

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204936

RONALD K. HICKMAN, EMPLOYEE	CLAIMANT
KELLOGG BROWN & ROOT, EMPLOYER	RESPONDENT NO. 1
PACIFIC EMPLOYERS INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED OCTOBER 6, 2006

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

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 represented by HONORABLE JAMES C. BAKER, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by HONORABLE JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed, in part, affirmed, in part, and modified, in part.

OPINION AND ORDER

Respondent no. 1 appeals a decision of the Administrative Law Judge filed on January 25, 2006, finding that the respondent carrier is liable for a 30% impairment

rating to the claimant's lower extremity. In addition, the respondent no. 1 appeals the finding that the respondent carrier is liable for additional temporary total disability benefits from October 28, 2003, to May 4, 2005, with the exception of the period of March 12, 2004 to May 25, 2004. The claimant cross-appeals the finding that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable back injury, and likewise failed to prove that he is totally and permanently disabled, regardless of his alleged back injury.

Our carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that he sustained an impairment rating of 30% to his lower extremity as a result of his compensable knee injury, and that he is entitled to the temporary total disability benefits as awarded. Further, we find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable back injury, or that he is totally and permanently disabled as a result of his compensable injury.

Therefore, we find that the decision of the Administrative Law Judge should be and hereby is reversed in part, affirmed in part, and modified in part.

First, the claimant has failed to prove by a preponderance of the evidence that the April 26, 2002, work-related incident was the major cause of the permanent impairment rating assigned by Dr. Bailey. Dr. Bailey testified that, within a reasonable degree of medical certainty, the claimant's preexisting degenerative knee condition was the major cause of his total knee replacement surgery and resulting impairment, as opposed to his April 2002, accident. Ark. Code Ann. §11-9-102(4)(F)(a) states that permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause (more than 50%) of the disability or impairment.

The claimant's medical history, as it pertains to this claim, is long and complicated. Beginning with his most current injury, which is the subject of this claim, on April 26, 2002, the claimant, a precision millwright, slipped in some oil, which caused him to fall and hit his

right knee on a platform. The claimant alleges that he ultimately landed on his back. The claimant had been working as a millwright for the respondent employer for less than a week when this incident occurred. The claimant first sought medical treatment for his alleged injuries on April 28, 2002, at Little River Memorial Hospital in Ashdown, Arkansas. Hospital records of that visit indicate that the claimant was experiencing pain in his right knee down into his foot. An x-ray of the claimant's right knee revealed severe multi-compartmental osteoarthritis, with no acute injury. The claimant was seen again on May 21, 2002, at the emergency department of Morehouse General Hospital in Bastrop, Louisiana, with complaints of continuous knee and groin pain. The claimant also complained of lower, chronic back pain.

On June 5, 2002, the claimant was examined by Dr. Sidney L. Bailey at the Orthopaedic Clinic in Monroe, Louisiana. At that time, Dr. Bailey assessed the claimant with thoracic strain/sprain, right knee contusion, and preexisting, post traumatic degenerative arthritis of the

right knee. In his report of that examination, Dr. Bailey stated:

We discussed options at length. Due to the length of time from his injury and due to the fact that he has some inguinal-groin symptoms with previous multi-level instrumented lumbar fusion I would recommend EMG of the lower extremities and Ultracet for pain.

The preexisting conditions to which Dr. Bailey referred in his report were prior knee and back injuries. More specifically, the record indicates that the claimant underwent a right knee medial meniscectomy in 1976 in Monroe, Louisiana. The record is devoid of further details of this surgery. However, the claimant testified that he injured his right knee in 1976 in a work related accident when a rung broke on a ladder that he was climbing. The claimant's knee injury required surgery, which was allegedly performed by Dr. Hand. The claimant recalled that after Dr. Hand performed his knee surgery, he was off work for approximately three to four months.

The record reveals that the claimant sustained his

first back injury on November 9, 1984, when his vehicle was backed into by a garbage truck. The claimant was originally diagnosed with a lumbosacral strain as a result of that injury. However, when the claimant's symptoms did not subside with conservative treatment, he eventually saw a specialist in Shreveport, who in turn, referred him to Dr. Bruce Razza, an orthopaedic surgeon in New Orleans.

On June 11, 1985, the claimant underwent a bilateral lumbar laminectomy, foraminotomy, and decompression at level L3-4, with a right-sided discectomy, performed by Dr. Razza. By mid-August of 1985, the claimant was back at St. Charles General Hospital in New Orleans, complaining of low back and cervical pain. The claimant was diagnosed with multi-level cervical degenerative disc disease, for which on August 12, 1985, he underwent an anterior cervical fusion at levels C4 through C6. Sometime after this second surgical procedure, the claimant had another automobile accident, which was thought to have damaged his cervical fusion. On August 20, 1986, the claimant was taken into surgery with Dr. Razza. Among other

things, the claimant underwent lumbar fusion from L3 to the sacrum posterolaterally, with rod placement during this procedure.

Dr. Razza's clinic report, dated August 13, 1987, reveals that the claimant re-injured his back and neck after a fall at home. In that report, Dr. Razza stated that the claimant complained of constant, aching neck pain, with an occasional sharp pain; constant soreness just below his shoulder blades in the center; radiating pain down both arms, accompanied by weakness and numbness; constant deep, throbbing, dull low back pain, with radiating pain down both legs, especially the right; and, numbness, tingling, and weakness in both legs, especially the right. On August 24, 1987, the claimant underwent a fourth surgical procedure, primarily in order to tighten his Luque rod. On August 31, 1987, the claimant underwent a surgical procedure to evacuate a lumbar hematoma. In addition, the claimant underwent a right carpal tunnel release during that same procedure.

