U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 November 2012

CASE NO.: 2012-LHC-82

OWCP NO.: 07-186112

IN THE MATTER OF:

HERMAN DAVIS

Claimant

v.

EXPRO AMERICAS, L.L.C.

Employer

and

LIBERTY MUTUAL INSURANCE COMPANY

Carrier

APPEARANCES:

MICHAEL G. HUEY, ESQ.

For The Claimant

LAURIE B. YOUNG, ESQ.

For The Employer/Carrier

BEFORE: C. RICHARD AVERY
Administrative Law Judge

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq*., (herein the Act), brought by Herman Davis (Claimant) against Expro Americas, L.L.C. (Employer) and Liberty Mutual Insurance Company (Carrier).

The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for hearing. Pursuant thereto, Notice of Hearing was issued scheduling a formal hearing, which was conducted on July 24, 2012, in Mobile, Alabama. Each party was represented by counsel, and each presented documentary evidence, examined and cross-examined the witnesses, and made oral and written arguments. The following exhibits were received into evidence[1]: Joint Exhibit 1; Claimant's Exhibits 1-14; and Employer/Carrier's Exhibits 1-7, 9-27. This decision is based upon a full consideration of the entire record.

Post-hearing briefs were received from the parties. Based upon the stipulations of Counsel, the evidence introduced, and having considered the arguments presented, I make the following Findings of Fact, and Conclusions of Law and Order.

STIPULATIONS

The parties stipulated (JX-1), and I find:

1. The date of Claimant's disputed injury is March 26, 2009.
2. Claimant's injury occurred within the course and scope of employment.
3. There was an Employer/Employee relationship at the time of the accident.
4. Employer was advised of the injury on March 27, 2009.
5. The Notice of Controversion was filed on September 24, 2009, and August 3, 2011.
6. The informal conference was held May 25, 2010.
7. Claimant's average weekly wage at the time of injury was $954.14.
8. Temporary total compensation benefits were paid by Employer/Carrier from July 12, 2009, to July 12, 2011, at $636.09 per week.

ISSUES

The unresolved issues presented by the parties are:

1. The fact of the accident;
2. Whether Claimant is entitled to medical benefits, specifically surgery;
3. Claimant's current disability, if any; and
4. Attorney's fees, expenses, interest, and penalties.

[1] References to the transcript and exhibits are as follows: Trial Transcript: Tr. ___; Joint Exhibit: JX-___; Claimant's Exhibit: CX-___; Employer/Carrier's Exhibit: EX-___.

STATEMENT OF THE EVIDENCE

I. Testimonial Evidence

A. Claimant

Born August 7, 1969, Claimant testified he is a high school graduate with several years of college credits. He was in the Marine Corp for six years, after which he studied electronics and home inspections. Claimant then opened a business performing home inspections. Eventually, Claimant hired with Employer as a wireline assistant working off shore. His job, along with others, was to maintain the wireline operations in the well and involved carrying wireline bags, putting together lubricators, and lifting over 50 pounds. The job paid $10.41 an hour and involved three weeks on and one week off.

During the period in question, Claimant arrived on the platform on March 19, 2009, and worked the 20th through the 26th. His chores included using pulling tools, changing out tools, and cleaning out the well holes. Claimant said his back started hurting approximately on the 25th, and by the 27th he could hardly get out of bed. Claimant informed his supervisor Joe Dunning of his condition, and as the wireline supervisor, Mr. Dunning requested Claimant to go ashore and seek medical attention. Claimant did so the same day.

Claimant first saw Dr. Phillips-Savoy, had an MRI, and engaged in conservative treatment until June 2009. During that time, Claimant also saw Dr. Phillip-Savoy's partner, Dr. Gregory Gidman. The treatment provided included physical therapy and medication. Claimant was put on light duty in the tool shop.

Not feeling he was improving and stating Dr. Gidman told Claimant he would hurt the rest of his life, Claimant went to his family doctor, Dr. Thomas Davidson, on July 8, 2009. Although no compensation had been paid to Claimant, despite the fact he was earning less on light duty, after seeing Dr. Davidson compensation was started on July 12, 2009. Since that time, Dr. Davidson has kept Claimant on medication and arranged two steroid injections, but he has yet to release Claimant.

Upon Dr. Davidson's referral, Claimant eventually saw Dr. Edward Flotte, a neurosurgeon who in turn had Claimant seen by his partner Dr. Donald Tyler, also a neurosurgeon. Both doctors felt Claimant needed surgery.

At the request of Employer/Carrier, Claimant was next seen by Dr. Bendt Petersen, an orthopedic surgeon. He opined Claimant was at MMI and could return to full work, but did request a CT scan. Following Dr. Peterson, and in an effort to get yet another opinion, the District Director had Claimant seen by Dr. Kevin Donahoe, another orthopedic surgeon, who requested an MRI, but doubted surgery was indicated.

Claimant conceded he had broken his ankle while in the service, but denied doing more at that time than strain his back. Likewise, he acknowledged a prior car accident, which resulted in the removal of his spleen but denied that he did any more at that time than bruise his back. In fact, Claimant testified he passed his pre-employment physical with Employer and had worked his job with no back difficulty until the four day period in question.[2]

In 2009 after returning to light duty, Claimant said his wife became ill with cancer and he took care of her, but after exhausting sick and vacation leave, Employer terminated him on November 13, 2009. (CX-2, p. 13). He has not worked since though he did say he has gone online recently to apply for jobs. As far as surgery, he wants the operation Dr. Tyler recommended to end his pain and return to work.

B. Joe Dunning

Mr. Dunning is a wireline operator for Employer and found Claimant to be a "good worker". Once Claimant reported to Mr. Dunning, his supervisor, about his back pain, Mr. Dunning testified he "pushed" Claimant to go home that day. Mr. Dunning did not see any incident involving Claimant being knocked to the platform deck by a lubricator, and there was not anything in the service logs to indicate a report of such an incident. (Tr. 162-164).

C. Tom Christiansen

Thomas H. Christiansen, a licensed professional counselor and certified rehabilitation counselor, conducted a vocational evaluation of Claimant on June 21, 2012. (EX-6, p. 3; EX-7, p. 2). He found Claimant pleasant and qualified for at least light to sedentary work. Claimant reported to Mr. Christiansen that he is approximately 18 hours short of earning a degree in mathematics and physics, but he received an electronics engineering certificate from Devry University.[3] (EX-7, p. 4).

