improve and

is not motivated to work to do so. He gives up when facing difficulties.

Dr. Johnson explained, "Expect him to present symptoms in a dramatic manner, which suggest more serious problems than are actually present. Secondary gain and conversion factors further complicate the picture."

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002).

However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable

injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989

(Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed

procedure and the condition it is sought to remedy. Deborah

Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also,

the respondent is only responsible for medical services which are causally related to the compensable injury.

Our review of the evidence demonstrates that the claimant is not entitled to additional medical treatment with respect to his alleged erectile dysfunction. The

claimant testified that the follow-up appointment with Dr. Mooney's office was cancelled by the respondents so that the claimant could attend another medical appointment in the form of either the functional capacity evaluation or the psychological evaluation. However, Ms. Hermina Wilson testified that when she spoke with Dr. Mooney's office, she was advised that the claimant failed to keep his follow-up appointment, and that appointment was not cancelled by the respondents. A review of the record reveals that the functional capacity evaluation was performed on November 30, 2000 and the psychological evaluation was performed on December 11, 2000. Both of these appointments took place well beyond the six-week follow-up time recommended by Dr. Mooney.

Further, the medical evidence fails to demonstrate that the claimant is entitled to any additional treatment for this alleged problem. Although the medical records indicate that the claimant was complaining of impotency shortly after his surgery, there have been no objective findings to support the claimant's complaints. Dr. Mooney's initial evaluation of the claimant failed to demonstrate, identify, or locate any signs or symptoms of abnormality with regard to the claimant's complaints of erectile dysfunction. Dr. Mooney prescribed Viagra to the claimant and instructed him to return in six weeks for a follow-up.

The claimant failed to do so, although the argument exists between the claimant and the respondent about why the claimant did not go. However, in my opinion, the evidence preponderates in favor of finding that the claimant just failed to follow-up. In addition, when the claimant was evaluated by Dr. Judy White Johnson for the psychological examination, the claimant failed to address that issue with Dr. Johnson. The claimant merely stated to Dr. Johnson that that issue was "personal" and he did not want to talk about it. In addition, Dr. Johnson administered the Waller Physical Symptoms Inventory test. On that test, it was found that the claimant showed a pattern of symptom magnification and distortion. Accordingly, we find that the claimant is not entitled to additional medical treatment for his alleged erectile dysfunction.

The claimant is also requesting additional medical treatment for lumbar pain. Our review of the evidence indicates that the claimant is not entitled to this continuing medical treatment. The claimant has not established by a preponderance of the evidence that his cervical and lower back complaints are in any way related to his compensable thoracic spine injury. The claimant's treating physician, Dr. Russell, testified that neither the claimant's cervical nor lumbar complaints are related to the claimant's compensable injury. Dr. Russell further

testified that he did not have any recommendations for additional treatment for the claimant's compensable thoracic injury. The claimant has not introduced any credible evidence demonstrating the need for additional medical treatment of his thoracic injury. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with his compensable injury.

The last issue to be addressed is the wage-loss issue. The claimant contends that he is permanently and totally disabled. The Administrative Law Judge awarded the claimant a 10% loss in wage-earning capacity. We find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to any wage-loss disability benefits in excess of his 15% permanent impairment rating.

The Arkansas Workers' Compensation Law provides that when an injured worker's disability condition becomes stable and no further treatment will improve that condition, the disability is deemed permanent. In order to be entitled to any wage loss disability in excess of permanent physical impairment, the claimant must first prove by a preponderance of the evidence that she sustained permanent physical impairment as a result of the compensable injury. Needham v. Harvest Foods, 64 Ark. App. 141, 987 S.W.2d 278, (1998). If the employee is totally incapacitated from earning a

livelihood at that time, he is entitled to compensation for permanent and total disability. See, Minor v. Poinsett Lumber & Manufacturing Co., 235 Ark. 195, 357 S.W.2d 504 (1962).

