

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G708909

DAVID R. LENARD,
EMPLOYEE

CLAIMANT

CADDO RIVER, LLC,
EMPLOYER

RESPONDENT NO. 1

LIBERTY MUTUAL GROUP/CARRIER,
THIRD PARTY ADMINISTRATOR (TPA)

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED JANUARY 4, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Garland County, Hot Springs, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on December 4, 2020, in Hot Springs, Arkansas. A pre-hearing telephone conference was held in this matter on October 29, 2020. A pre-hearing order was entered on that same day. This pre-hearing order set forth

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the stipulations offered by the parties, their contentions, and the issues to be litigated at the hearing.

The following stipulations were submitted by the parties, either pursuant to the pre-hearing order, or at the start of the hearing. I hereby accepted the following proposed stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. My Opinion of October 21, 2019, is now res judicata and "the law of the case."

3. At the time of the Claimant's accidental injury, his average weekly wage was \$835.16.

4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

5. This claim for additional medical benefits has been controverted by Respondents No. 1.

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether the Claimant is entitled to additional medical treatment, in the form of a permanent spinal cord stimulator.

2. Whether Respondents No.1 willfully and intentionally

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failed to pay medical benefits (in the form of a permanent spinal cord stimulator), for which a penalty should be assessed under Arkansas Code Ann. §11-9-802. However, on December 30, 2020, the Claimant's attorney notified the Commission via email that this issue should be held in abeyance at this time. Said email has been blue-backed and made a part of the record. It has been marked as Commission's Exhibit No. 2.

3. Whether the Claimant's attorney is entitled to a controverted attorney's fee. Since following the hearing, the parties agreed to hold in abeyance the above referenced issue relating to a possible penalty, the issue pertaining to an attorney's fee has been rendered moot.

CONTENTIONS

Claimant:

On 12/16/2017, Claimant was pulling a 20-foot bunch of metal pipes when a pipe gave way and hit him in the leg. Claimant injured his leg and lower back. Respondents accepted the injury as compensable. Claimant was diagnosed as having acute cellulitis, kidney failure, and CRPS/RSD. Claimant was diagnosed with CRPS/RSD (complex regional pain syndrome/reflex sympathetic dystrophy) by

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Dr. Hulsey, Dr. Rudder, Dr. Pederson[sic] and Dr. Paul. A spinal cord stimulator was recommended.

The Respondents denied the stimulator. In an Opinion dated October 21, 2019, Administrative Law Judge Chandra Black awarded the trial spinal cord stimulator. Claimant had a very good result, from the trial. Now the Respondents have denied the actual spinal cord stimulator.

Additionally, Dr. Rudder is the Claimant's authorized treating physician. The Respondents have denied the payment of his bills.

Additionally, the Respondents have now denied all of the Claimant's medication.

As such, Claimant contends that he is entitled to medical treatment and his medical bills be paid. Claimant also requests sanctions due to the fact that this matter has previously been litigated and benefits awarded.

All other issues are reserved.

Respondents No. 1: The last decision awarded a trial SCS. The trial was not a success. It is not reasonable or necessary for the Claimant to have a permanent SCS (spinal cord stimulator).

Respondent No. 2: The Trust Fund has deferred to the outcome of litigation.

The documentary evidence submitted in this case consists of the hearing transcript of December 4, 2020 and the documents contained therein. The hearing transcript of August 10, 2019 and the documents contained therein have also been made a part of the record. Said transcript was marked as Commission's Exhibit No. 3. It is retained in the Commission's file. The Oral Deposition of Dr. James Kevin Rudder was taken on August 9, 2019. Dr. Rudder's deposition testimony has also been a part of the record. It is retained in the Commission's file (Of note, said deposition also marked Commission's Exhibit No. 3 from the prior hearing). The emails from the parties agreeing to hold the issue of penalties in abeyance have also been made a part of the record. These have been blue-backed and marked as Commission's Exhibit's No. 2.