Mr. Christiansen conducted a labor market survey between June 26, 2012, and July 3, 2012, in light of Claimant's work history, vocational testing in reading and arithmetic, education level, and the differing medical opinions of Claimant's physicians. (EX-7, p. 5; EX-26, p. 1). Mr. Christiansen identified the following positions available since Claimant's MMI date around September 2009[4]: (EX-7, pp. 7-10; EX-26).

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[2] The Post-Offer Function Assessment dated October 1, 2007, indicates that Claimant was, at that time, physically able to safely perform the duties required of a wireline assistant. (CX-2, pp. 1, 5, 8). This includes lifting and carrying 50 pounds for 50 feet up and down stairs and lifting 25 pounds from floor to knuckle or overhead. The recorded history only lists a splenectomy in 1995. Claimant did not complain of pain or discomfort during the evaluation. (CX-2, p. 5).

[3] In his deposition taken February 24, 2011, as part of a third party related lawsuit, Claimant testified he had earned a college degree in both mathematics and physics in 1989. (Tr. 91-94). At the hearing, Claimant stated that while he took courses at Stillman College in Tuscaloosa, Alabama, and some courses at the University of Alabama, he never graduated from college because he went active duty with the Marine Corps. (Tr. 39-40).

[4] However, Mr. Christiansen notes that his retroactive labor market files only "date back to early 2011." (EX-7, p. 7; EX-26, p. 1).

1. **Deckhand (Compass Marine) –** heavy labor, full time; $90.00 to $100.00 per day.

2. **Deckhand (Seaport Marine; Mobile, Alabama)** – heavy labor, full time; $150.00 to $170.00 per day.

3. **Service Technician (ORKIN Pest Control) –** medium-heavy labor, full time; $12.75 to $12.90 per hour.

4. **Distribution Driver (O'Reilly Auto Parts; Baldwin County) –** medium labor, full time; $13.75 per hour.

5. **Customer Service Representative (Lowe's) –** medium-light labor, full or part time; $9.00 per hour.

6. **Customer Service Representative (Home Depot) –** medium-light labor, full or part time; $9.00 per hour.

7. **Customer Service Support (Pottery Barn; Gulf Shores) –** medium-light labor, full or part time; $7.25 per hour to start.

8. **Alarm Monitor (Hunter Security) –** sedentary, full time; $9.00 per hour.

9. **Night Auditor (Best Western Plus; Daphne, Alabama) –** sedentary to light, full time; $8.25 per hour.[5]

10. **Convenience Store Manager (Clark Oil Company; various locations)** – sedentary to light, full time; $24,000.00 per year.

11. **Mercy Medical Hospital (Material Management; Daphne, Alabama)** – sedentary to light, full time; $11.00 per hour.

12. **Night Auditor and Front Desk Clerk (Ashbury Suite and Hotels) –** sedentary to light labor, full time; $8.25 per hour.

In an affidavit signed and dated August 22, 2012, Claimant attested that he submitted applications for the positions identified by Mr. Christiansen, with the exception of the position with Mercy Medical Hospital because he could not find the application online. As of August 22, 2012, Claimant had not heard back from any of these potential employers. In addition, Claimant applied on July 30, 2012, for positions with Winn-Dixie (Foley, Alabama), GameStop (Gulf Shores), and Pizza Hut (Gulf Shores); and on August 6, 2012, for positions with Wal-Mart (Foley, Alabama), Mellow Mushroom Restaurant (Foley, Alabama), and Hope's Cheesecake

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[5] Mr. Christiansen's report indicated that this position and the following three were available from June 11, 2011, up to the date of the labor market survey report dated July 5, 2012. (EX-7; EX-26).

(Gulf Shores). As of August 22, 2012, Claimant has not heard back from any of these potential employers.

D. Johnnie Sanders, Jr.

Mr. Sanders was the crane operator working on the platform with Claimant the week of March 27, 2009. (EX-19, p. 22). He testified by deposition on March 28, 2011. In reference to Claimant's general statement from another deposition that he was pushing on the lubricator from underneath while Mr. Sanders was operating the crane, Mr. Sanders denied that this was accurate. (EX-19, pp. 34, 58). Mr. Sanders also disagreed with Claimant's prior deposition testimony that there was slack on the line at some point during operation.

Mr. Sanders testified that on March 26, 2009, the only problem he recalled having with the crane was with the throttle, but he stated that issue would not affect the task involving the movement of the lubricator. (EX-19, pp. 41-42, 45, 56-57). He testified that as he used the crane to lay the lubricator down, one wireline assistant was off to the side and the other was holding the bottom of the lubricator with cupped hands as was protocol. (EX-19, pp. 48, 57-58). Mr. Sanders remembered working with Claimant that day but he could not remember if he was the one giving signals or holding the lubricator. Mr. Sanders testified that he did not recall Claimant complaining of pain or hurting after this job was complete, and there was no kind of problem with the crane jerking or moving rapidly that day. (EX-19, pp. 49, 53-54). If Claimant had an accident on March 26, 2009, Mr. Sanders should have known about it to report it right away, but he was unaware of any accident that day. (EX-19, p. 58).

II. <u>Documentary Evidence</u>

A. Claimant's Personnel File

In Claimant's job performance assessment from July 9, 2008, Claimant was described as a "very good worker, and pleasure to work with." (CX-2, p. 10). He was ranked as "good" in each of the individual qualities assessed. On another assessment dated July 15, 2008, Claimant was described as "very safety conscious, good worker." (CX-2, p.11).

B. Incident Report

Claimant reported back pain and pain in his rear right leg to Mr. Dunning on March 27, 2009. (CX-11; EX-1). In describing the "activity generating the incident", Mr. Dunning wrote "day to day work activity". On the form, Mr. Dunning elaborated, writing "This morning [Claimant] mentioned that his back was sore from working the day before…" As Claimant's back was still causing him pain later in the day, Mr. Dunning sent Claimant to seek treatment that afternoon. (CX-11; EX-1).