The claimant testified that he received social

security disability benefits from 1984 through the mid-1990's. The record reflects that by 1997, the claimant had become employed at the Campbell Soup plant in Paris, Texas. An emergency room record from McCuistion Regional Medical Center in Paris, Texas, dated March 4, 1997, reflects that the claimant fell at work, landing on his right hip. Contemporary views taken of the claimant's lumbar spine showed a fracture at the base of one of the screws at L3, and a fracture involving the left side of S1. The reporting radiologist was uncertain as to the etiology of these fractures. Due to the claimant's continuing low back and neck pain from his March 4, 1997, fall at work, the claimant underwent further diagnostic studies. These studies showed postoperative changes from his multiple surgeries over a decade prior, and extensive degenerative disc disease at C6-7. In addition, these studies confirmed fractures of two of the claimant's lumbar pedicle screws.

Turning again to his most recent work related accident, the claimant continued under the care of Dr. Bailey for his knee problems. On June 17, 2002, an

EMG/NCV study of the claimant's lower extremities showed normal results, with no evidence of neuropathy, myopathy, or motor nerve root dysfunction.

An emergency room record from Morehouse General dated June 30, 2002, reflects that the claimant was involved in another automobile accident on June 29, 2002.

Contemporary X-rays taken of the claimant's cervical spine were normal, and the claimant was diagnosed with a cervical strain as a result of that accident.

Due to the claimant's continuing complaints of right knee pain, Dr. Bailey ordered an MRI. This test, which was conducted on August 15, 2002, revealed degenerative arthritic changes within the claimant's right knee. These degenerative changes were most prominent in the right medial compartment, where a normal medial meniscus was not seen. The radiologist stated that the meniscus "must be grossly degenerative and torn". Further, The claimant's ACL could not be evaluated, and was thought to be "chronically torn". Dr. Bailey recommended debridement of the claimant's right knee, but he recommended putting off total knee replacement

as long as possible, due primarily to the claimant's age.

On September 18, 2002, the claimant underwent a comprehensive examination by Dr. David Herbert. In his report of that examination, Dr. Herbert concluded that the claimant has "severe physical impairment" due to osteoarthritis and degenerative disc disease in the claimant's lumbar spine; degenerative disc disease in the claimant's cervical spine; severe osteoarthritis in both knees, with a history of instability in the right knee; and, severe chronic obstructive lung disease. Concerning the claimant's lumbar spine disease, Dr. Herbert stated that it was "some of the most severe I have ever seen". Regarding the claimant's prognosis, Dr. Herbert opined that the claimant's maximum amount of walking should be limited to 20 minutes a day; his lifting should be restricted to 10 pounds; he should avoid bending, crawling, and climbing stairs; and, his sitting activities should be limited to less than 2 hours per day. Finally, Dr. Herbert did not expect any improvement in the claimant's lumbar and cervical spine disease, or the severe arthritic condition of his

knees.

During October of 2002, the claimant received three Synvisc injections in his right knee, as prescribed by Dr. Bailey. When further diagnostic testing revealed herniations at L1-2 and L2-3, Dr. Bailey referred the claimant to Dr. John Ledbetter, a pain management specialist, for lumbar injections.

Upon examination of the claimant on January 28, 2003, Dr. Bernie McHugh, Jr., of the Ouachita Neurosurgery Center in Monroe, Louisiana, opined that the claimant's fusion hardware had failed, and he recommended that further testing be done in order to evaluate the stability of the claimant's lumbar spine. By February 6, 2003, Dr. McHugh recommended that the claimant consider further decompression surgery at L2-3. In December of that same year, Dr. Ledbetter reported that the claimant had broken his opiate maintenance contract, and was exhibiting signs of opiate addiction. Shortly thereafter, Dr. Ledbetter removed himself from the claimant's care.

The claimant was next seen by Dr. Bailey for his

knee complaints on March 5, 2003. Medical records reveal that the claimant was also experiencing profound pulmonary problems at that time. In his report of that examination, Dr. Bailey noted palpable crepitance in the claimant's right knee. Dr. Bailey diagnosed the claimant with post traumatic degenerative arthritis, and he again opined that the claimant would eventually need a total knee replacement "at some point". By April 15, 2003, Dr. Bailey reported that the claimant had been successful in a smoking cessation program, and was ready to proceed with total knee replacement surgery.

On April 17, 2003, Dr. McHugh reported that the claimant had been approved for lumbar decompression surgery at L2-3, which was performed on May 28, 2003, and was reportedly uneventful. In the meantime, on April 28, 2003, the claimant was evaluated by Dr. Donna Holder, a pain specialist. X-rays of the claimant's right knee, as ordered by Dr. Holder, corroborated narrowing of the medial disc space with significant findings of irregularities caused by severe osteoarthritis. In addition, the claimant showed

symptoms of lumbosacral and cervical radiculopathy, lumbar facet and cervical facet joint arthropathy, sacroiliac joint arthralgia, and chronic pain syndrome. Dr. Holder prescribed a pain management program for the claimant, and advised him that pain medication noncompliance would not be tolerated.

On October 26, 2003, Dr. Douglas Brown rated the claimant with 30% impairment of the body as a whole due to his "difficulties and restricted motions". Cervical/lumbar myelogram and CT scans were performed on January 28, 2004. According to Dr. McHugh, these tests revealed significant postoperative changes and arthritis in the claimant's cervical and lumbar spines. Dr. McHugh did not recommend further surgery at that time.

The claimant's right knee continued to be problematic, in that it was prone to "give way", thus putting the claimant at a higher risk of falling. In a letter dated March 10, 2004, Dr. Bailey wrote that total right knee replacement surgery had become necessary for the claimant. Two days later, on March 12, 2004, the claimant was seriously injured in an automobile accident in which his

wife perished. Among other injuries, the claimant sustained a head injury from that accident, which left him in a coma for 32 days.

On May 25, 2004, the claimant was evaluated by Dr. Earl Peeples of OrthoArkansas. The record reflects that the claimant indicated to Dr. Peeples that his current knee problems were caused solely by his accident of April 26, 2002. However, based upon the claimant's radiographic studies and physical examination, Dr. Peeples found no evidence of specific traumatic lesion that could be separated from his degenerative changes. Further, Dr. Peeples noted that the claimant "could not give a precise description of the differences in [right] knee following his incident of 2002". In addition, Dr. Peeples stated, "I am unable to identify a specific injury to the spine or to the knee." Pointing out that a total knee arthroplasty is an "elective procedure", he could not call it necessary in the claimant's case. Dr. Peeples stated, however, that he thought this procedure would be appropriate for the claimant. In conclusion, Dr. Peeples stated:

I do not identify specific trauma for which additional treatment is required. [The claimant] has a long history of degenerative spinal disease and has bilateral degenerative knee disease and I suspect will require treatment for these non-traumatic conditions in the future.