The Claimant, Mr. David Ray Lenard, was the only witness to give testimony during the hearing.

DISCUSSION

The Claimant, David Lenard, now age 43, testified during the hearing. He essentially verified that he sustained an on-the-job injury to his legs December 2017, while working for the respondent-

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employer. According to the Claimant he was pulling a piece of pipe from out of a pipe bundle, when it slipped and hit him in the leg.

Per the Claimant's testimony, he was transported to National Park Hospital, where he was diagnosed with cellulitis. While at the hospital, Dr. Rudder became the Claimant's authorized treating physician. The Claimant agreed that Dr. Rudder diagnosed him with CRPS.

Regarding the Claimant's treatment, according to the Claimant, three days after going to the ER (emergency room), he went back to a local urgent care clinic. The Claimant testified that they figured out that he had elevated "blood-type levels and stuff." There, the Claimant underwent MRIs, and CAT scans to his leg. He also had an epidural that did not deliver any relief. After ten days in the hospital, Dr. Rudder referred the Claimant to a neurosurgeon to have more testing performed.

At that point, the Claimant began treating with Dr. Petersen, at UAMS. He recommended spinal cord stimulator. The Claimant underwent a nerve conduction test. According to the Claimant, Dr. Paul also recommended the trial spinal cord stimulator.

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The Claimant verified that a prior hearing was held in this claim on his entitlement to a trial spinal cord stimulator. Following the hearing, the trial spinal stimulator was awarded. He admitted that Dr. Paul implanted the trial spinal cord stimulator.

Upon being asked about the trial stimulator, the Claimant replied, in relevant part, "It was amazing -- the relief. The burn, the stabbing pains, the swelling, was gone pretty much." However, the Claimant testified that he still had the bone pain. According to the Claimant, he gave them a rating between 60 and 70 percent because he still had the bone pain. The Claimant essential testified that although he did not have the nerve pain or the swelling, he did not know that once they got the nerve pain under control, then the bone pain would go away. According to the Claimant, his position as of the date of the hearing, would be that the trial stimulator was a 100 percent effective, with his understanding that the bone pain will go away. The Claimant testified that the burning and swelling improved 90 to a 100 percent.

He testified had the spinal cord stimulator in for seven days. The Claimant testified that it was amazing. According to the

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Claimant, it was such a relief that he was hoping to get back to work because it was just that effective. The Claimant admitted to discussing with Dr. Rudder the 60 percent pain relief. He also discussed the 90 percent improvement for burning and swelling. Next, the Claimant denied that Dr. Rudder asked him about any pain and swelling.

The Claimant testified that after they removed the trial stimulator, within 20 minutes, the pain was instantly back. According to the Claimant, they watched the color change and the swelling return while he was still in the doctor's office. According to the Claimant, they have since increased his medications (Gabapentin and the Effexor). The Claimant essentially testified that his medications had been cut in half while he was on the trial stimulator. Once they removed the Claimant's spinal cord stimulator, his medications had to be increased.

The Claimant admitted to seeing Dr. Machado for incontinence. According to the Claimant, he has been put on medications for this condition, which have helped. He denied treating for this before getting the trial stimulator. The Claimant agreed that after his injury, he began to experience some urinary incontinence. He

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agreed that the trial stimulator helped with his incontinence. According to the Claimant, they recommended the bladder stimulator to fix his urinary incontinence. However, the Claimant maintained that the spinal cord stimulator actually took care of his urinary condition.

He testified that the bladder stimulator is on hold until there is a determination on the spinal cord stimulator. The Claimant verified that Dr. Paul has left UAMS. He continues to treat with Dr. Rudder, who is his authorized treating physician. The Claimant verified that his visits with Dr. Rudder were approved by the insurance company. However, he denied that Dr. Rudder's bills have been paid. The Claimant verified that he continues to receive medical bills from Dr. Rudder for these visits.