C. DOL Forms

On the LS-203 the cause of Claimant's injury was described as follows: "Over a five (5) day period the claimant was engaged in repetitive lifting while operating a lubercating [*sic*] machine and injured his back." (CX-1, p. 1). The date of injury was listed as March 27, 2009. It was indicated Claimant worked light duty from the date of injury until July 3, 2009. (CX-1, p. 2). The LS-202 was signed by Employer's manager on July 24, 2009. (EX-9, p. 1). The date of the accident was listed as March 27, 2009. The description of the accident reads: "assistant operator woke up with sore back and was unable to continue".

D. Education Records

The Registrar for the University of Alabama in Tuscaloosa, Alabama, executed an affidavit on June 27, 2012, affirming the Office of Academic Records and University Registrar does not have any records for Claimant. (EX-4). Claimant's transcript from Stillman College in Tuscaloosa, Alabama shows Claimant earned 15 credits in the fall semester of 1986, 12 credits in the spring semester of 1987, and three credits in the fall semester of 1987. (EX-22, p. 1).

III. <u>Medical Evidence</u>

A. Prior Medical Records

On an intake form from Stafford Healthcare Clinics dated October 1, 2007, Claimant indicated that he had no prior back strains, pain, injury, or surgery.[6] (EX-23). In records from Promina Douglas Hospital after an automobile accident on July 18, 1995, it was indicated that Claimant complained of pain to his lower back area, but also that it was "sore before wreck". (EX-24, p. 1). The radiologist reported that CT scan of Claimant's lumbar spine showed no abnormality. (EX-24, p. 2). On January 29, 2000, Claimant reported to the emergency room at WellStar Douglas Hospital with complaints of lumbar back pain which began while he was lifting a heavy object earlier that day. The pain was not radiating. (EX-25, p. 2). He was diagnosed with a lumbosacral strain and a herniated disc.

B. Acadiana Center for Orthopedic and Occupational Medicine[7]

Employer/Carrier sent Claimant to Dr. Amanda R. Phillips-Savoy, who examined Claimant on March 27, 2009. (EX-14, p. 1). Claimant reported to Dr. Phillips-Savoy that he was on the 14th or 15th day of his hitch doing his normal activities at work but began having nonspecific back pain or weakness for two or three days. When he woke on March 27, 2009, he had low back pain radiating down his right leg. Claimant reported the back pain was persistent and worsening; however, his leg pain "comes and goes", and was worse than the back pain at that time. (EX-14, pp. 1-2).

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[6] Claimant also indicated that he had attended four more years of school after he completed high school. (EX-23, p. 1).

[7] Claimant reported to Drs. Phillips-Savoy and that he completed his bachelor's degree. (EX-14, p. 3).

Dr. Phillips-Savoy also recorded that Claimant had described having similar back pain in 1988 in jump school when he hurt his back. (EX-14, p. 1). The pain only lasted about a week, but he did not remember what was done to treat it. Since then Claimant told Dr. Phillips-Savoy he has had occasional back aches on and off but nothing so significant that he had to see a doctor, miss work, or have any treatment other than over the counter medications. (EX-14, pp. 1-2). Claimant also has not previously seen any doctors for any radicular leg pain similar to that in his leg at that time. Claimant denied any major trauma. (EX-14, p. 2). No psychological symptoms were reported. (EX-14, p. 3).

Upon examination, Dr. Phillips-Savoy did not observe any muscle spasm or swelling in Claimant's back. (EX-14, p. 4). Toe walking tests were normal but painful. (EX-14, p. 5). Claimant was given medication and home therapy instructions. (EX-14, p. 7).

Claimant returned to Dr. Phillips-Savoy on April 6, 2009. (EX-14, p. 8). He reported that his right leg pain persisted and was worse than the back pain, which was improving. (EX-14, p. 8). Claimant estimated he was 60% better than he was at the previous appointment. Claimant denied any tingling or numbness in his lower extremities. No psychological symptoms were reported. (EX-14, p. 10). Claimant presented for a follow-up appointment on April 22, 2009. (EX-14, p. 13). He reported that his back pain was completely resolved but his right leg pain was exactly the same. Dr. Phillips-Savoy ordered an MRI. (EX-14, p. 13).

The interpreting radiologist reported the following findings from the April 22, 2009 lumbar spine MRI: annular bulging at L1-L2; a ventral annular tear at L2-L3; minimal central annular bulging at L4-L5; and left paracentral disc protrusion or herniation at L5-S1. (CX-10, p. 1; EX-14, p. 18). Dr. Gregory G. Gidman, another physician with the Acadiana Center, reviewed the MRI and noted the protrusion or herniation at the L5-S1 level and some bulging at the L1-L2 level. (EX-14, p. 19). In light of the MRI results, Dr. Phillips-Savoy recommended Claimant start formal physical therapy for four to six weeks. (EX-14, p. 20). Dr. Phillips-Savoy planned to refer Claimant for a neurosurgical evaluation and possible epidural steroid injections if physical therapy was unsuccessful. (EX-14, p. 20).

Claimant presented for follow-up on May 14, 2009. (EX-14, p. 22). He reported that his low back pain returned and his right leg pain was the same, but continued to work light duty. No psychological symptoms were reported. (EX-14, p. 23). Dr. Phillips-Savoy recommended an EMG and nerve conduction studies of the right lower extremity, epidural steroid injection, and continuation of physical therapy. (EX-14, p. 26). She released Claimant to work at light duty with occasional lifting of up to 20 pounds, frequent lifting up to 10 pounds, and constant lifting of only negligible weight. (EX-14, p. 27).

Dr. Phillips-Savoy's partner, Dr. Gidman, examined Claimant on June 29, 2009.[8] (EX-14, p. 28). Claimant complained of constant moderate aching and shooting pain in the lower lumbar spine that goes into both buttock areas and into both thighs, with greater right leg pain. Claimant reported that about four months prior, his pain began when he was pressing on a large

[8] Dr. Gidman indicated that Claimant reported completing a "B.S. degree". (EX-14, p. 28).

piece of equipment suspended by a crane. Claimant continued to work, but on the third day, his leg pains became worse. Claimant reported doing some pool therapy, driving, and working in a light capacity. Claimant denied any anxiety, depression, or sleep disturbances. (EX-14, p. 29).