Due to the claimant's extensive history of surgical procedures, Dr. Peeples could not accurately rate his back impairment. Although Dr. Peeples stated that he did not believe a 30% impairment rating to the body as a whole for the claimant's back would be "unreasonable", he further stated that he was uncertain if any percentage of this rating was attributable to the work related incident of April 2002. Dr. Peeples stated that the claimant's knee had not reached maximum medical improvement, but added that "the rating for a satisfactorily functioning total knee is generally about 25% of the involved extremity". Dr. Peeples opined that the claimant could return to light to sedentary type employment activities.

In August of 2004, the claimant was again evaluated for cervical problems resulting from his

automobile accident of March 2004. Among his other complaints, the claimant was currently experiencing right-sided weakness. An MRI of the claimant's cervical spine showed what appeared to be traumatic injury at the base of the claimant's skull which seemed to be causing some encroachment of the spinal canal.

On September 29, 2004, the claimant underwent a right total knee replacement procedure. A pathology report from that procedure reflects that the claimant's condition was caused by degenerative changes consistent with osteoarthritis. On May 4, 2005, in a letter to the claimant's attorney, Dr. Bailey offered the following opinion:

Although [the claimant] did work seven days a week, 12 hours a day, the amount of posttraumatic degenerative arthritis in his knee, which incidentally was severe, had most certainly been present for many years although asymptomatic until his April, 2002, injury. I know this does not correlate with the [claimant's] work history or history, but again, degenerative changes of that severe nature take many years to develop. Perhaps one might find some x-rays in the intervening period of time

that would document the same.

In any event, I would rate [the claimant] as a 15% of the whole person and 30% of the lower extremity permanent impairment taken from Chapter 3, Page 85, Table 64 - AMA Guide to Permanent Impairment, 4th Edition.

On June 16, 2005, Dr. McHugh offered a 28% permanent physical impairment rating of the claimant's body as a whole for his back condition using the 5th edition of the AMA Guides to the Evaluation of Permanent Impairment.

The deposition of Dr. McHugh was taken on January 25, 2005. Dr. McHugh's testimony was specific to the claimant's degenerative back condition. Dr. McHugh initially testified that the claimant's accident of April 2002, exacerbated the claimant's back condition, ultimately causing his need for further surgery. However, he later agreed with Dr. Peeples's opinion that nothing from the April accident and ensuing medical treatment showed objective or measurable evidence of physical injury as a result of that accident. Further, Dr. McHugh agreed and

admitted that he did not find any evidence of acute trauma when he performed surgery on the claimant's spine on May 28, 2003. "We found progressive degenerative changes is what we found." Stated Dr. McHugh, "We did not find acute traumatic injury." Dr. McHugh stated within a reasonable degree of medical certainty that the claimant's April 2002, accident did not cause his spinal stenosis, which in most cases, explained the doctor, is a degenerative process. Dr. McHugh testified that the claimant's radiographic studies demonstrate that the claimant's degenerative spine disease preexisted his April 2002, injury.

The deposition of Dr. Bailey was taken on December 13, 2005. Dr. Bailey's testimony was specific to the claimant's right knee condition. As previously discussed, Dr. Bailey first saw the claimant on June 5, 2002. According to Dr. Bailey, the claimant advised him that he had been injured in April of 2002, when he slipped while on-the-job, injuring his right knee. "He had been to the emergency room, received medications, placed on light duty, slipped again and ha[d] been out of work since that time,"

continued Dr. Bailey, who added that the claimant had been placed in a knee immobilizer prior to his first visit with him. Dr. Bailey agreed that the claimant informed him at that first visit both of his 1984 knee injury and the previous surgery he had undergone due to that injury. "He [the claimant] had a healed surgical scar. Mild to moderate synovitis [soft tissue inflammation] and pain with any attempted active or passive range of motion," stated Dr. Bailey. In addition, Dr. Bailey stated that the claimant's range of motion was restricted, but that he displayed no significant instability to ligamentous examination. Further, aside from obvious swelling of his right knee, x-rays taken at that time showed no obvious acute injury to the claimant's right knee. Rather, these films showed moderate to severe post-traumatic degenerative arthritis, which Dr. Bailey agreed preexisted the claimant's injury of April 26, 2002. Dr. Bailey further agreed that an MRI of the claimant's right knee taken on August 15, 2002, confirmed degenerative changes throughout the claimant's right knee, with the most prominent changes being seen in

the medial compartment. Dr. Bailey affirmed that there was an absence of the right medial meniscus and ACL demonstrated on the claimant's MRI. He explained that the absence of the medial meniscus and ACL meant that they had either been removed surgically, or had been removed by injury.

Dr. Bailey further explained that the ACL gives stability to the knee, and that the meniscus adds stability and functions as a pad between the femur and tibia. In short, at the time of his April 2002, work related accident, the claimant's right knee was "bone on bone", which Dr. Bailey stated increases the probability of developing arthritis.

Dr. Bailey further stated:

Without the ACL the knee is too loose, sloppy, not good support and the body actually develops over the years osteophytes that actually secondarily stabilize the knee. One with an ACL will progress from instability to actually restricted motion as the spurs grow and the changes become significant.

Dr. Bailey agreed that the claimant had a "painful and very ineffective right knee", prior to his accident of April 2002. Dr. Bailey further agreed that the claimant

would have eventually required total right knee replacement, independent of his April 2002 accident, due to the severe degeneration in his right knee. In this regard, Dr. Bailey testified as follows:

Q. So given the degeneration in his right knee was it inevitable that at some point in time he would require a knee replacement?