The Claimant testified that some months they paid for his Gabapentin and Effexor, and other months they have not pay for them. He testified that he uses his Medicare to pay for them, but he has to pay the co-pay. The Claimant essentially testified that he was referred to a dermatologist by Dr. Rudder, and that was approved by the insurance company, but they have not been paying those bills. He denied that they paid for the medications prescribed by the dermatologist. According to the Claimant, he

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was referred to the dermatologist because he began forming psoriasis. He agreed that the psoriasis is a result of the CRPS. The Claimant acknowledged that his condition has gotten worse since the spinal cord stimulator was removed.

On cross-examination, the Claimant was asked about how the spinal cord stimulator works. He explained:

A They go in and they put leads on the nerves in your back with pulsating electrodes that rest the nerves.

Q Actually there's a wire they put in your spinal cord -

A Yes, sir.

The Claimant testified that the spinal cord stimulator helps his left leg because it connects to the ganglion nerve system. He admitted that he is aware of another kind of stimulator that works for the lower extremities. It is called a DRG (dorsal root ganglion) stimulator.

According to the Claimant, it was explained to him that the DRG would not be effective for him. As a result, they recommended spinal cord stimulator. The Claimant testified that he is now affected from the neural down. He denied having contacted a doctor about the DRG stimulator. Instead, the Claimant explained that he went with the referral he was given, by Dr. Rudder. He referred

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the Claimant to Dr. Petersen, and she referred the Claimant to Dr. Paul.

The Claimant admitted that Dr. Petersen referred him for an algorithm treatment. According to the Claimant, Dr. Petersen also referred the Claimant for a neuropsychological evaluation prior to implantation of a permanent stimulator. The Claimant verified that he has undergone this evaluation, but he was unable to recall the lady's name.

Under further questioning, the Claimant was again asked how he felt with the trial stimulator, he explained, "I felt amazing. The pain was gone. I wasn't burning, I didn't have the shakes. I didn't have the swelling, the color change in my legs."

The Claimant explained a second time, his reasoning for telling the doctors that the trial-stimulator period was only 60 percent effective, which was because it did not take the bone pain away. He testified that the trial spinal cord stimulator made him not feel anything.

According to the Claimant, once they set it in, they turn up the setting to where you could feel it and then they turn it back down. The Claimant testified that it is basically a TENS unit on your nerve system in your spinal cord. He denied that he could

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turn the device up and down. The Claimant went on to explain that he knows if it is turned up or down by his pain levels. They were able to do the reprogramming for it. According to the Claimant, when he said it was 60 percent effective, the other 40 percent was bone pain.

The Claimant stated that the bone pain was/is in both of his legs. He testified that his bladder problem has been linked to his injury by Dr. Machado. According to the Claimant, Dr. Machado told him that with nerve injuries, most of the time that is what happens. He admitted that a report from Dr. Machado has not been admitted into evidence. The Claimant testified that the next step after medication, would be a bladder stimulator. According to the Claimant, it controls the nerves of the bladder.

The Claimant verified that he has a dermatitis or dermatological condition. He was asked if a doctor ever tied it to his CRPS condition, the Claimant replied, "No. Well, kind of. Your skin starts growing and flaking off. You can get it all over." He agreed that that he has psoriasis. The Claimant admitted that this condition happens to the general public for no reason, without them having CRPS.

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Next, the Claimant maintained they are looking into his psoriasis condition and linking it to the CRPS, as far as he knows. The Claimant testified that this condition appeared after the trial stimulator.

He admitted to testifying on direct examination that he was ready to go back to work with the 7-day trial stimulator. However, the Claimant testified that he was not ready to go back to work once it was removed. The Claimant verified that he draws social security disability and is on Medicaid. He admitted that Medicare has paid some of his bills. The Claimant went on to state that he does not know who is paying them. He stated that he just knows that they are getting paid because they are either turning them over to the insurance carrier or Medicare.