Upon examination, Dr. Gidman observed no spasms in the lumbar area, but Claimant complained of tenderness upon light palpitation. (EX-14, p. 30). Dr. Gidman found the pelvic and lumbar spine x-rays from March 27, 2009 as normal; he observed a small protrusion or herniation at L5-S1 in the April 22, 2009 MRI. Dr. Gidman diagnosed Claimant with sciatica and a lower back sprain. Dr. Gidman recommended a lumbosacral myelogram and a CT scan of the lumbar spine. Claimant was restricted to light activities and work and was instructed to avoid repetitive bending and twisting. (EX-14, pp. 31-32).

C. Thomas J. Davidson, III, M.D.

Dr. Davidson, board-certified in family practice, testified by deposition on July 19, 2012. (CX-3). He does not do inpatient surgeries in his practice, only in-office skin surgeries. (CX-3, p. 4). Dr. Davidson saw Claimant as a new patient on February 12, 2009, and again for a general physical on March 9, 2009. (CX-3, p. 5). These visits were unrelated to his workplace accident, and Claimant did not mention any back problems at either appointment. In his new patient information, Claimant reported that he smoked three quarters of a pack a day, and Dr. Davidson encouraged him to quit smoking. (CX-3, p. 13).

Claimant presented to Dr. Davidson again on July 8, 2009, for his back pain. Dr. Davidson did not record the mechanism of Claimant's reported injury in his notes. Dr. Davidson reviewed the report of Claimant's April 22, 2009 MRI at that visit and noted it showed disc protrusions and a possible herniation in his lumbar spine area. He also reviewed the records and evaluation by Dr. Phillips-Savoy. (CX-3, p. 6). Dr. Davidson agreed that the back pain complaints Claimant was making on July 8, 2009 were supported by the MRI report findings. (CX-3, p. 15).

Upon examination, Dr. Davidson found Claimant to have lumbar pain and muscle spasms in his lumbar spine area. (CX-3, p. 6). Dr. Davidson diagnosed Claimant with lumbar disc disease with some radiculopathy as evidenced by pain. He referred Claimant to Dr. Desverreaux for epidural injections. Dr. Davidson saw Claimant on August 17, 2009, after his second epidural injection. Claimant was still in pain and did not feel improvement from the injections. Claimant also complained about having decreased sex drive. (CX-3, p. 6).

Dr. Davidson referred Claimant to Dr. Flotte for a neurological exam, and Dr. Flotte recommended a decompression or fusion. (CX-3, pp. 6-7). Dr. Davidson deferred to Dr. Flotte's recommendation in favor of surgery, and opined that surgery could still possibly relieve Claimant of his pain and psycho-social issues as other conservative measures had not improved his condition. (CX-3, p. 7). Dr. Davidson continues to see Claimant on a regular basis to manage his pain with medications until a better treatment solution is found. (CX-3, p. 8).

Dr. Davidson reviewed the description of Claimant's prior duties as a wireline assistant. (CX-3, pp. 7-8). He opined that as of July 8, 2009, Claimant would have been unable to perform those duties.[9] Additionally, he stated that those activities could have caused Claimant's back problems as evidenced on the MRI he reviewed. He stated he has "no reason to not think that" Claimant's work activities are "what caused the injury." (CX-3, p. 9). While Dr. Davidson did not have anything in his records about Claimant being pushed to the ground on the deck of the platform while guiding a heavy load, he opined that such an incident could have caused Claimant's back condition. (CX-3, p. 12). Dr. Davidson also opined that Claimant's degenerative disc disease along with some pressure on the nerve could cause Claimant's current radiculopathy. (CX-3, p. 25).

Dr. Davidson's last appointment with Claimant before the deposition was June 7, 2012. (CX-3, p. 8). At that time, Claimant's pain was "about the same". He was having trouble sleeping and reported chronic constipation from his pain medications; Claimant was still experiencing a decrease in his libido, was not able to be very physically active, and was depressed about his overall situation. Dr. Davidson does not believe that Claimant's condition will improve without trying treatment beyond what Claimant has already undergone and stated that surgery is the "most likely thing" to help. (CX-3, p. 9). Dr. Davidson also opined that Claimant's current psychological problems are related to or proximately caused by his workplace injury.

Dr. Davidson testified that if Claimant does not get the surgery, he would currently release Claimant to return to work that is consistent with the results of the FCE report dated July 9, 2012. (CX-3, p. 10). However, Dr. Davidson maintained that Claimant cannot return to his previous position as wireline assistant—he can only lift a maximum of 20 pounds, any other manual labor job, or even a clerical job because of his inability to sit for any length of time. (CX-3, p. 20). Dr. Davidson was unaware that Claimant had returned to light duty work through July of 2009, and did not believe Claimant could work an eight-hour day. (CX-3, pp. 20-21).

Dr. Davidson stated that surgery in general is riskier for smokers and they have slower healing time, but those risks must be balanced with the relief the patient could receive from the surgery. (CX-3, p. 16). Additionally, he opined that quitting smoking could improve Claimant's chances for better surgical results.

D. Epidural Injections

On July 8, 2009, Dr. Davidson referred Claimant to Dr. Desverreaux for epidural injections for his lumbar pain and sciatica. (CX-9, p. 46). The first injection was administered on July 16, 2009. Claimant's pre-procedure diagnosis was lumbar disc herniation. (CX-9, p. 37). He reported a history of diverticulitis and back pain. (CX-9, p. 31). He reported he smoked cigarettes. The second injection was administered on July 21, 2009. (CX-9, p. 19). The final

[9] Later, Dr. Davidson reviewed some return to work slips he signed allowing Claimant to return to work in July and August 2009. (CX-3, pp. 20, 42-43). He clarified that these were initial return to work.

injection was administered on July 31, 2009. (CX-9, p. 15). Claimant's pre-procedure diagnosis was degenerative lumbar disc disease. At that time Claimant complained of a loss of interest in and physical capacity for sex.

E. Coastal Neurological Institute

Claimant first presented to Dr. Edward R. Flotte, a board-certified neurosurgeon, on August 21, 2009. (CX-6, p. 2; EX-13, p. 1). Claimant complained of mild lumbar spine pain, numbness in both legs, weakness in his left leg, joint pain, stiffness, muscle aches, and erectile dysfunction. (CX-6, pp. 2-3; EX-13, pp. 1-2). Claimant's indicated to Dr. Flotte he smokes about 0.3 packs of cigarettes a day. Dr. Flotte reviewed Claimant's MRI and diagnosed him with degenerative disc disease of the lumbar spine. (CX-6, p. 4; EX-13, p. 3). Dr. Flotte discussed management options with Claimant, including conservative treatment or surgery. Dr. Flotte referred Claimant to Dr. Tyler, his colleague, for a recommendation of whether fusion or decompression was the best procedure.