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Emerson Electric v. Gaston, 75 Ark. App. 232, 58 S.W.3d 848 (2001). To be entitled to any wage-loss disability benefit in excess of permanent physical impairment, a claimant must first prove, by a preponderance of the evidence, that he or she sustained permanent physical impairment as a result of a compensable injury. Wal-Mart Stores, Inc. v. Connell, 340 Ark. 475, 10 S.W.3d 727 (2000). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. Emerson Electric v. Gaston, supra.

In determining wage loss disability, the Commission may take into consideration the workers' age, education, work experience, medical evidence and any other matters which may reasonably be expected to affect the workers' future earning power. Such other matters are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. Glass v. Edens, 233 Ark. 786,

346 S.W.2d 685 (1961); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946 (1984). Curry v. Franklin Electric, 32 Ark. App. 168, 798 S.W.2d 130 (1990). A claimant's lack of interest in pursuing employment with her employer and negative attitude in looking for work are impediments to our full assessment of wage loss.

However, so long as an employee, subsequent to his injury, has returned to work, has obtained other employment, or has a bona fide and reasonably obtainable offer to be employed at wages equal to or greater than his average weekly wage at the time of the accident, he or she shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by a preponderance of the medical testimony and evidence. Ark. Code Ann. §11-9-522(b)(2) (Repl. 2002). The employer or its workers' compensation insurance carrier has the burden of proving the employee's employment, or the employee's receipt of a bona fide offer to be employed, at wages equal to or greater than his average weekly wage at the time of the accident. Ark. Code Ann. §11-9-522(c)(1). In considering factors that may affect an employee's future earning capacity, the Commission considers the claimant's motivation to return to work, since a lack of interest or a negative attitude impedes the assessment of the claimant's loss of earning capacity. Emerson Electric v. Gaston, supra.

The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. Oller v. Champion Parts Rebuilders, 5 Ark. App. 307, 635 S.W.2d 276 (1982).

Under the Arkansas Workers' Compensation Law that existed prior to the passage of Act 796, an injured worker could also be classified as permanently and totally disabled under the "odd lot" doctrine even though the injured worker was not altogether incapacitated from work. An injured worker was said to fall into the "odd lot" category where the obvious severity of his injury combined with other factors such that the services he could perform were so limited in quality, dependability, or quantity that a reasonably stable market did not exist for those services even though the claimant was not completely incapacitated from work. See, Lewis v. Camelot, 35 Ark. App. 212, 816 S.W.2d 632 (1991). However, Act 796 eliminated the "odd-lot" doctrine as a consideration in a claim for permanent disability benefits under the Arkansas Workers' Compensation Commission. See, Ark. Code Ann. § 11-9-522(e) (Repl. 2002).

In addition, Ark. Code Ann. § 11-9-102(4)(F)(ii)(Repl. 2002) provides:

(a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.

(b) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

"Major cause" is defined as more than 50% of the cause. Ark. Code Ann. § 11-9-102(14) (Repl. 2002).

Further, "disability" is defined as an "incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury." Ark. Code Ann. § 11-9-102(8) (Supp. 1999).

Considering the context in which the terms "permanent benefits" and "disability" are used in Ark. Code Ann. § 11-9-102(5)(F)(ii), the amendments of Act 796 clearly impose a requirement on a claimant seeking compensation for a permanent decrease in earning capacity to show that the compensable injury was the major cause of any decrease in earning capacity to obtain an award of permanent disability benefits.

We find that the claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled as a result of his compensable injury. As noted above, if the employee is totally incapacitated from earning a livelihood, he may be found permanently and totally disabled. Although the claimant contends that he

cannot work due to his inability to function with pain, the psychological evaluation expects the claimant to present symptoms in a dramatic manner and it further suggests that the claimant's symptoms are not as serious as he might suggest.