A. Of course if he lived long enough and nothing else -

Q. Unless he predeceases his need.

A. There you go, right.

Dr. Bailey testified that he postponed the claimant's knee replacement surgery as long as possible due to the claimant's age. In short, he waited until the claimant's level of pain became intolerable before performing the surgery. Finally, Dr. Bailey agreed that, although the claimant's accident of April 26, 2002, aggravated or "lit up" his knee condition, the claimant's preexisting degenerative condition was the major cause for his total knee replacement. Dr. Bailey further agreed that

the claimant's preexisting degeneration was also the major cause of any permanent impairment to the claimant's right knee.

On examination by the claimant's attorney, Dr. Bailey admitted that the claimant's accident of April 26, 2002, was the reason the claimant first sought treatment from him, and that it was the major cause of his "subjective symptoms". However, Dr. Bailey emphasized that this incident did not cause the changes seen on the claimant's x-rays or subsequent MRI. Dr. Bailey stated that the claimant reached maximum medical improvement for his total knee replacement surgery on May 4, 2005. In conclusion, under questioning by the attorney for the Second Injury Fund, Dr. Bailey testified that his initial diagnosis of the claimant's knee injury was a contusion, which he more specifically defined as a "bruise". Dr. Bailey testified that a contusion, such as the claimant's, usually heals within several weeks. Dr. Bailey further testified that at the time he examined the claimant, which was approximately six weeks after the incident occurred, there were no

external signs of acute injury to the claimant's knee.

Well, it really depends on the - not trying to get out of the hedge but an individual - I mean, one can have an [sic] dramatic amount of swelling with bruising up and down the leg or a bruise that - excuse me, subjective complaints of pain that we can't even [see] an external sign of. Mr. Hickman, you know, I saw six or eight weeks later so I don't really believe that he ever had a sign, an external sign, of an injury that I could see.

At any rate, Dr. Bailey agreed that by the time of the claimant's total knee replacement surgery, all objective evidence of the claimant's contusion, which he sustained in April of 2002, was gone.

Pursuant to Ark. Code Ann. §11-9-102(4)(F)(ii)(a), if a compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or the need for treatment, permanent benefits shall be payable for the resultant condition only if the injury is the major cause of the permanent disability or need for treatment. "Major cause" is defined as more than fifty percent (50%) of the cause, and a finding of major

cause shall be established according to the preponderance of the evidence. Pollard v. Meridian Aggregates, 88 Ark. App. 1, ___ S.W.3d ___ (September 29, 2004); citing, Ark. Code Ann. §11-9- 11-9-102(14) (Supp. 2003).

In, Pollard, Supra, the appellant, Mr. Pollard, sustained a compensable back injury in 2000, for which his employer accepted liability. Because Mr. Pollard had a preexisting back condition, which had required two previous surgeries, the Second Injury Fund was made a party to the claim. Notwithstanding that the Commission found that Mr. Pollard's preexisting stenosis, which had been asymptomatic prior to the work injury of 2000, had caused his condition to become symptomatic, resulting in surgery, the Commission denied Mr. Pollard's claim for benefits for permanent physical impairment. Relying on Needham v. Harvest Foods, 64 Ark. App. 141, 987 S.W.2d 141 (1998), the Commission concluded that Mr. Pollard's 2000, compensable injury was not the major cause of his permanent anatomical impairment. Rather, the Commission found that the claimant's work injury had only aggravated a preexisting condition, and

had not caused the stenosis which had eventually led to surgery and permanent anatomical impairment. Relying on Wal-Mart Stores Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002), the Court of Appeals reversed the Commission and remanded the claim for a determination of benefits.

In Wal-Mart, Supra, the Court of Appeals affirmed the Commission's finding that the appellee's most recent compensable injury caused only a fractional percentage of his total assigned impairment rating (which was 30%). This finding was based on the "exacting testimony" of the claimant's physician, who had opined that a specific percentage (10%) of the claimant's current overall permanent physical impairment rating (30%), was attributable to his most current compensable injury, while the remainder of his permanent physical impairment was caused by a preexisting condition. Thus, the appellee had proven by a preponderance of the evidence that the compensable aggravation of his preexisting condition was the major cause of 3% of his overall permanent physical impairment.

In Needham, Supra, which was the case upon which the Court of Appeals stated that the Commission had erroneously relied in the Pollard decision, the Court affirmed the Commission's denial of benefits where the appellant was given a 4% anatomical impairment rating solely for a condition that predated her aggravation. The appellant's subsequent, compensable aggravation did not add to her permanent physical impairment rating. Therefore, the Court concluded that there was substantial evidence to deny permanent partial disability benefits, since the appellant suffered no permanent physical impairment from her compensable aggravation.

The three above cited cases are distinguishable primarily as follows. See, Pollard, Supra; Needham, Supra; and Wal-Mart, Supra. First, the Court of Appeals specifically found in Pollard, Supra, that there was no evidence that Mr. Pollard was assigned an impairment rating for his preexisting stenosis, but there was evidence that his impairment resulted from the aggravation that caused his need for surgery. As noted by the Court of Appeals, "It is

clear that the need for surgery and resulting impairment rating would not have occurred but for the work-related aggravation." Pollard, Supra. In contrast, the appellant in Needham, Supra, had been assigned a rating of 4% for a previous condition, but none for her subsequent, compensable aggravation. Finally, of the 30% overall impairment rating that the appellee in Wal-Mart, Supra, was assigned, 3% of that 30% was specifically attributed to the appellee's most recent compensable injury. Therefore, there was no question that the Wal-Mart appellee's last compensable injury was the major cause of 3% of his impairment rating.

The present claim is yet distinguishable from the three cases discussed above as follows. See, Pollard, Supra, Needham, Supra, and Wal-Mart, Supra. In the case at bar, the claimant had a preexisting knee condition that had required surgery, and for which he had not been assigned an impairment rating (or at least not to our discernable knowledge pursuant to the record). After his total knee replacement, Dr. Bailey assigned the claimant with a 30% impairment rating, which was solely attributable to his knee

replacement and the condition of his knee thereafter. Because the entirety of the claimant's impairment rating is attributed solely to his total knee replacement surgery, the issue, therefore, is whether the claimant's compensable aggravation of April 26, 2002, was the major cause of his eventual need for a right total knee replacement. The record demonstrates that it did not.

