

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E021330

JOHN G. BRYANT, EMPLOYEE	CLAIMANT
HICKS WELL SERVICE, INC., EMPLOYER	RESPONDENT NO. 1
ONE BEACON INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 23, 2011

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

Claimant represented by the HONORABLE WILLIAM C. FRYE,  
Attorney at Law, North Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE TERENCE C.  
JENSEN, Attorney at Law, Benton, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L.  
KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed November 23, 2010. The administrative law  
judge found that the claimant proved a fusion surgery  
recommended by Dr. Crowell was reasonably necessary for the  
claimant's compensable injury. After reviewing the entire

record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant did not prove a fusion surgery was reasonably necessary.

I. HISTORY

The parties have stipulated that John G. Bryant, now age 45, sustained a compensable low back injury on November 15, 1990. Mr. Bryant testified that he fell four to five feet from a derrick and "hit a joint pipe in the middle of my back." An x-ray of the claimant's lumbar spine was done on November 15, 1990:

No compression fractures are seen. The heights of the vertebral bodies and intervertebral disc spaces are well preserved. The spinous processes appear normal. There is a linear fracture of the transverse process of L1 on the left.  
IMPRESSION: Acute fracture of the transverse process of L4 on the left.

An MRI study of the claimant's lumbar spine was interpreted on November 16, 1990: "I see no evidence of disc herniation or obvious bony injury. Essentially unremarkable study of the lumbar spine. I see no evidence of disc herniation."

Dr. Richard C. Davis reported on November 17, 1990:

Patient is a 24-year-old white male who was admitted after having fallen from the derrick.

Xrays revealed a fracture of the left transverse process on the left. He is also having significant pain in the area of the left posterior rib cage....X-rays of the pelvis were also done. They were negative....MRI scan was performed which revealed no evidence of herniated disc.... At this time the patient is feeling much better. He is able to ambulate with minimal pain present. At this time he will be discharged home.

Dr. Davis' discharge diagnosis was "1) Fracture of the transverse process L4."

Dr. G. Morrison Henry corresponded with Dr. Davis on February 26, 1991:

John was seen by me on 2/26/91 for evaluation in reference to persistent lumbar and left leg discomfort since having fallen at work on 11/15/90 and sustaining a fracture of the L4 transverse process.

Examination today revealed a slightly positive straight leg raising test on the left and no other abnormality.

My initial impression is that the patient probably does not have a neurological deficit as a result of the transverse process fracture noted above. I am recommending that he have a repeat MRI scan of the lumbar spine and that he have electrodiagnostic studies of the legs. If these are negative, I will very likely at that time recommend that he train for some type of work that does not involve so much physical activity.

An MR of the claimant's lumbar spine was taken on March 7, 1991, with the following findings:

The T2-weighted sagittal images demonstrate loss of disc signal and disc space height at the L4-5

level. This pattern suggests disc degeneration/desiccation. The remainder of the lumbar discs are of normal height and signal intensity. The lumbar vertebral bodies are in normal position and alignment. They demonstrate normal height and signal characteristics. The intervertebral foramina are patent. A small midline subligamentous disc protrusion is evident at the L4-5 level. It produces no significant mass effect upon the thecal sac or adjacent nerve roots. I see no focal disc herniation throughout the lumbosacral spine.

IMPRESSION:

1. Degenerative disc disease/desiccation at the L4-5 level.
2. Small midline subligamentous disc protrusion at the L4-5 level.

Dr. Henry's impression following EMG and nerve conduction studies on March 7, 1991 was "1. Normal nerve conduction studies of the lower extremities. 2. Normal electromyographic studies of the lower extremities."

Dr. Henry reported on March 7, 1991:

John was seen by me on 3/7/91 for follow-up in reference to the persistent lumbar and left leg discomfort.

MRI scan of the lumbar spine today revealed evidence of disc degeneration at L4-L5 vertebral level but no significant herniation or protrusion. EMG and nerve conduction studies of the lower extremities today were normal.