Further, Dr. Rutherford opined that the claimant was capable of returning to work in the capacity of a shipping clerk. The FCE, while indicating an invalid profile, still confirmed that the claimant could return to work in at least a sedentary capacity. Furthermore, while Dr. Russell was reluctant to release the claimant to return to work and assume the responsibility should something go wrong, he testified that the claimant should be able to bend and stoop and lift up to 50 pounds. Dr. Russell testified:

Q. Okay. And if Tyson Foods had a job for this individual where he's a shipping clerk, and could sit and stand at his leisure, requires no lifting, he does have to reach and open a window, a sliding glass window, and answer the phone, do you see any problem with that?

A. No.

Q. Okay. And at what point in time did that change? In other words, you were-- you had testified that you didn't feel like he could go to work. At what point in time did he become, at least in your mind, able to do something like that?

- A. I don't know that there was a specific time.
- Q. How about the FCE date?
- A. No. I don't recall, again, registering the FCE, honestly, I must have reviewed it at a time when I had something else going on.
- Q. Okay. What about when you didn't schedule another appointment in March of 2001? Do you think he was capable of doing that?
- A. I think that would have been a little early.
- Q. So at some point between today and March and 2001?
- A. Sure. [D53-54]

The overwhelming weight of the credible evidence establishes that the claimant is not totally incapacitated from earning a livelihood. The claimant has sustained a compensable injury and he currently complains of pain, much of which is not related to his compensable injury; nevertheless, the evidence reflects that the claimant is capable of working.

A.C.A. § 11-9-522(b)(2) provides:

However, so long as an employee, subsequent to his or her injury, has returned to work, has obtained other employment, or has a bona fide and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of the accident, he or she shall not be entitled to permanent

partial disability benefits in excess of the percentage of permanent physical impairment established by a preponderance of the medical testimony and evidence.

The record reflects that the respondents have identified a job within their plant which the claimant is physically capable of performing. The claimant testified that he was approached by respondents to return to work, but it was too early for him to go back to work. Ms. Wilson testified that once the job was identified, the claimant was supposed to be offered the job via mail. There is no evidence in the record to rise to a preponderance of the evidence to find that the claimant was "offered" employment with respondents with the same or similar wages. Ms. Wilson did not "offer" the job to the claimant and there is no evidence of a job offer mailed or otherwise related to the claimant. Therefore, A.C.A. § 11-9-522(b)(2) does not operate to bar the claimant from receiving permanent partial disability in excess of his physical impairment rating. However, the respondent's offer of proof establishes that work is available for the claimant within the claimant's sedentary working restrictions.

The claimant has a strong and stable work history. The claimant is young, he is a high school graduate, and he can read and write. The claimant possesses the ability to be re-trained should he so desire. The claimant's medical

records indicate that he is able to work, even if Dr. Russell does not want to assume responsibility for releasing the claimant to work. The claimant has not wanted to return to work and he has made no effort to re-join the workforce. In short, the claimant is simply not motivated to return to work.

After we consider the claimant's age, his education, work experience, and the nature of his injury, the claimant's negative attitude in returning to work, and all the other relevant factors, we find that the claimant has failed to prove by a preponderance of the evidence that he sustained any loss in wage-earning capacity. Accordingly, we reverse the decision of the Administrative Law Judge awarding wage-loss disability benefits.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I must respectfully dissent from the opinion of the majority denying any and all additional benefits for the claimant's compensable injury.

The claimant was injured in an admittedly job related accident on September 23, 1999, when a forklift that he was operating fell off the loading dock at a Tyson Foods plant in Hope, Arkansas. The respondent provided the claimant with medical treatment and he eventually was seen by Dr. Anthony Russell, a Little Rock neurosurgeon, who diagnosed him as suffering from a "huge thoracic disc herniation," at the T6-T7 level. Dr. Russell would eventually perform a discectomy at this level in an attempt to repair the disc injury, relieve the compression on the claimant's spinal cord, and reduce the pain and related symptoms from which the claimant was suffering.