The claimant contends that his right knee was asymptomatic from the time of his surgery in the late seventies until the time of the accident of April 2002. The claimant further contends that his having worked for several years consecutively after his knee surgery in 1976, then again from the mid-ninety's until the time of his current injury, helps establish that his right knee was not symptomatic during that time, or up until the time of his 2002 injury. However, after the claimant's back injury of 1984, he received Social Security benefits and, other than brief failed attempts at operating a used car lot and a pawn shop, did not work for a period of 8 to 10 years. Although the medical records are devoid of evidence that the

claimant's right knee was symptomatic with regard to pain and swelling during that 8 to 10 year period of time, more current medical records clearly establish that the claimant's knee degeneration was well developed by the time of his accident in April of 2002. Therefore, whether or not the claimant was experiencing knee problems for which he sought medical treatment during that time, Dr. Bailey agreed that it was logical to expect that the claimant was having unreported problems with his knee during that time. To illustrate, at the time of the claimant's 2002 accident, he was missing his right meniscus and ACL, and his right knee was "bone-on-bone". Therefore, logic dictates, and the medical records corroborate, that the claimant's right knee was undergoing progressive and extensive deterioration from the time of his 1976 accident up until the time of his total knee replacement surgery in September of 2004. Further, Dr. Bailey testified that based on the extensive nature of the claimant's knee deterioration at the time of his April 2002, accident, the claimant's right knee was undoubtedly highly unstable prior to that incident. As previously

discussed, Dr. Bailey stated that the absence of the claimant's right ACL and meniscus undoubtedly caused instability, and due to the formation of osteophytes, eventually caused restricted mobility in the claimant's right knee. In addition, the claimant indicated to the Social Security Administration upon his latest application for benefits that he had been having problems related to the arthritic condition of his knees for the past decade. Further, Dr. Peeples's examination of the claimant's right knee revealed no evidence of specific traumatic lesion that could be separated from his degenerative changes. In addition, the claimant could not precisely describe to Dr. Peeples any differences in his right knee following the 2002 incident, as compared to his previous symptoms. Moreover, and more importantly, Dr. Bailey affirmed that the claimant's total right knee replacement was inevitable, in spite of his April 2002, injury, and that it was put off primarily because of the claimant's age. And, although the claimant's injury of April 2002, caused symptoms associated with the bruising that he sustained from that injury, this

condition was temporary. Dr. Bailey found no objective evidence of acute right knee injury either at the time of the claimant's April injury, or at the time of his total knee replacement surgery. Nor did any of the diagnostic studies conducted on the claimant's right knee subsequent to the April accident reveal acute injury to the claimant's right knee, other than a contusion. Dr. Bailey stated within a reasonable degree of medical certainty that the claimant's preexisting arthritis was the major cause of his eventual knee replacement procedure and resulting impairment, as opposed to the claimant's injury of April 2002. In fact, Dr. Bailey agreed that by the time of the claimant's total knee replacement surgery, all objective evidence of the claimant's contusion, which he sustained in April of 2002, was gone.

As the respondent correctly contends, the Arkansas Court of Appeals recognized in Pollard, Supra, that an injury that exacerbates a preexisting condition can constitute the "major cause" of permanent impairment. However, unlike the claimant in Pollard, Supra, the claimant

here has failed to prove that "but for" his knee injury of April 2002, he would not have required total knee replacement surgery. This surgery, which was performed over two years after the claimant's compensable contusion, was inevitable regardless of the claimant's injury, and was postponed due to the claimant's age. Certainly the numerous diagnostic studies and examinations performed contemporaneously with the claimant's 2002 injury brought to light the severity of the claimant's preexisting knee condition. But, the evidence fails to support a finding that this injury in any way permanently worsened that condition or brought about a need for surgery that would have otherwise not existed. Likewise, the preponderance of the evidence fails to support a finding that the claimant's knee contusion sustained in April of 2002, is the major cause of his current knee impairment.

Based upon the above and foregoing, we find that the claimant has failed to prove by a preponderance of the evidence that the bruising injury he sustained to his knee on April 26, 2002, was the major cause for his total knee

replacement surgery of September 29, 2004. It follows, therefore, that the claimant has failed to prove by a preponderance of the evidence that the 30% impairment to his lower extremity that resulted from his total knee replacement procedure is attributable to his injury of April 26, 2002. Therefore, the claimant has failed to prove that his compensable knee injury is the major cause of the 30% impairment rating assigned to his lower extremity, and that he is entitled to benefits based upon this rating.

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002). In order to be entitled to temporary total disability compensation for a scheduled injury, the employee must prove: (1) that she remains within her healing period; and (2) that she has not returned to work. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is statutorily defined as that period for healing of an injury resulting from an accident. Dallas County Hosp. V. Daniels, 74 Ark.

App. 177, 47 S.W.3d 283 (2001). The healing period continues until the employee is as far restored as the permanent character of his injury will permit, and if the underlying condition has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The determination of when the healing period ends is a factual determination to be made by the Commission. Arkansas Highway & Transp. Dept. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993); Mad Butcher, Supra.

Recurring symptoms may give rise to a subsequent healing period, after the original one has ended. Elk Roofing Co. v. Pinson, 22 Ark. App. 191, 737 S.W.2d 661 (1987). Where a second complication is found to be a natural and probable result of the first injury, the employer remains liable. Id. This liability includes liability for additional temporary benefits when the employee undergoes a second, distinct healing period. Id.

On March 5, 2003, Dr. Bailey opined that the claimant's right knee condition had essentially plateaued,

in that it would not improve further without knee replacement surgery "at some point". In a report from a follow-up visit on September 2, 2003, Dr. Bailey reiterated that the "only procedure that would give him [the claimant] relief, ..., would be a right knee replacement." On October 28, 2003, the claimant's temporary total disability benefits were terminated. Although the claimant did not return to work after October 28, 2003, the medical records reflect that his inability to work was due primarily to his back condition, which is not compensable.

In a letter dated March 10, 2004, Dr. Bailey stated unequivocally that the claimant's knee replacement surgery was necessary due to the claimant's "marked post-traumatic degenerative arthritis of the right knee ..." and his failure to respond to "nonsurgical treatment options". From March 12, 2004, through May 25, 2004, by stipulation of the parties, the claimant was incapacitated due to an automobile accident. In his report of his comprehensive evaluation of the claimant on May 25, 2004, Dr. Peeples agreed that, without surgery, the claimant had reached

maximum medical improvement for his right knee condition. Finally, on September 29, 2004, the claimant underwent a total knee replacement procedure, for which he remained in his healing period until May 4, 2005.

Based on the above and foregoing, the claimant had reached the end of his first healing period for his right knee well before October 28, 2003. The claimant underwent the total knee replacement surgery on September 29, 2004. Respondent's accepted and paid for this surgery. Accordingly, compensability of this surgery and its corresponding period of disability are not at issue. The claimant re-entered a second healing period for his right knee on September 29, 2004, at which point Dr. Bailey performed a total right knee replacement. Pursuant to the credible medical evidence, the claimant's healing period for this surgery ended on May 4, 2005. Moreover, the preponderance of the evidence demonstrates that if the claimant was incapacitated from working from October 28, 2003, through September 28, 2004, it was due to his chronic back condition, combined with a plethora of other disabling,

non-work related conditions. Therefore, we find that the Administrative Law Judge's award of additional temporary total disability benefits should be modified to reflect that the claimant is entitled to these benefits for his right knee during his healing period for his total knee replacement from September 29, 2004, through May 4, 2005.

With regard to the claimant's back condition, the preponderance of the evidence overwhelmingly supports the Administrative Law Judge's finding that the claimant has failed to establish a compensable injury to his back by medical evidence, supported by objective findings as defined in §11-9-102(16). Dr. McHugh's testimony corroborates this undeniable conclusion, and the extensive medical records corroborate this finding. Among other things, Dr. McHugh testified that there are no radiographic studies that connect the claimant's current back problems with the incident of April 26, 2002. Further, Dr. McHugh testified that the claimant's 2003 back surgery was necessitated by his preexisting back condition, as opposed to his April 2002, accident. Based upon the above and foregoing, we

find that the claimant has failed to prove by a preponderance of the evidence that his April 2002 accident caused injury to his back, and in this regard, the decision of the Administrative Law Judge is hereby affirmed.

In conclusion, the preponderance of the evidence fails to support a finding that the claimant is entitled to benefits associated with his permanent physical impairment rating. Therefore, we find that these benefits should be denied, and the decision of the Administrative Law Judge to award these benefits should be and hereby is reversed. We further find that the preponderance of the evidence fails to support a finding that the claimant sustained a compensable back injury on April 26, 2002, or that he is permanently and totally disabled due to a compensable injury, these benefits should be denied and decision of the Administrative Law Judge hereby affirmed. Finally, we find that the claimant was not within his healing period for his compensable knee injury from October 29, 2003, through September 28, 2004. Therefore, we find that the claimant is only entitled to the awarded temporary total disability benefits from

September 29, 2004, through May 4, 2005. Accordingly the award of temporary total disability benefits is hereby modified. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur in part and dissent in part from the decision of the Majority. Specifically, I

concur with the Majority opinion to the extent that it awards the claimant temporary total disability benefits for the time period of September 29, 2004 to May 4, 2005.

However, I must respectfully dissent from the balance of the decision.

The claimant worked as a precision millwright for the employer. On April 26, 2002, the claimant was walking across a piece of machinery and stepped in some oil. As a result the claimant slipped and hit his knee against a platform. He also fell onto his back.

The evidence indicates that the claimant, did in fact, have a history of having both back and knee problems. The claimant testified that in 1976 he had to have knee surgery; however, the type of surgery that was performed is unclear. There is also no record indicating that the claimant was given an impairment rating for that surgery. He testified that despite this injury, he was able to work and indicated that he had not noticed any swelling or pain in his knee prior to the incident in question. The claimant testified that he first injured his back in a 1984 incident.

He subsequently had to undergo multiple surgeries to his back and neck. Prior to 2002, the claimant had hardware installed at every level but L1-L2 and L2-3. He also drew Social Security Disability benefits from 1984 until the mid-1990s. The claimant also sustained a work-related injury in 1997 and medical records from that time indicate that the claimant's hardware had fractured.

The claimant testified that he suffered from pain "all over" after falling at the respondent's work place. The claimant reported to the emergency room on April 28, 2002. The Outpatient-Emergency Record indicates that the claimant complained of pain in his right knee and down into his foot. It also indicated the claimant was taking Hydrocodone, Soma, and Cardura. Swelling was noted in the claimant's knee and he was diagnosed with a strained knee. X-rays were performed and showed severe osteoarthritis. The claimant was given an immobilizer for his knee and released from working for three days.

The claimant next presented for treatment on May 21, 2002. At that time the claimant reported pain in

his right knee, groin, and in his low back. The report indicates that the claimant suffered from a history of chronic back pain.

On June 5, 2002, Dr. Sidney L. Bailey treated the claimant. X-rays were performed and indicated as follows,

X-rays show anterior innerbody and instrumented solid posterolateral fusion at L3-S1. Screw fractures notes. Cervical spine films show a posterior as well as an anterior solid arthrodesis at C4, C5 and C6. C7 is not visualized on plane films. Knee x-rays do show moderate to post-traumatic degenerative arthritis with no obvious fracture of the right knee.

The claimant was diagnosed with a thoracic sprain, a right knee contusion, and with, "pre-existing post-traumatic degenerative arthritis of the right knee."

The claimant was in a car accident on June 29, 2002. The accident occurred when another car backed into his vehicle. The claimant presented to the emergency room the next day, complaining of pain down his left arm, numbness in his left hand, back pain, and headaches. X-rays did not reveal any worsening of the claimant's back.