Claimant returned to the Institute and was examined by Dr. Donald R. Tyler, a board-certified neurosurgeon, on September 1, 2009. (CX-6, p. 5). Claimant complained of moderate diffuse low back pain and bilateral leg pain with greater pain in the right leg. He denied numbness and tingling. Dr. Flotte noted Claimant had been in an accident in March 2009 "involving shifted load on a crane offshore." Claimant reported no improvement from the two epidural injections and six weeks of physical therapy, which developed the left leg pain. The MRI examined by Dr. Flotte was found to be consistent with Claimant's symptoms. Dr. Flotte's impressions included back pain with radiculopathy, mechanical instability, low back pain, and degenerative disc disease in the lumbar spine. (CX-6, p. 8). Based on the failure of conservative measures tried, the increased severity of Claimant's pain, and the duration of the symptoms thus far, Dr. Tyler recommended Claimant undergo an L5-S1 transverse lumbar inerbody fusion. (CX-6, p.5).

F. Bendt P. Petersen, III, M.D.

Dr. Petersen testified by deposition on August 23, 2012. (EX-27). At Employer/Carrier's request, he examined Claimant on December 3, 2009, and January 12, 2009. (EX-27, pp. 7-8). On April 9, 2010, Dr. Petersen submitted a letter to counsel for the Employer/Carrier regarding his examination of Claimant. (EX-15, p. 3). He reported Claimant was experiencing lower back pain extending into the right leg and that Claimant noted prior wrist and spleen surgeries. It was also noted Claimant reported smoking three packs of cigarettes a day. Upon examination, Dr. Peterson observed tenderness throughout the lower lumbar spine, but no discreet spasm. (EX-15, p. 4). Dr. Petersen reviewed the April 22, 2009 MRI and found modest disc desiccation at "5-1" and subtle disc protrusion "perhaps left sided". Dr. Petersen testified that the MRI did not show anything that would be outside a normal pattern of degeneration for a person of Claimant's age and work history. (EX-27, p. 18). He diagnosed Claimant with "lumbar spondylosis, age appropriate with radiculitis". (EX-15, p. 4). Dr. Petersen stated he would not recommend laminotomy, decompression, or arthrodesis based on the imaging studies he had reviewed; he did not feel he had enough information to proceed surgically. (EX-27, p. 11). He recommended a lumbar CT to further investigate Claimant's

symptoms. Dr. Petersen also indicated that with Claimant's "3 pack per day cigarette history any effusion attempts are futile" because even exposure to second hand cigarette smoke can interfere with the healing process. (EX-27, p. 14; EX-14, p. 4).

In another letter dated June 21, 2011, Dr. Petersen opined that Claimant reached MMI six months after his injury and required no work restrictions. (EX-15, pp. 1, 22-23). Dr. Petersen testified that Claimant had plateaued and that six months post-fusion surgery or post-injury is the healing time generally assigned. (EX-27, pp. 17, 22).

Dr. Petersen reviewed Claimant's MRI dated September 3, 2010, and stated that he did not have enough information to recommend surgery based on that scan. (EX-27, pp. 20, 34-35). He also stated that this 2010 MRI did not show anything that is outside normal degeneration in a man of Claimant's age and occupation. (EX-27, p. 20).

G. D. Kevin Donahoe, M.D.

At the Department of Labor's request, Claimant presented to Dr. Donahoe, an orthopaedic surgeon, on July 8, 2010. (CX-13, p. 1).[10] Dr. Donahoe's records indicate Complainant reported March 27, 2009 as the date of injury. Complainant reported to Dr. Donahoe that his symptoms began three days prior to that date "with really no acute episode." The pain began in the low back, radiating into his right thigh.

On July 8, 2010, Claimant complained of continued low back pain, worsening bilateral leg pain, numbness, and tingling. (CX-13, pp. 1-2). Upon examination, Dr. Donahoe found limited range of motion in Claimant's back. (CX-13, p. 2). X-rays showed decreased disc height at L5-S1 and some degenerative changes in the upper lumbar. Dr. Donahoe reviewed the April 2009 MRI and found a "black disc at L5-S1". Based on the MRI, x-rays, and Claimant's reported symptoms, Dr. Donahoe diagnosed him with spondylosis, disc desiccation, and "most likely" discogenic back pain coming from the L5-S1 interspace. (CX-13, p. 2).

Dr. Donahoe noted that there was some information in the records he reviewed that suggested Claimant may have had prior back problems, although Claimant did not report any such problems when directly asked and there was no work-up in the records. (CX-13, p. 2). Dr. Donahoe noted that Claimant smokes about a half a pack of cigarettes per day, and as a result he would be "hard pressed to recommend a fusion…as this would be detrimental to any fusion." (CX-13, pp. 1-2). Finally, Dr. Donahoe recommended an updated MRI to explore possible nerve compression and declined to give his opinion regarding MMI or Claimant's potential work restrictions. (CX-13, p. 2).

[10] Dr. Donahoe's records are also included in the record as EX-12.

The MRI recommended by Dr. Donahoe was performed September 3, 2010, and he reviewed it on September 23, 2010. (CX-13, pp. 3-5; EX-16, pp. 1-2). Dr. Donahoe reported the MRI showed disc desiccation, L5-S1 lumbar spondylosis, and degenerative disc disease at L5-S1. (CX-13, p. 5). He stated he would not recommend any laminectomy, and he reiterated that he would be "hard pressed" to recommend a fusion based on Claimant's smoking history. (CX-13, p. 5).

H. Functional Capacity Evaluation

Claimant participated in an FCE over two days on July 5, 2012, and July 6, 2012, and the evaluator prepared a report of the results and findings on July 9, 2012. (CX-12). The evaluator noted that Claimant had consistent results on all 14 tests and objective signs showed he was putting forth good effort. There was no evidence of symptom magnification or self-restricted performance during the testing procedure. Claimant's demonstrated antalgic gait was consistent with his reports of left lower extremity pain and difficulty with stair and ladder climbing. He showed poor tolerance for bending and reaching.