The Claimant testified that his pain level without the spinal cord stimulator is 90 percent. He testified that his pain is from his naval down, into his lower extremities. The Claimant agreed that his right leg is as bad as his left leg.

He testified that Dr. Palys is going to be the surgeon who does the implant. He admitted that he continues to draw temporary total disability from Liberty Mutual. The Claimant further admitted that he testified on direct examination, that he would be

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ready (feeling-wise) to return to work with the spinal cord stimulator. He admitted to using a walker while on the trial stimulator. However, the Claimant explained that although the pain was gone, he was still a fall risk. According to the Claimant, he will need to go through therapy to build his strength back up. The Claimant essentially testified that two years of not being able to use your legs causes them to go weak.

On redirect examination, the Claimant admitted that he followed protocol for obtaining the trial stimulator. Specifically, the Claimant went to every doctor's appointment and underwent the neuropsychological evaluation. The Claimant agreed that the doctors did not recommend the DRG. Instead, they recommended the trial spinal cord stimulator.

The Claimant agreed that the CRPS spread from his left leg into his right leg, and across his bladder. He further agreed that as a result, the Respondents approved for him to go to the urologist and dermatologist. The Claimant verified that all the doctors he has been sent to were pursuant to referrals made by Dr. Rudder. The Claimant verified that no doctor has declared him to be at maximum medical improvement.

On recross examination, the Claimant testified that the RSD is spreading. According to the Claimant, the spreading occurred after the stimulator was taken out. The Claimant testified that the spread of it is controlled by the stimulator. He further testified that it is his understanding that the stimulator stops the spread because it resets the nerves.

According to the Claimant does not know who paid for the neurological consult for his psoriasis consultation. He essentially admitted that he does not know if Dr. Rudder referred him due to his injury or simply because he had a medical condition.

MEDICAL EXHIBITS

The medical records from my prior Opinion of October 21, 2019, are incorporated by reference herein.

As a result, the first medical record of evidence since that time is dated August 13, 2019. At that time, the Claimant sought continued treatment from Dr. James Rudder due to his compensable left leg/thigh injury, and RSD, which resulted due to his accidental injury of December 16, 2017. Dr. Rudder noted that on physical examination, the Claimant's left leg continued to have a larger diameter than his right leg. His range of motion was somewhat painful within normal limits. Dr. Rudder assessed the

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Claimant with "G90.529: Complex Sympathetic Dystrophy of lower extremity." Per Dr. Rudder's Discussion Notes, he wrote: "Again, I think the patient needs a dorsal column stimulator trial[sic] we will continue his Neurontin at its current state and I will see him back in a month."

Dr. Rudder noted on September 12, 2019, that the Claimant continued with burning, and stabbing pain. At that time, the Claimant reported pain from the waist down. He also reported muscle weakness, numbness, arthralgias/joint pain, back pain, and swelling in the extremities. On physical examination of the Claimant's thigh, Dr. Rudder noted abnormalities which included: swelling, tenderness of the proximal femur anterior, the mid femur anterior, and the distal femur anterior. There were also other symptoms of RSD noted, which included decreased sensation of the upper thigh(L2), the lower thigh(L3), the knee and medial leg (L4), the lateral leg and dorsum of the foot (L5), the sole of the foot and posterior leg (S1), and the posterior thigh (S2). However, the Claimant was still awaiting the approval of the stimulator.

Dr. Rudder saw the Claimant for a follow-up visit on November 13, 2019. At that time, the Claimant had relatively little improvement since his last examination, and in fact the Claimant

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continued to complain of low back pain and right hip pain on physical examination of his left leg. According to these notes, Dr. Rudder stated that the Claimant's left leg continued to have a larger diameter than his right leg. The Claimant's range of motion of both his left hip as well as his back was painful. However, the Claimant noticed had some improvement since starting the Effexor. Dr. Rudder's Discussion Notes read: "As patient continues to have issues with pain and function, would again recommend referral to Dr. Paul for pain management evaluation and stimulator."