My final impression is that the patient has a post-traumatic syndrome secondary to the transverse process fracture at the L4 vertebral level and with no evidence for neurological deficit. I recommend that the patient not return

to his previous employment of being a derrick hand. I have suggested that he consider training into a type of work that does not involve such physical activity as the job he was performing. I have made no change in his medications.

Dr. Robert S. Bell reported on March 7, 1991:

Mr. Bryant is a 24 year old male who fell approximately four feet from a derrick on November 15, 1990. At that time he sustained a fracture of the lumbar spine involving the transverse process of L4. He was seen in consultation for Dr. Richard Davis on November 16, 1990, and at that time I examined him and did not find any neurological deficit. I reviewed his MRI scan and reexamined him on November 18, 1990, and asked him to recheck in the office in ten days. He did not recheck for follow-up and I do not have a final disposition on him.

Dr. Henry corresponded with Dr. Davis on January 7, 1992:

John was seen by me on 1/7/92 for follow-up in reference to his persistent lumbar and leg discomfort. He states that the discomfort in the lower back is brought on by prolonged sitting and by prolonged walking. He does tolerate standing with occasional movement.

Examination today reveals no neurological deficit and the straight leg raising test is negative bilaterally.

My final impression is that the patient has a post-traumatic syndrome with residual lower back and right leg discomfort secondary to degenerative disease of the lumbar spine. I consider the patient to be permanently disabled and would recommend that he be considered for 20% disability for the body as a whole. I suggest that he be considered for training into a type of work that

involves standing with some walking, but does not involve climbing, heavy lifting or continuous sitting.

Thank you again for having allowed me the opportunity of assessing this patient. I will be happy to see him in follow-up if indicated.

The parties stipulated that the claimant's healing period ended on January 7, 1992.

The record indicates that Dr. Walter J. Giller examined the claimant, and that Dr. Giller stated the following on April 1, 1992:

Impression:

1. Status post transverse process fracture of L4.
2. Post traumatic syndrome with residual lower back and right leg discomfort secondary to degenerative disc of the lumbar spine.

Disposition: It is my opinion that the patient has reached his maximum healing period. There is no surgical treatment indicated....

Dr. Davis noted on April 18, 1993, "The patient is a young white male with a prior history of a back injury with a fracture of the lateral process of the thoracic spine. MRIs have been negative. The patient has had recurrent back pain, had a severe episode of pain today that has been slightly pleuritic in nature in the mid thoracic region. The pain was so severe that he stated he had numbness in

both legs; he could not move his legs....MRI scan of the thoracic spine will be obtained...."

An MRI of the claimant's cervical spine and thoracic spine on April 18, 1993 indicated, in pertinent part, "There is no detectable posterior herniation of the thoracic intervertebral discs except for mild posterior protrusion of C7-T1 intervertebral disc described in the report for cervical spine. IMPRESSION: Unremarkable MRI of the dorsal spine."

An administrative law judge filed an opinion on May 6, 1993. The administrative law judge found that the claimant proved he sustained a 20% anatomical impairment rating. The administrative law judge found that the claimant proved he fell in the odd-lot category and was permanently totally disabled. The Full Commission affirmed the administrative law judge's decision in an opinion filed December 10, 1993. The parties have stipulated that the Full Commission's December 10, 1993 opinion "is *res judicata* and the law of the case."

X-rays were done on or about November 3, 1998:

LUMBOSACRAL SPINE, AP AND LATERAL VIEWS  
The alignment is normal. The vertebral body heights and disc spaces are normal. The pedicles are intact.

CONCLUSION: NORMAL LUMBOSACRAL SPINE.

AP PELVIS

There is no fracture or dislocation, no osseous or articular abnormality.

CONCLUSION: NORMAL PELVIS.

Dr. Joe H. Wharton saw the claimant on July 3, 2003 and assessed "chronic low back pain." Dr. Wharton saw the claimant on December 9, 2004: "He was lifting and strained his back a couple of days ago....He has tenderness bilaterally over the sacroiliac joints in the lower back." Dr. Wharton assessed "Acute Sacroilitis."

Dr. William A. Daniel stated on April 24, 2007, "John Bryant is a 41 year old male patient who is disabled. I am assuming responsibility for his medical care."