The evaluator noted that based on Claimant's performance he demonstrated the ability to work at a light level of work or carrying/lifting up to 20 pounds on an occasional basis. (CX-12, p. 1). The evaluator also reported Claimant showed a limited tolerance to prolonged standing, and should be limited to only occasional bending, reaching, squatting, crouching, kneeling, crawling, stair climbing, and ladder climbing. The evaluator concluded that Claimant's physical and functional abilities at that time did not meet the full time job demands of his former position. (CX-12, p. 2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law are based upon my analysis of the entire record, arguments of the parties, and applicable regulations, statutes, and case law. My evaluation has been guided by the principle that the proponent of a rule bears the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 277-78 (1994) (citing *Steadman v. SEC*, 450 U.S. 91, 95 (1981)).

As trier of fact, I may accept or reject any part of the evidence, including that of medical witnesses, and rely on my own judgment to resolve factual disputes or conflicts in the evidence. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). The "true doubt rule," which resolves conflicts in favor of the claimant when the evidence is balanced, violates Section 566(d) of the Administrative Procedures Act, and thus has not been employed in my review of this claim. *Greenwich Collieries*, 512 U.S. at 281.

I. Compensable Injury

Section 20(a) of the Act provides the claimant with a presumption his disabling condition is causally related to his employment if the claimant can prove the following two elements: (1) he suffered an injury or harm, and (2) employment conditions existed which could have caused, aggravated, or accelerated his condition. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 287 (5th Cir. 2003) (citing *Conoco v. Director, OWCP*, 194 F.3d 684, 687 (5th Cir. 1999)). Once the claimant has made this *prima facie* showing, the burden then shifts to the employer to rebut the presumption with substantial evidence employment conditions did not cause the injury. *Ortco Contractors, Inc.*, 332 F.3d at 287. "Substantial evidence" has been defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Sprague v. Director, OWCP*, 688 F.2d 862, 865 (1st Cir. 1982) (quoting *Parsons Corp. v. Director, OWCP*, 619 F.2d 38, 41(9th Cir. 1980); *Diamond M. Drilling Co. v. Marshall*, 577 F.2d 1003, 1006 (5th Cir. 1978)). If the employer meets this burden, the Section 20(a) presumption is rebutted, and the administrative law judge must then weigh all the evidence and render a decision supported by substantial evidence. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986).

In this case, the parties dispute whether Claimant's back and leg pain is a compensable injury. Claimant argues that the nature of the work he had done on the platform the day before his injury report caused his back pain. Employer/Carrier argue that Claimant should be discredited and his claim denied as the evidence arguably shows Claimant has been untruthful about the alleged accident, his medical history, and his educational background.

A. Claimant's *Prima Facie* Case

I find that Claimant has presented sufficient evidence to invoke the Section 20(a) presumption. Claimant's work as a wireline assistant required him to regularly lift and carry anywhere from 30 to 100 pounds. (Tr. 43-45). On March 26, 2009, Claimant recalled he had an especially demanding day at work. (Tr. 64). He reported being in pain on the morning of March 27th to his supervisor Mr. Dunning, and this is recorded in an incident report from that day. Mr. Dunning sent Claimant ashore to seek medical attention.

Subsequently, Claimant consistently complained of back pain and radicular pain in both legs. Claimant sought treatment from several different physicians regarding his back pain. Dr. Phillips-Savoy, who Claimant was sent to by Employer/Carrier upon first reporting his pain, ordered an MRI which showed annular bulging at L1-L2; a ventral annular tear at L2-L3; minimal central annular bulging at L4-L5; and left paracentral disc protrusion or herniation at L5-S1. The protrusion and bulging were also apparent to Dr. Gidman, Dr. Phillips-Savoy's partner, who reviewed the MRI. Claimant's back pain improved but then worsened again in the months following his first report of pain. The radicular pain in his legs remained a consistent problem. Physical therapy and medications did not provide Claimant with relief.

Dr. Davidson, Claimant's treating physician, agreed that the back pain complaints Claimant was making on July 8, 2009 were supported by the findings of the MRI report. Upon examination, Dr. Davidson found Claimant to have lumbar pain and muscle spasms in his lumbar spine area. (CX-3, p. 6). Dr. Davidson reviewed the description of Claimant's prior duties as a

wireline assistant. Additionally, he stated that those activities could have caused Claimant's back problems as evidenced on the MRI he reviewed and there was no reason to think that work activities were not the cause of Claimant's injury.

In sum, I find these facts sufficient to show Claimant suffered an injury at work for purposes of the Section 20(a) presumption. In other words, Claimant has produced evidence that workplace conditions could have caused his back and leg pain.

B. Employer/Carrier's Rebuttal Evidence

In response to Claimant's invocation of the Section 20(a) presumption, I find Employer/Carrier have not met the burden of providing substantial evidence to break the causal nexus between Claimant's back and leg pain and his workplace conditions.

First, Employer/Carrier argue that there was no singular accident involving slack in the line of the crane. Claimant filed a third party suit in U.S. District Court based on such an incident. The crane operator, Johnnie Sanders, and Claimant's supervisor, Joe Dunning, two people working side by side with Claimant on the day of this alleged accident both testified that they saw nothing like this happen on the platform. Employer's records show no report of such an incident. Additionally, Employer/Carrier argue that Claimant's alternative theory that the general working conditions caused his pain is unsupported. Claimant confirmed at trial that he testified at a deposition in the third party suit that he had "no issues" the day prior to his report of pain to Mr. Dunning.

Employer/Carrier also point to several inconsistencies between Claimant's testimony and the evidence of record to call into question Claimant's credibility regarding his assertions about his current back and leg pain. Claimant testified at trial that he had not graduated from college despite testifying in his deposition and telling other physicians he had completed a bachelor's degree. A request for Claimant's records from the University of Alabama registrar returned no record of attendance, despite Claimant's assertions that he completed some courses there. Additionally, Employer/Carrier assert that the record indicates Claimant denied prior back injuries when hired by Employer, even though the medical evidence of record notes other instances of back injuries in the past.