The Claimant saw Dr. Rudder on March 3, 2020, for follow-up of his RSD. At that time, the Claimant had complaints of decreased sensation of the upper left thigh, the lower thigh, knee, medial leg, lateral leg, dorsum of the foot, the sole of foot, posterior leg and posterior thigh. Dr. Rudder continued to recommend the that dorsal column stimulator placed. According to these notes, due to scheduling problems, the Claimant did not have the trial stimulator placed. He was scheduled to have the stimulator placed on the 16th (March).

On April 4, 2020, the Claimant had a telephonic visit with Dr. Rudder. Since his last visit, the Claimant had a trial

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stimulator placed, but the carrier denied permanent placement, stating that it did not give enough relief. The Claimant reported that since the removal of the trial stimulator, his symptoms had returned.

The last medical report of record was authored by Dr. Rudder on October 21, 2020. At that time, the Claimant reported that his left hip felt like some was twisting the bone inside. The Claimant's RSD symptom remained. Per an addendum to the above report, Dr. Rudder reported, in relevant part:

David[sic] did have a trial stimulator done and evidently 60% pain relief was not enough for his Workmen's Comp. to pay for it. It think that this is unrealistic over 3-day trial. He's now wearing depends underwear due to incontinence I think that he will do well with a dorsal column stimulator however I cannot make that happen. It is my opinion as it always has been that he got RSD from his injury. As he did have substantial relief from with a dorsal column stimulator over a short. I think it would be best if he had one implanted. I will continue to see my patient Mr. Leonard[sic] to see this through. As of now I cannot prescribe pain medications and I cannot do anything but record his symptoms[sic] his symptoms are bilateral lower extremity pain[sic] he continues to have redness swelling and pilar erector pain with examination. Again, I will see him back in a month's time and I think it is very unreasonable that he did not get a permanent dorsal column stimulator.

Although the Claimant introduced information relating to some unpaid medical bills. Following the hearing, the parties agreed to hold this issue in abeyance.

ADJUDICATION

Additional Medical Treatment/Trial Stimulator

The sole issue for determination is whether the Claimant is entitled to a permanent spinal cord stimulator/dorsal column stimulator for his compensable left injury of December 16, 2017.

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005).

In a prior Opinion dated October 21, 2019, I found that the Claimant proved by a preponderance of the credible evidence, his entitlement to a trial spinal cord stimulator, for his compensable left leg injury of December 16, 2017, and resulting RSD. No appeal was taken from that Award. Therefore, pursuant to said award, Respondents No. 1 paid for the 7-day trial spinal cord stimulator.

However, Respondents No. 1 have now controverted the Claimant's entitlement to a permanent spinal cord stimulator. They have asserted that the trial dorsal column stimulator was not a

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success. They have also asserted that it is not reasonable or necessary for the Claimant to have a permanent SCS.

Therefore, the Claimant has now asserted his entitlement to a permanent spinal cord stimulator, as recommended by his treating physician, Dr. Rudder.

I find that the Claimant proved by a preponderance of the evidence his entitlement to a permanent spinal cord stimulator/dorsal column stimulator due to his admittedly compensable injury of December 2017.

Here, the Claimant received a 7-day trial spinal cord stimulator after a hearing was held on this this issue. This treatment modality was performed by Dr. Paul. Although Dr. Rudder's notes seem to indicate that the Claimant received the trial stimulator on March 16, 2020, a report from Dr. Paul was not made a part of the record.

Nevertheless, the Claimant's testimony demonstrates that his symptoms were significantly reduced by the trial spinal cord stimulator. The Claimant credibly testified that his mobility was increased, and he was able to ambulate better with the spinal cord stimulator. His testimony demonstrates that his daily activities of living and quality of life were significantly improved by this

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device. The Claimant specifically testified that the trial stimulator was "amazing," and it reduced his symptoms of burning and swelling by 90 to 100 percent. This treatment modality also helped with relief of some of his other RSD related symptoms.