On July 31, 2002, Dr. Bailey indicated that he discussed options for treatment of the claimant's right knee. He indicated, "Again, shows mild to moderate effusion. No significant change from previous." An MRI was performed and revealed that the claimant had, "small joint effusion." It also indicated that the claimant suffered from degenerative arthritic changes in the knee.

A CT scan of the claimant's back was performed on October 10, 2002. It revealed the claimant suffered from,

1. Large diffuse disc bulges along with hypertrophy of the ligamentum flavum and facets at the L1-2 and L2-3 levels resulting in moderate to severe canal spinal stenosis and probable bilateral neural foraminal stenosis at both levels.

2. Prior surgical fusion at the L3-4, L4-5, and L5-S1 levels as noted above."

The claimant continued to seek treatment for both his knee and for his back. Ultimately, the claimant submitted to a total knee replacement on September 29, 2004. The claimant underwent back surgery on May 28, 2003. At that time a decompression was performed at level L2-3.

Treatment for both the knee and back was paid for by the respondents. Dr. Bailey also assigned an impairment rating of 30% to the lower extremity due to the claimant's knee surgery.

The deposition of Dr. Bailey was submitted for consideration in the hearing before the Administrative Law Judge. Dr. Bailey testified that the claimant suffered from degenerative arthritis that pre-existed his admittedly compensable injury. He went on to indicate that the claimant's compensable injury caused swelling and a contusion, both of which had resolved by the time of the surgery.

However, Dr. Bailey also testified that the claimant's need for surgery was promulgated by the compensable injury to his knee. He said that while the claimant might have eventually needed a knee replacement, he was uncertain when or if that would occur, as the basis for the surgery was based on the claimant's ability to withstand pain. He further opined that the claimant's reason for treatment and need for surgery was directly related to the

claimant's compensable injury, and that but for that incident, he was unable to say when the claimant would have needed the knee replacement.

After a de novo review of the record, I find that the claimant has shown that he sustained compensable injuries to his knee and lumbar spine. Additionally, I find that while the claimant suffered from pre-existing arthritis in his right knee, he has shown that his admittedly compensable injury was the major cause for the impairment rating due to having total knee replacement. Likewise, I find that the claimant is entitled to temporary total disability benefits for the time period of October 28, 2003, through May 4, 2005; exclusive of the time period that was stipulated not to be in question. Finally, I find, that due to a combination of the claimant's back condition and knee, he should be entitled to permanent and total disability benefits.

The Majority reverses the Administrative Law Judge's finding that the claimant is entitled to receive a 30% impairment rating for his knee condition. Specifically,

they find that the claimant has not shown that the claimant's admittedly compensable injury was the major cause for his 30% impairment rating.

Ark. Code Ann. § 11-9-102(4) (F) (ii)
(Supp. 2003), which provides:

(ii) (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 fifty percent of the cause, and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. § 11-9-102(14)

The Major cause requirement is satisfied where a compensable injury aggravates an asymptomatic pre-existing

condition such that the condition becomes symptomatic and requires treatment. Pollard v. Meridian Aggregates, 88 Ark. App. 1, ___ S.W.3d ___ (September 29, 2004), See also, Estridge v. Waste Management, (Claim No. E500479) Full Commission Opinion filed July 12, 2004. Additionally, the Courts have ruled that the major cause requirement is satisfied where a compensable injury necessitates a surgery and the surgery is the basis for the impairment rating. Second Injury Fund v. Stephens, 62 Ark. App. 255, 970 S.W.2d 331 (1998).

In the present case, it is clear that the claimant's need for surgery was directly caused by his admittedly compensable injury. Though the claimant suffered from pre-existing arthritis in his knee, the evidence indicates that he did not need a knee replacement until after he sustained the admittedly compensable injury.

The claimant was assigned no impairment rating for the surgery he had in 1978. He also returned to work after the surgery and there is no indication that he sought further treatment for his knee until the time of his

compensable injury. Likewise, the claimant testified that he was not suffering from pain until the time of his injury and there is no indication that the claimant was unable to work due to his knee prior to the time of the compensable injury.

Furthermore, the claimant testified that after his admittedly compensable injury he suffered from swelling that did not go away. As noted by Dr. Bailey during his testimony, the swelling was caused, at least in part, by the compensable injury. Dr. Bailey also testified that but for the claimant's injury, he would not have needed the total knee replacement. He also indicated that while the claimant suffered from pre-existing arthritis, the compensable injury was, "the straw that broke the camel's back." I note that Dr. Bailey testified the claimant's pre-existing arthritis was the major cause for his need for surgery; however, I find that statement does not overcome Dr. Bailey's other testimony that the claimant's fall was the major cause for the claimant's complaints of pain that led to the surgery. It also fails to outweigh his testimony that the

precipitating cause for the claimant's need for surgery and that but for the injury, he could not say exactly when the claimant would need a knee replacement.

The Majority finds that the claimant's injury was simply a contusion that had resolved by the time of surgery. They also argue that the claimant's medical records indicate he had ongoing pain prior to the compensable injury and that pursuant to the rationale of Pollard, the claimant would have to show that but for his accident he would not have needed the total knee replacement in the future.

While I find the rationale of Pollard to be persuasive, I disagree with the application of the case by the Majority. In my opinion, pursuant to the rationale of Pollard, the claimant has met his burden of proof in showing that his compensable injury was the major cause for the need for surgery and the resulting impairment rating.

In Pollard, the claimant suffered a compensable injury in March 2000. As a result he had surgery in the form of a lumbar laminectomy at levels L2-3 and L3-4. However, he had previously had two surgeries to his back in

1985 and at the time of the injury with the respondents, suffered from pre-existing stenosis. The respondents accepted responsibility for medical benefits and temporary total disability benefits, but controverted entitlement to an impairment rating due to the surgery. At the hearing, the claimant testified that after his 1985 surgery he had no further problems with his back and did not have to miss work due to his back. The Commission found that the claimant had not shown major cause to show entitlement to an impairment. However, on appeal the Court of Appeals reversed the decision and remanded the case to award benefits in the form of an impairment rating and wage loss benefits. Id.