An x-ray was done on September 14, 2007, with the following findings:

AP, lateral and oblique views of the lumbar spine are obtained in this 41-year-old patient with stated symptoms of back pain. Alignment of the lumbar spine is intact and intervertebral disc spaces appear well maintained. SI joints are intact.

IMPRESSION: Essentially normal views of the lumbar spine with intact alignment and well maintained intervertebral disc spaces. No fracture or other acute finding.

An MR of the claimant's lumbar spine was taken on July 14, 2008, with the following findings:

Bone marrow and alignment is normal. The distal cord and conus are normal in appearance with cord ending at the L1 level. Degenerative changes are present in the lower lumbar spine as described below.

L3-L4: Facet degenerative change is mild without significant canal or foraminal narrowing.

L4-L5: There is a mild circumferential disc bulge, with a slightly asymmetric posterior disc protrusion. No significant neural impingement is identified. No significant canal compromise is seen. There is facet degenerative hypertrophy without significant foraminal narrowing.

L5-S1: Facet degenerative hypertrophy leads to mild neural foraminal narrowing bilaterally.

IMPRESSION: Mild degenerative changes of the lower lumbar spine. There is mild foraminal narrowing bilaterally at L5-S1 but no other significant canal or foraminal compromise.

Dr. Daniel reported on July 31, 2008:

I am the attending physician for John Bryant. Mr. Bryant is a 42 year old male who had fractures of his L3, L4 and L5 vertebrae sustained in a fall at work in 1990. Since that time, he has continued with muscle spasm and pain in his lumbar spine. An MRI was done on July 14, 2008, which revealed degenerative changes throughout the lumbar spine as well as a disc bulge at L4-L5.

I am sorry to report that Mr. Bryant is probably looking at a lifetime of chronic and acute episodes of back pain with/without leg and buttock involvement. At this point, he will be maintained on muscle relaxants, anti-inflammatories, occasional IM steroid injections and prescription pain medication for the more acute stages of pain.

Dr. Christopher K. Mocek stated on March 4, 2009 that Dr. Daniel had referred the claimant to him. Dr. Mocek's impression on April 16, 2009 was "1. Lumbar radiculopathy. 2. Lumbar spine pain. 3. Muscle spasms lumbar." Dr. Mocek planned a series of lumbar epidural steroid injections and performed such treatment on October 5, 2009, November 2, 2009, and December 7, 2009. The claimant testified that he did not benefit from the injections administered by Dr. Mocek. Dr. Mocek prescribed physical therapy on December 7, 2009.

Dr. Mocek subsequently referred the claimant to Dr. Bernard Crowell for a "surgical evaluation." Dr. Crowell examined the claimant on March 9, 2010:

Mr. Bryant is complaining of back pain and radiculopathy into both the right and left legs. This has been going on since an on the job injury many years ago. He has undergone epidural steroid injections and MRI scans of his lumbar spine. The last one he had was dated back to 2004 in July. Since then Dr. Mocek has performed epidural steroid injections and various other modalities with little relief for the patient. He claims of pain which awakens him from sleep at night. He only gets about 3 or 4 hours of sleep. He has weakness in his legs and his right leg giving (sic) out at times. The left leg also has numbness radiating from his buttocks down the posterior aspect of his thigh to his legs.

Dr. Crowell's impression was "1) Degenerative disc disease lumbar spine, 2) facet arthropathy, 3) neuroforaminal stenosis, 4) radiculopathy 5) chronic back pain....Since the last scan was dated almost two years ago, recommendation is for a repeat MRI scan of his lumbar spine. I will evaluate this and notify the patient of my findings. We did briefly discuss possible surgical intervention, which would be a posterior spinal fusion."

Dr. Crowell informed the claimant's attorney on April 28, 2010, "Mr. Bryant was referred by Dr. Chris Mocek for me to evaluate for surgery on March 9, 2010. Until Mr. Bryant is released from Workman's Compensation, I am unable to treat him with medication or surgical intervention at this time."

Dr. Mocek performed a "selective nerve root block injection" on June 9, 2010. The claimant followed up with Dr. Mocek on June 15, 2010: "He continues to have the pain in the back and left leg. No relief from the SNRB. Would recommend that he be scheduled for a lumbar myelogram with post CT scan to check for a pinched nerve. He did not get the last prescriptions fill (sic) and we will not write for any medications today since he does still have the

prescriptions at home. We will need to wait for work comp to approve the myelogram."

The parties deposed Dr. Crowell on or about June 23, 2010. The respondents' attorney questioned Dr. Crowell:

Q. Can you tell me what your conclusions were and your findings after you had the opportunity to see him for the first time in an office visit and then confirm your office examination with the following MRI?

A. He had presented with an MRI scan, which had been dated back in 2008, which revealed disc desiccation to the L4-L5. Because of the age of the MRI scan I wanted to repeat it, and the second MRI scan which was performed on 3-9-2010 revealed disc desiccation of the L4-L5 with loss of disc height and a small central protrusion with minimum migration to the central canal.

Q. Okay. And what was your recommendation after having the opportunity to review the MRI?

A. Well, I reviewed the MRI scan, and my recommendation at that time, since he had been having long-term pain, he had been under the care of a pain management doctor and wasn't getting any relief, was for a lumbar fusion....

Q. And what level?

A. L4-L5....

Q. Would you agree with me, Doctor, that the MRI taken the day after the accident was a normal MRI study?

A. Uh-huh, I would.

Q. And it showed no evidence of disc herniation or other soft tissue injury?

A. Uh-huh....Yes.

Q. And the x-ray showed a transverse fracture at L4?

A. Yes.

Q. Okay. Doctor, if you will, please tell me for the record what a transverse fracture is.

A. Well, a transverse process is the small bony element that moves out laterally from the vertebral bodies -

Q. Right.

A. - where the muscles attach to, and so the x-ray describes a small fracture through the small process.

Q. Right. It's a fracture actually in the bone itself; isn't it?

A. Yes.

Q. Okay. All right. So would you agree that at least the tests that were given to Mr. Bryant immediately after the injury showed that his injury was limited to a fracture of the L4 transverse body?

A. Based on these studies, yes....

Q. Knowing that his injury was a transverse fracture of L4-

A. Uh-huh.

Q. - all right, that particular injury in and of itself wouldn't cause the need for a fusion?

A. No.

Q. - that you have proposed; correct?

A. No, it would not.

Q. Okay. Am I correct in that the reason for the fusion you have proposed is the normal degenerative process that has taken place in Mr. Bryant?

A. Over the years, yes.

Q. Over the years, okay. All right. And can you tell us within a reasonable degree of medical certainty whether that degenerative process in Mr. Bryant is just his normal aging or was caused from a particular traumatic event?

A. Well, it's difficult to say over the years whether it's one thing or another.

Q. Okay. In other words, you couldn't tell me one way or the other within a reasonable degree of medical certainty; correct?

A. No.

The claimant's attorney questioned Dr. Crowell:

Q. His injury in this case was he fell four feet on his back right across the L4 area. Is that the type of trauma that can cause back problems?

A. With enough force to fracture the transverse process, so you can see some problems with people....

Q. In Mr. Bryant's case do you think his disc desiccation is related to an aggravation due to this trauma, the trauma he had in 1990?

A. Yes.

Q. Okay. And is that the reason that you are wanting to do the fusion?

A. Yes....

A pre-hearing order was filed on June 28, 2010. The claimant's contentions were, "1. The claimant has submitted medical bills, prescription reimbursements, and mileage to the respondent. These included visits to the claimant's family doctor, Dr. Daniel, who has been maintaining his treatment. Also, the claimant has been referred by his authorized treating physician, Dr. Mocek, to Dr. Crowell. Some of these medical bills have not been paid and no reimbursements for prescriptions or mileage have been reimbursed. 2. The claimant was treated by Dr. Mocek with epidural steroid injections. It should be noted that Dr. Mocek was the claimant's authorized treating physician. Dr. Mocek referred the claimant to Dr. Crowell, who is a neurologist. Dr. Crowell recommended and scheduled a spinal fusion. However, the respondent has refused to authorize the fusion. 3. It is anticipated that the claimant will be re-entering a healing period and will be entitled to additional temporary total disability benefits. 4. The Trust Fund is paying benefits at this time."