The Claimant testified that he is willing to undergo permanent implantation of the spinal cord stimulator. His treating physician, Dr. Rudder, has recommended implantation of the permanent dorsal column stimulator. In fact, the final medical report of record demonstrates that Dr. Rudder related the Claimant's need for the permanent dorsal column stimulator to his compensable injury of December 16, 2017. Per this report, Dr. Rudder opined that it is very unreasonable that the Claimant did get a permanent dorsal column stimulator. No probative evidence to the contrary or any other medical opinion opposing this treatment has been presented. In fact, not one shred of evidence has been presented to support a finding that the Claimant should be denied this treatment for relief of his RSD symptoms.

The evidence shows that the Claimant has undergone proper protocol for the implantation of the permanent dorsal column stimulator. Specifically, the Claimant testified that he has undergone a neuropsychological evaluation and an algorithm

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treatment. No testimony has been presented demonstrating otherwise.

Of note, the evidence demonstrates that since the Claimant's compensable incident, he has been treated with a medication regimen, a 48-hour epidural, and a lumbar sympathetic block, with only minimal relief of his symptoms. Hence, following his injury, the Claimant continued in debilitating pain and other related symptoms due to his left thigh injury and resulting RSD, until undergoing the 7-day trial spinal cord stimulator, with amazing results.

Specifically, the evidence demonstrates that the trial stimulator improved the Claimant's symptoms significantly, with the exception of the bone pain. However, the Claimant testified that he gave the trial a rating of 60 percent due to his continued bone pain. Had it not been for this pain, the Claimant testified that he would have rated this method of treatment as being more effective. His testimony demonstrates that with the passing of time, his bone pain is expected to resolve. The Claimant's testimony also demonstrates that this treatment modality is also expected to stop the spread of the CRPS.

However, the Claimant testified that once the 7-day trial stimulator was removed, his symptoms returned within 20 minutes. He rated his current pain to be at 90 percent.

Dr. Rudder's final medical report/addendum of October 2020 demonstrates that the Claimant's ongoing symptoms include, bilateral lower extremity pain, redness, swelling, and pilar erector pain with examination.

In a nutshell, the Claimant's credible testimony establishes that he received exceptionally good results from the 7-day trial stimulator. As such, I am persuaded that that trial stimulator afforded the Claimant with significant relief of his RSD symptoms.

Based on all of the foregoing, I find that the Claimant proved by a preponderance of the evidence that the implantation of a permanent dorsal column stimulator, as recommended by his treating physician (Dr. Rudder) is reasonably necessary in connection with his left leg injury and resulting RSD.

Moreover, as noted in my prior opinion, the Claimant has treated with a multitude of doctors, (namely, Drs. Hulsey, Petersen, Paul, and Rudder) and each of them recommended this form of treatment for the Claimant's pain and related RSD symptoms. It

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is noteworthy that even Dr. Roman opined that the Claimant may have some neuropathic pain from the injury.

Accordingly, Respondents No. 1 are responsible for payment of this treatment modality pursuant to Ark. Code Ann. §11-9-508(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704.

1. The Arkansas Workers' Compensation Commission has Jurisdiction of this claim.
2. I accept aforementioned stipulations as fact.
3. The Claimant proved by a preponderance of the evidence that a permanent dorsal column stimulator/ spinal cord stimulator, as recommended by his treating physician, Dr. James Rudder, is reasonably in connection with his compensable left leg injury and resulting RSD of December 16, 2017.

AWARD

Respondents No. 1 are directed to pay additional medical benefits (in the form of a permanent spinal cord stimulator/ dorsal column stimulator, pursuant to the Findings of Fact and Conclusions

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of Law set forth in this Opinion.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

clb/bh