In reversing the Commission, the Court of Appeals called attention to a doctor's note indicating, "The patient was relatively [a]symptomatic prior to his injury, therefore, the injury would be considered the cause of his present condition." In discussing the note, the Court indicated, "It is clear the that the need for surgery and resulting impairment would not have occurred but for the work-related aggravation." Id.

The Court also noted a physician's report providing,

Clearly the "major cause" of this patient's disease process was his preexisting disease. In my opinion his preexisting disease accounted for 80% of his disease process and at most 20% was as a result of any aggravation secondary to the "jarring" that occurred during employment.

Despite the note, the Court of appeals discounted the conclusion in the doctor's report and indicated that it did not resolve the issue of whether the compensable injury was the major cause of the impairment. Likewise, the Court noted, "Significantly, Mr. Pollard's back disease did not require surgery, or any other medical treatment, prior to the compensable aggravation." The Court further went on to distinguish the case from Needham v. Harvest Foods, Inc., 64 Ark. App. 141, 987 S.W.2d 141 (1998), by noting that the claimant had not been given an impairment rating for his pre-existing stenosis. Id.

In my opinion, the case of Pollard is very similar to the present case. Both scenarios involve a claimant with

a pre-existing disease process that was degenerative in nature. Likewise, in both situations the claimants received treatment at a prior time, but then were able to return to work without difficulty until the time of their admittedly compensable injuries. Furthermore, in both instances, the doctors opined that while the pre-existing disease was the major cause for the need for surgery unless the compensable injury occurred, the surgery would not have been needed.

I note that after the claimant's compensable injury there appears to be reference to the fact that the claimant suffered from pain in his knees. However, there is not a single medical record indicating he went to the doctor for his knee prior to his compensable injury. Likewise, it is undisputed that the claimant was able to work from the mid 1990's until April 26, 2002. It is also undisputed that the claimant's jobs were physically demanding and required him to lift and bend. Accordingly, I find that just as in Pollard, his knee was relatively asymptomatic. Furthermore, even if the claimant had been suffering from knee pain, it was certainly worsened by the compensable injury or that his

need for surgery was promulgated by his fall at work.

As to the respondent's assertion that any aggravation had subsided by the time of surgery, I note that the respondents paid for the knee replacement and do not dispute that they are liable to do so. In my opinion, this illustrates that the claimant's need for surgery was directly due to his compensable injury. Furthermore, I note that even if the contusion had subsided, that still does not overcome the fact that the claimant had symptoms caused by the compensable injury. Likewise it does not overcome Dr. Bailey's assertion that the claimant's injury was the precipitating cause for surgery and that his injury was the "straw that broke the camel's back."

With regard to the argument that the Administrative Law Judge mistakenly relied on Pollard, I note that the evidence is unclear as to whether the claimant would have been required to have a knee surgery in the future. Dr. Bailey testified that while the claimant's arthritis was severe, he would not have performed surgery until the claimant became symptomatic. When asked about the

claimant's need for a knee replacement had the compensable injury not occurred, Dr. Bailey indicated that the claimant could have gone without a knee replacement so long as he remained asymptomatic. He also indicated that absent the compensable injury he could not indicate a time period as to when the claimant would have needed a knee replacement. Accordingly, in my opinion, to deny the claimant benefits based on the fact that he might need knee replacement at an undetermined time in the future is improper and requires resorting to impermissible speculation and conjecture.

Last, I note that Dr. Bailey specifically testified that the claimant's impairment rating was because of the surgery. As previously mentioned and as noted by the Administrative Law Judge, if a compensable injury caused or necessitated the performance of the surgery and this surgery is the reason for the impairment rating, then the major cause requirement has been met. Second Injury Fund v. Stephens, Supra, See also, Estridge v. Waste Management, Supra. Since in this instance the respondents do not contend that the surgery was not reasonably necessary to

treat the claimant's admittedly compensable knee injury, and since the impairment rating was given for the surgery itself, rather than due to the pre-existing arthritis in the claimant's knee, I find that the claimant has shown that the admittedly compensable injury was the major cause for treatment and the resulting impairment.

The claimant has also requested temporary total disability benefits in connection with his admittedly compensable knee injury. The Majority awards temporary total disability for the time period of September 29, 2004, through May 4, 2005. However, I find that the claimant should have been awarded temporary total disability benefits for the entire time period in question.

Dr. Bailey performed surgery on the claimant's knee on September 29, 2004. However, prior to that the claimant was seeking treatment for the knee. Likewise, the medical records indicate that the claimant was unable to get approval for his knee treatment and that the claimant suffered from problems such as falling due to his knee. Furthermore, the evidence indicates that the claimant's

condition was not such that additional treatment would not improve his condition. Accordingly, I would have awarded benefits for the entire time period requested by the claimant.

Finally, I find that the preponderance of the evidence shows the claimant sustained a compensable back injury. While the claimant had extensive pre-existing damage to his back, in my opinion, he still had objective findings that evidenced a new injury. On September 18, 2002, x-rays revealed the claimant had narrowing throughout his lumbar spine. Likewise, subsequent testing revealed he had herniations at levels L1-2 and L2-3. In contrast, a CT scan performed on May 16, 1997 found no herniation. Accordingly, I find that the claimant sustained a compensable back injury.

In conclusion, I find that the claimant sustained an aggravation to his already arthritic knee. As a direct result of his admittedly compensable injury, the claimant had to undergo knee surgery and was unable to work for an extended period of time. Accordingly, the claimant's

compensable injury was the major cause for his knee replacement and the impairment rating associated with that surgery. He should have also been awarded temporary total benefits for the entire period of October 29, 2003 to May 4, 2005. Finally, I find that the claimant has shown a compensable aggravation to his back, and that he should be awarded permanent and total disability benefits due to a combination of his back and knee injuries.

For the aforementioned reasons, I must respectfully concur in part and dissent in part.

SHELBY W. TURNER, Commissioner