After consideration of these concerns raised by Employer/Carrier, I find they are insufficient to rebut Claimant's invocation of the Section 20(a) presumption. At trial, I found Claimant to be credible. Claimant explained that statement that he had "no issues" the day prior to his report to Mr. Dunning was taken out of context; he took an over-the-counter pain reliever, which allowed him to go to work that day despite waking with pain. He even wanted to work the next day when he could not get out of bed, but Mr. Dunning would not allow it. It is plausible to believe that Claimant did what he could to manage the pain and continue working, until it progressed to a more severe level.

While Claimant has been less than straightforward in the reporting of his education background, I find that his boasting of a college degree has no relevance to whether he was injured in the course and scope of his employment. Likewise, I consider any underreporting of

prior back pain by Claimant at most a lapse in memory. The automobile accident was nearly twenty years ago and Claimant attended jump school over 20 years ago. The mentions of previous complaints of back pain in Claimant's medical records do not indicate extensive treatment was required, and the record is silent on any prior complaints of radicular pain. Furthermore, while Employer/Carrier may have presented evidence to show that there was not a specific accident involving Claimant and the crane he was working alongside, none of the evidence cited by Employer/Carrier shows that Claimant's general employment conditions could not have caused the injury.

C. Weighing the Evidence

Even if Employer/Carrier had successfully rebutted the Section 20(a) presumption, in weighing all the evidence, I would still find in favor of Claimant. Claimant's treating physician, Dr. Davidson, testified that Claimant's back issue could be caused by the nature of his duties at work. I find it appropriate to afford his opinion the most weight as he has had the occasion to examine Claimant at several appointments over a long duration of time and was still treating Claimant at the time of trial.

Also, there is evidence to show damage to Claimant's back that was not there before; the CT scan in 1995 showed no abnormality, despite Claimant's soreness in the back after an automobile accident. In 2000, Claimant was diagnosed with a lumbosacral strain and herniated disc, but this diagnosis was not formed in response to any objective testing. I conclude Claimant did his best to accurately report his back history to the seven different physicians he has seen in the past three years, and nothing supports a finding that Claimant had a significant disabling back injury prior to the events which are the subject of this claim.

Some of the doctors of record opined that the back issues shown on Claimant's most recent MRIs are not inconsistent with that of a typical man his age. This, however, does not disprove the notion that his workplace conditions could have been the culprit, as was indicated by Dr. Davidson's opinion. Multiple doctors opined that Claimant's complaints were consistent with the objective results seen in the MRIs and upon examination. As a whole, I find that the evidence weighs in favor of Claimant.

II. <u>Nature and Extent</u>

A. Nature of Disability

A claimant bears the burden of proving the nature and extent of his work-related injury. *Trask v. Lockheed Shipbldg. & Constr. Co.*, 17 BRBS 56, 59 (1986). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). *Id.* at 60 (citing *McCray v. Ceco Steel Co.*, 5 BRBS 537, 540 (1977)). The date of MMI is defined as the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. *Trask*, 17 BRBS at 60. The date of MMI is a question of fact based upon the medical evidence of record regardless of economic or vocational consideration. *La. Ins. Guar. Ass'n v. Abbott*, 40 F.3d 122, 125 (5th Cir. 1994). If MMI has not yet been reached, the disability is temporary.

Surgical intervention is the only remaining treatment suggested that Claimant has not tried. Neither Dr. Phillips-Savoy nor Dr. Gidman gave a recommendation regarding surgery, but once the testing, conservative modalities of treatment, and epidural injections failed to significantly improve Claimant's condition, Dr. Davidson referred Claimant to Dr. Flotte, a neurosurgeon. Dr. Flotte proposed either a decompression or fusion surgery, and referred Claimant to his partner Dr. Tyler, another neurosurgeon, for an opinion on which procedure would be more appropriate. Dr. Tyler recommended an L5-S1 transversal lumbar inerbody fusion.

Claimant continues to treat with Dr. Davidson who prescribes medications to help manage Claimant's pain until he can find a more permanent resolution. Dr. Davidson does not believe that Claimant's condition will improve without trying treatment beyond what Claimant has already undergone and stated that surgery is the "most likely thing" to help. Dr. Davidson stated that for smokers, surgery in general is riskier and results in slower healing time, but those risks must be balanced with the relief the patient could receive from the surgery. In sum, Dr. Davidson deferred to the surgical recommendation of Drs. Flotte and Tyler.

Employer/Carrier's physician, Dr. Petersen, stated that he did not have enough information to make a determination on whether surgery was advisable and requested a CT scan. He did state, however, that a fusion could be futile because Claimant is a smoker since even exposure to second-hand cigarette smoke can interfere with the healing process. However, he did not give a definitive recommendation regarding surgery for Claimant; he felt he did not have enough information at the time of his deposition and still felt that a CT scan would be necessary before he did make a final recommendation. Nevertheless, Dr. Petersen is the only physician who gave an express opinion regarding MMI. In a letter dated June 21, 2011, Dr. Petersen opined that Claimant reached MMI six months after his injury and required no work restrictions. In his deposition he stated he based this opinion on the standard healing time of six months for a patient post-injury or post-fusion, which has obviously not been the norm in this instance.

Finally, Dr. Donahoe stated that after reviewing Claimant's MRI from September 3, 2010, at the Department of Labor's request, he would not recommend a laminectomy. Dr. Donahoe also noted that he would be "hard pressed" to recommend a fusion because of Claimant's smoking habit.

While Claimant's symptoms have not shown improvement in several months after much conservative treatment, I find the evidence suggests surgery is still a viable option for providing Claimant with relief. While it seems it is in Claimant's best interest to stop smoking before he has surgery (Dr. Petersen testified that if Claimant stopped smoking, it would "absolutely" make a difference in Claimant's post-fusion healing process), Claimant has not expressed an unwillingness to do so and remains hopeful for surgery to be approved. Two physicians, Drs. Flotte and Tyler, approved of surgery for Claimant, and consequently, as surgery is still an option for Claimant's further improvement, I find Claimant has not yet reached MMI, and therefore remains temporarily disabled.

B. Extent of Disability

The question of extent of disability is an economic as well as medical concept. *Quick v. Martin*, 397 F.2d 644, 648 (D.C. Cir. 1968). A claimant must first make a *prima facie* case of disability by showing he is unable to return to his former job due to his work-related injury. Once he has done so, the burden shifts to the employer to show the existence of suitable alternative employment. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981). The claimant remains entitled to total disability compensation until the date upon which the employer establishes the availability of such employment, at which point the disability becomes partial. *Rinaldi v. Gen. Dynamics Corp.*, 25 BRBS 128, 131 (1991).

To establish suitable alternative employment, an employer must prove the existence of realistically available job opportunities; the employer must take into account factors such as the claimant's age, education, employment history, and physical capabilities. *Turner*, 661 F.2d at 1042. The employer must also demonstrate the claimant could realistically secure the alternative employment if he diligently tried. *Id.* at 1042-1043. The *Turner* standard does not require the employer to seek out specific job offers for the claimant, but the employer must outline the specific terms, nature, and availability of the identified suitable alternative employment. *Turner*, 661 F.2d at 1041; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94, 94 (1988). The claimant remains entitled to total disability compensation until the date upon which the employer establishes the availability of such employment, at which point the disability becomes partial. *Rinaldi v. Gen. Dynamics Corp.*, 25 BRBS 128, 131 (1991).

Upon reporting his injury to Mr. Dunning on March 27, 2009, Claimant was sent to shore for medical treatment. Dr. Phillips-Savoy released Claimant to work at light duty, and he returned to work at light duty in the tool shop. Claimant continued working light duty until Dr. Davidson, his treating physician, took him off of work on July 8, 2009. Claimant was terminated by Employer on November 13, 2009, and Employer has not subsequently offered Claimant an opportunity to return to employment there. Claimant has not secured other employment since his termination.

Dr. Petersen placed Claimant at MMI with no work restrictions on June 21, 2011. This does not comport with the recommendations of Claimant's treating physician or with the later results of the 2012 FCE. Dr. Davidson says that Claimant is still only able to lift 20 pounds at the most and most likely cannot even do a sedentary job because he is unable to sit for long periods of time. However, Dr. Davidson stated he would release Claimant to work within the restrictions of the FCE if Claimant did not have surgery. The FCE evaluator reported that Claimant's physical and functional abilities as of July 2012 did not allow him to return to his wireline assistant position. The report noted that Claimant demonstrated the ability only to work at a light level of work or carrying/lifting up to 20 pounds on an occasional basis. The evaluator also reported that Claimant showed a limited tolerance to prolonged standing, and should be limited to only occasional bending, reaching, squatting, crouching, kneeling, crawling, stair climbing, and ladder climbing.

Employer/Carrier first provided vocational evidence on July 5, 2012. A supplemental version of that report was provided to Claimant post-trial, as it became clear at trial that Claimant did not have the complete labor market survey report. Neither version of the report is sufficient to establish suitable alternative employment. The *Turner* standard is not met by the given job listings. Only a few of the jobs identified were sedentary, and as to those, no descriptions of the tasks required by the positions were given. In other words, the specific job duties are not mentioned and do not allow for a comparison between the restrictions recommended by the functional capacity evaluation that Dr. Davidson suggested he would adopt for returning Claimant to work if he did not get the surgery. Therefore, Claimant remains totally disabled despite this labor market survey.[11]

III. Medical Benefits

Where a claimant has established that he has suffered from a compensable injury under the Act, the employer is liable for "medical, surgical, and other attendance or treatment, nurse or hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process or recovery may require." 33 U.S.C. § 907(a). For medical expenses to be assessed against the employer, the expense must be reasonable, necessary, and appropriate for the injury. *Pernell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979); 20 C.F.R. § 702.402.

Claimant is seeking medical treatment for his back and leg pain. Drs. Tyler and Flotte recommended surgery to correct the conditions seen in Claimant's MRI. Dr. Davidson, Claimant's treating physician deferred to the opinions of these neurosurgeons. Employer/Carrier argue that this surgery is not prudent and not warranted as per the opinions of Drs. Petersen and Donahoe, as discussed previously. Specifically, these two physicians expressed concern about proceeding with surgery as Claimant is a smoker, which can reduce healing time and creates more risks for the surgical patient. Even Dr. Davidson testified that Claimant would benefit from decreasing his smoking habit or quitting all together before surgery is performed.

While Claimant's smoking habit is a concern, it does not negate Employer/Carrier's responsibility for the cost of the surgery when it is reasonable, necessary, and appropriate to treat the compensable work related injury. I find that the surgery recommended by Drs. Tyler and Flotte is reasonable and necessary in this case. Their opinions are based on sound testing and these doctors are board-certified. It may be most effective and appropriate to delay the surgery until Claimant can quit smoking, but even still, in light of the doctors' opinions, I find Claimant entitled to any and all reasonable and necessary treatment with respect to his work-related condition, including the recommended back surgery.

[11] In his testimony at trial, Mr. Christiansen acknowledged he did not have the benefit of the 2012 FCE. If he had, he said he would have concentrated on light duty jobs.

ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and upon the entire record, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

1.) Employer/Carrier shall pay Claimant compensation benefits for temporary total disability from July 13, 2011[12], to present and continuing, based on a stipulated average weekly wage of $954.14, in accordance with the provisions of Section 8(b) of the Act. 33 U.S.C. § 908(b).

2.) Employer/Carrier shall pay Claimant all reasonable and necessary medical expenses arising out of his work-related injuries, including recommended surgery, pursuant to 33 U.S.C. § 907.

3.) Employer/Carrier shall pay Claimant interest on any sums determined due and owing at the rate provided by 28 U.S.C. § 1961.

4.) Employer/Carrier shall receive a credit for all compensation payments previously made to Claimant.

5.) All computations of benefits and other calculations provided in this **ORDER** are subject to verification and adjustment by the District Director.

6.) Claimant's attorney shall have thirty (30) days from the date of service of this decision by the District Director to file a fully supported fee application with the Office of Administrative Law Judges; a copy must be served on Claimant and opposing counsel who shall then have twenty (20) days to file any objections thereto.

So ORDERED this 19th day of November, 2012, at Covington, Louisiana.

Digitally signed by C. Richard Avery
DN: CN=C. Richard Avery,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Covington, S=LA, C=US
Location: Covington LA

C. RICHARD AVERY
Administrative Law Judge

[12] The parties stipulated that Employer paid Claimant temporary total disability compensation until July 12, 2011. In brief, Claimant states that he is seeking "an award of temporary total disability from July 13, 2011, and continuing based upon the average weekly wage of $954.14." (Claimant's Brief, p. 11). Therefore, apparently no additional compensation benefits are due prior to July 13, 2011.