The respondents' contentions were, "1. The respondents are currently gathering information and attempting to schedule the deposition of Dr. Bernard Crowell in order to

determine whether the surgery recommended by Dr. Crowell is reasonable and necessary as it relates to claimant's compensable injury of November 15, 1990. Respondents are also gathering documentation regarding medical bills, prescription reimbursements and mileage submitted by the claimant. Respondents will take a final position regarding payment of medical expenses and the surgery recommended by Dr. Crowell following reasonable investigation of discovery."

A CT of the claimant's lumbar spine was performed on July 12, 2010, with the following findings:

The vertebral body heights are well maintained without dominant anterior wedging or compression. Conus medullaris is normal in appearance and terminates behind the L1 level. Contrast material surrounds the normal-appearing descending nerve roots. T11-12, T12-L1, L1-2, L2-3 and L3-4: No dominant disc abnormalities identified. No compressive arthropathy is seen. L4-5: Minimal disc displacement without protrusion or herniation. No compressive arthropathy is seen. L5-S1: Minimal disc displacement and mild facet hypertrophy results in mild bilateral exiting neural foraminal stenosis.

CONCLUSION: Minimal disc displacement at the L4-5 and L5-S1 levels without dominant compressive arthropathy. No dominant osseous abnormality is seen.

The claimant followed up with Dr. Mocek on August 11, 2010: "The myelogram and CT scan did not show evidence of

pinched nerves. He continues to have the pain in the back and left leg. Therefore, he will be scheduled for a lumbar discogram with post CT scan to check for painful discs. He is work comp and this will need to be approved before it can be scheduled. In the meantime, his medications will be refilled."

A hearing was held on August 31, 2010. At that time, the respondents stipulated that they would reimburse the claimant for pharmaceutical costs, mileage, and medical bills. The only medical treatment the respondents controverted was the surgery proposed by Dr. Crowell. The claimant testified that his physical condition was worsening and that he wanted to undergo a lumbar fusion recommended by Dr. Crowell.

An administrative law judge filed an opinion on November 23, 2010. The administrative law judge found, among other things, that surgery proposed by Dr. Crowell was reasonably necessary. The respondents appeal to the Full Commission.

## II. ADJUDICATION

\_\_\_\_\_Ark. Code Ann. §11-9-508(1987) provides:

- (a) The employer shall promptly provide for an injured employee such medical, surgical, hospital,

and nursing service, and medicine, crutches, artificial limbs, and other apparatus as may be reasonably necessary for the treatment of the injury received by the employee.

An administrative law judge found in the present matter, "4. The claimant has established by a preponderance of the evidence that fusion surgery recommended by Dr. Crowell is reasonably necessary in connection with his compensable low back injury sustained on November 15, 1990." The Full Commission finds that the claimant did not prove surgery by Dr. Crowell was reasonably necessary. The parties stipulated that the claimant sustained a compensable low back injury on November 15, 1990. The claimant testified that he fell approximately four feet from a derrick and struck his middle back on a joint pipe. An x-ray taken on the date of the accidental injury showed "Acute fracture of the transverse process of L4 on the left." A lumbar MRI on November 16, 1990 was interpreted as being unremarkable with no evidence of disc herniation.

The claimant treated with Dr. Davis and Dr. Henry following the compensable injury. An MR of the claimant's lumbar spine in March 1991 showed degenerative disc disease with a small subligamentous disc protrusion at L4-5. Dr. Henry stated in January 1992, "My final impression is that

the patient has a post-traumatic syndrome with residual lower back and right leg discomfort secondary to degenerative disease of the lumbar spine." Dr. Henry did not recommend surgery. The parties stipulated that the claimant's healing period ended on January 7, 1992. Dr. Giller stated on April 1, 1992, "It is my opinion that the patient has reached his maximum healing period. There is no surgical treatment indicated."

An x-ray of the claimant's lumbosacral spine in November 1998 was normal; there was no report of a continued fracture of the claimant's L4 transverse process. Another x-ray of the claimant's lumbar spine in September 2007 showed "Essentially normal views of the lumbar spine with intact alignment and well maintained intervertebral disc spaces. No fracture or other acute finding." The impression from an MR of the claimant's lumbar spine in July 2008 was "Mild degenerative changes of the lower lumbar spine. There is mild foraminal narrowing bilaterally at L5-S1 but no other significant canal or foraminal compromise."

The claimant began treating with Dr. Mocek in March 2009. Dr. Mocek performed injection therapy, from which the claimant reported no benefit. Dr. Mocek referred the

claimant do Dr. Crowell for a "surgical evaluation." Dr. Crowell's impression in March 2010 included degenerative disc disease and chronic back pain. Dr. Crowell stated, "We did briefly discuss possible surgical intervention, which would be a posterior spinal fusion." Dr. Crowell testified that he could not state "within a reasonable degree of medical certainty" whether the degeneration in the claimant's lumbar spine was caused by "normal aging" or "a particular traumatic event." The Full Commission notes that the claimant's compensable injury occurred on November 15, 1990, before passage of Act 796 of 1993. There was no statutory requirement in Ark. Code Ann. §11-9-102(1987) that medical opinions addressing compensability be stated "within a reasonable degree of medical certainty."

Nevertheless, the injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. *Geo Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000), citing *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Gansky*

*v. Hi-Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996). In the present matter, Dr. Crowell has recommended a spinal fusion. Dr. Crowell testified at the June 2010 deposition that the claimant's degenerative condition was related to "aggravation" sustained from the claimant's compensable injury in November 1990, and that this condition required surgery. The Full Commission finds that Dr. Crowell's recommendation of surgery is entitled to minimal weight. Dr. Henry opined in January 2002 that the claimant suffered from post-traumatic syndrome secondary to degenerative disease of the lumbar spine. Dr. Henry did not recommend surgery. Dr. Giller expressly indicated in April 2002, "There is no surgical treatment indicated."

The Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (1989). The Commission has the duty of weighing evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Whaley v. Hardee's*, 51 Ark. App. 166, 912 S.W.2d 14 (1995). In the present matter, the Full Commission finds that the opinions of Dr. Henry and Dr.

Giller are entitled to more probative weight than the opinion of Dr. Crowell. The record shows that the acute transverse process fracture sustained by the claimant in 1990 had healed no later than November 1998, when an x-ray of the claimant's lumbosacral spine was entirely normal. An x-ray in September 2007 additionally showed, "Essentially normal views of the lumbar spine with intact alignment and well maintained intervertebral disc spaces. No fracture or other acute finding." We otherwise assign minimal evidentiary weight to Dr. Crowell's conclusion that the claimant's degenerative condition was related to the compensable injury and required a spinal fusion.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that a fusion surgery recommended by Dr. Crowell in 2010 was reasonably necessary for the claimant's November 15, 1990 compensable injury. We therefore reverse the administrative law judge's opinion that the claimant proved he was entitled to surgery recommended by Dr. Crowell, and this claim for surgical treatment is denied and dismissed.

IT IS SO ORDERED.

---

A. WATSON BELL, Chairman

---

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has established by a preponderance of the evidence that the proposed lumbar fusion surgery at the L4-5 level of his spine is reasonably necessary in connection with the compensable back injury that he sustained on November 15, 1990.

The majority has chosen to disregard the medical opinion of Dr. Bernard Crowell. I would note that Dr. Crowell is an orthopedic specialist. Dr. Crowell is the only physician who has referenced the MRI that Dr. Crowell ordered on March 9, 2010, and Dr. Crowell is the only physician who has rendered an opinion in the hearing record on whether the fusion surgery at the L4-5 level of the claimant's spine is or is not appropriate treatment for the

claimant's current back problems identified by Dr. Crowell by MRI at the L4-5 level of the claimant's spine. Dr. Crowell recommended a lumbar fusion. I see no evidence in the record which persuades me that Dr. Crowell's opinion regarding surgery is based on any material mistake of fact. In my opinion, the majority, with the medical record presented in this case, cannot disregard the opinion of Dr. Crowell.

For the aforementioned reasons, I must respectfully dissent.

---

PHILIP A. HOOD, Commissioner