The first issue in this case is whether the claimant is entitled to additional medical treatment. The claimant has requested further medical treatment based upon an alleged lumbar injury which he claims occurred in the same forklift accident that injured his thoracic spine. In reviewing the medical records, I note that the claimant did complain of low back pain in his doctor visits immediately following his injury. For example, the earliest medical report contained in the file is a progress note from Dr. Lowell Harris dated December 15, 1999. In that notation, Dr. Harris stated that the claimant was still having low back pain. These complaints of back pain continued to appear in the progress notes regarding the claimant's treatment. The first MRI performed on the claimant was on

December 27, 1999 and, the MRI report states that the claimant was suffering from a disc bulge at the L4-L5 level. Subsequent MRI's continued to note the presence of lumbar disc bulges. The most recent MRI contained in the record is November 30, 2000 and describes the lumbar anomaly as a "lateral right disc herniation at L4-L5 with severe encroachment on the neural foramen and exiting nerve root."

The claimant's consistent complaints of lumbar pain and the findings in several MRI's support the claimant's argument that he did suffer an injury to his lumbar spine in his compensable forklift accident and that the lumbar condition has grown progressively worse over time.

In its cross appeal, the respondent contended that the Administrative Law Judge erred in awarding the claimant benefits for his impotency and penile dysfunction problems. However, the respondent has not articulated any clear reason as to why the claimant should be denied this medical treatment. At the hearing, and in the appeal brief, the respondent discusses at great length a missed appointment with the claimant's Urologist, Dr. Keith Mooney. According to the claimant, the appointment was canceled by the respondent. However, the respondent contends that the claimant failed to keep the appointment for reasons of his own. However, this argument is totally irrelevant. The question is not who caused the claimant to miss his

urological appointment, but whether this appointment and follow up treatment was reasonable and necessary and related to the claimant's compensable injury. The Administrative Law Judge correctly found that it was. That finding is clearly supported by the evidence in the record. The claimant consistently complained of sexual dysfunction as a result of his injury and Dr. Russell opined, on more than one occasion, that these types of problems are consistent with an injury such as that suffered by the claimant.

The respondent also notes that there is no report from Dr. Mooney setting out any "objective evidence" of any erectile dysfunction. However, this argument overlooks the fact that the claimant unquestionably suffered a herniated disc in the thoracic region of his spine, an injury which can cause this problem. Therefore, the objective evidence of the injury is the disc herniation at T6-T7, a condition that was unquestionably caused by a compensable injury.

The final issue in this case is whether the claimant is entitled to additional benefits for wage loss disability or, in the alternative, whether he is entitled to benefits for permanent and total disability. In arguing his entitlement to the latter, the claimant asserts that even if his thoracic spinal injury is considered by itself, he still has established that he is permanently and totally disabled. I believe the claimant has met his burden of proof. Dr. Russell, the claimant's primary treating physician who is

most familiar with this case, opined that the claimant was not yet able to return to any type of gainful employment. In his letter of February 21, 2002, Dr. Russell clearly stated that the claimant, in addition to a disc herniation, had suffered a significant spinal cord injury and as such, his future employability was unlikely given the restrictions that would be placed upon him. Dr. Russell reiterated this opinion in his deposition of May 31, 2002.

The claimant likewise testified about the severe debilitating pain he undergoes. According to the claimant, he is not able to engage in any prolonged sitting or standing. Likewise, bending over or stooping causes a considerable increase in his level of pain. The claimant is further restricted from doing any heavy lifting or similar activities. Since the claimant's prior jobs have all involved manual labor, usually in a factory setting, it seems unlikely that he would be able to return to his former employment or similar jobs. Therefore, based on the above evidence, I find that the claimant has proven by a preponderance of the evidence that he is permanently and totally disabled.

In denying all benefits for wage-loss disability, the majority notes the claimant's relatively young age, (38) and his poor motivation to return to work. I point out that the claimant has suffered a severe injury that resulted in a substantial amount of disability. The extensive

restrictions on the claimant's activities and his very limited likelihood of returning to work certainly play a part in his poor motivation. Rather than being a limiting factor, it would appear to me that the depression and severe pain syndrome resulting from the injury are factors which would enhance the claimant's wage loss disability and not limit it.

For the foregoing reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner