

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H004773

DONALD P. HODGE, EMPLOYEE

CLAIMANT

DEPT. OF HUMAN SERVICES, EMPLOYER

RESPONDENT

**PUBLIC EMPLOYEE CLAIMS DIVISION,
CARRIER/TPA**

RESPONDENT

OPINION FILED 19 MARCH 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 20 December 2023 in Little Rock, Arkansas.

Mr. Gregory R. Giles, of Moore, Giles & Matteson, LLP, appeared for the claimant.

Mr. Robert H. Montgomery, of Public Employee Claims Division, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 20 December 2023 in Little Rock, Arkansas, after the parties participated in a pre-hearing telephone conference on 3 October 2023. A Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on the same day the conference. The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant was owed for underpayments of temporary total disability and partial disability benefits.
2. Whether the claimant was entitled to an impairment rating associated with a cervical injury.

3. Whether the claimant was entitled to additional medical treatment.¹
4. Whether the claimant is entitled to wage-loss disability benefits.
5. Whether the claimant is entitled to an attorney's fee.

The parties' CONTENTIONS, as set forth in their pre-hearing questionnaire responses, were incorporated into the Pre-hearing Order. The CLAIMANT contends:

1. That he was initially assessed at maximum medical improvement (MMI) with regard to all injuries on 11 August 2021.
2. That the assessment was premature, and he did not reach MMI until 3 May 2022.
3. That he was underpaid temporary total disability (TTD) benefits as a result of those different assignment dates.
4. That he was entitled to TTD between 20 May 2021 and 5 December 2021.²
5. That his permanent partial disability (PPD) payments should have started on 3 May 2022 and that he would be entitled to PPD benefits for a five percent (5%) impairment rating to his right shoulder and a ten percent (10%) impairment rating to his lower back.
6. Also, that given the nature of the "posterior disc bulges identified at C5-6 and C6-7 with increased signal associated cervical cord" that he should be awarded a cervical impairment rating of at least five percent (5%).
7. That he should be awarded wage-loss disability benefits in excess of the anatomical impairment ratings assigned.

¹ At the beginning of the hearing, the entitlement to ongoing treatment issue was withdrawn by the claimant. TR at 13-14.

² The Prehearing Order lists the claim for TTD beginning on 13 May 2021, but at the beginning of the hearing, the claimant stated that 20 May 2021 was the correct date for those claimed benefits to begin. TR at 13.

8. That he is currently prescribed pain management medications through his primary physician Dr. Becker, which he contends are reasonable and necessary treatments for his compensable condition(s) for which the respondents should be responsible for payment.³
9. And that he is entitled to an attorney's fee.

The RESPONDENTS contend:

1. That the claimant reported lifting a box of blueprints that slid and hit his right foot.
2. That he reported falling, grabbing a wheeled cart, and sliding into a file cabinet, and that the claim was accepted as compensable with appropriate benefits being paid.
3. That appropriate TTD and PPD benefits have been paid.
4. That the claimant underwent right shoulder arthroscopy on 18 December 2020 with Dr. Reynolds and was found to be at MMI on 11 May 2021. The claimant was assigned a ten percent (10%) whole-body impairment rating by Dr. Reynolds on 7 June 2021, which the respondents accepted and paid.
5. That Dr. Bruffett treated the claimant for lumbar symptoms and that the medical records indicate that the claimant did not want any additional surgery, so Dr. Bruffett found him to be at MMI on 11 May 2021. The claimant's full-duty work status was continued on 21 June 2021.
6. That several months later, on 15 November 2021, the claimant indicated that he was interested in surgery. An L4-5 laminectomy was then performed on 2 December 2021.
7. TTD benefits were reinstated after the surgery and paid through 2 May 2022.
8. PPD benefits were then initiated and paid through 9 March 2023.

³ See FN1.

9. TTD and PPD benefits were appropriately paid and that the claimant is not entitled to TTD benefits between 20 May 2021⁴ and 5 December 2021, as he declined additional treatment—namely surgery— recommendations from his authorized physician and was found at the time to be at MMI and released to full-duty. He cannot now claim entitlement to benefits during that period when he refused treatment.
10. That not only is the claimant not entitled to any additional TTD or PPD benefits, but he was actually overpaid in the amount of \$1,589.
11. That the claimant is not entitled to wage-loss benefits as he is working in construction oversight consistent with his experience and currently waiting for a determination on Social Security benefits.
12. That the respondents continue to pay reasonably necessary medical expenses, including those incurred from Dr. Becker.⁵

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on 15 June 2020 when the claimant sustained compensable injuries to his back, neck, right foot, right arm/right shoulder and right hip. Those injuries were accepted, and benefits were paid.
3. The claimant's average weekly wage was \$906.90, entitling him to compensation rates of \$605.00 for temporary total disability and \$454.00 for permanent disability.
4. Claimant reached maximum medical improvement with regard to his right foot contusion/fifth toe fractures on 8 October 2020, with no impairment rating (or a rating of zero percent 0%).

⁴ See FN2.

⁵ See FN1.

5. Claimant reached MMI with regard to his compensable shoulder injuries on 10 May 2021, with an assigned impairment rating of five percent (5%) to the body as a whole.

6. Claimant was initially assessed at MMI with regard to his low back injury on 11 August 2021, but was later deemed to require surgery that occurred on 2 December 2021, with MMI being found again on 3 May 2022 with a ten percent (10%) impairment rating assigned at that time.

The claimant was the sole WITNESS testifying at the hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant has not satisfied his burden for an underpayment on or additional payments owed for TTD benefits.
4. The claimant has not satisfied his burden for an underpayment of PPD benefits under his contention that “PPD benefits should have started on May 3, 2022.” The records reflect that PPD payments began on that date.
5. The claimant has not satisfied his burden in showing that he is entitled to an impairment rating for a cervical injury.
6. The claimant has not satisfied his burden in showing that he is entitled to wage-loss disability benefits.
7. Consistent with these findings, the claimant is not entitled to an attorney’s fee.

III. HEARING TESTIMONY and EVIDENCE

Claimant Donald P. Hodge

At the time of his compensable injury, Mr. Hodge was working as a Training and Project Manager at the Department of Human Services' Life Safety Code Department. He explained that the department was responsible for ensuring that institutional facilities and building projects met certain safety standards. The job entailed both reviewing plans and blueprints in the office and field work at construction sites. [TR at 17.]

On the day of his injury, 15 June 2020, the claimant stated that he was carrying a box of blueprints in the office when fell from the box and hit his foot, causing him to fall into a file cabinet. [TR at 19-20.] He was transported by ambulance to the emergency department at Baptist Hospital in Little Rock, where he reported right shoulder pain, right hip pain, thoracic spine tenderness, lumbar tenderness, and right foot pain. [Cl. Ex. № 1 at 37.] The ordered X-rays showed no acute fractures, but some degenerative changes. He was assessed with a right foot contusion, hip arthralgia, and acute shoulder pain, and he was directed to follow-up with his primary physician. [*Id.* at 40-42.]

Mr. Hodge followed up at the Morrilton Medical Clinic the following day, where he was taken off work until the following week and ordered to see physical therapy. He presented again to the clinic on 22 June 2020 when it was noted that physical therapy had not yet been approved. Initiating therapy was again ordered, and the claimant was released to work at modified duty for approximately two weeks, noting limitations for long periods of sitting and limited use of his right upper extremity. [*Id.* at 76-82.]

The claimant could not recall exactly when he returned to work, but that it would have only been for a couple of days, as he had already planned to be out on vacation for a couple of weeks at the time following his fall. He testified that he eventually received a call while leaving a physical therapy appointment and was informed that his employment was being terminated. [TR at 21-22.] He later received a letter dated 14 July 2020 confirming his termination. [Cl. Ex. № 1 at 83-84.]

He continued with physical therapy and was referred for an MRI and further specialty care. Mr. Hodge saw Dr. Robert Martin for his foot pain on 3 August 2020. Dr. Martin ordered X-rays that revealed a fracture to the right fifth toe, but noted it was healing on its own. He ordered light duty and set a follow-up after a month. [TR at 23; Cl. Ex. № 1 at 91-94]. Mr. Hodge testified that his foot was healed and agreed that “everything is good there.” [TR at 24].

The claimant saw Trent Tappan, PA-C, at OrthoArkansas on 12 August 2020. Mr. Hodge recalled Tappan initially recommending a steroid injection for his spine [TR at 24], but the records reflect an initial assessment of low back pain and lumbar spinal stenosis, with a plan for continued physical therapy, following up in one month, and continuing with restricted activities [Cl. Ex. № 1 at 97-99].

Mr. Hodge also had an appointment for his shoulder with Dr. Kirk Reynolds that same day. Dr. Reynolds suspected right rotator cuff and labrum injuries and ordered an MRI for better evaluation. He recommended modified work with no lifting, pushing, or pulling, and no work above the shoulder for the right arm. Dr. Reynold also noted that Mr. Hodge was not at MMI. [Cl. Ex. № 1 at 103].

On 9 September 2020, the claimant saw Trent Tappan again and reported continuing low back pain that radiated down his right leg. The note reflects that physical therapy did not seem to help the pain. A steroid injection was recommended at L4-5 on the right side. Tappan noted the spinal stenosis again and that the injection could be more diagnostic in nature than therapeutic, but hoped it would provide some relief. [Cl. Ex. № 1 at 108].

Mr. Hodge followed up with Dr. Martin the following day and was released to full-duty without restrictions on his foot injuries. He was not yet deemed at MMI, however, and scheduled to return again in one month for a final check. [Cl. Ex. № 1 at 113.]

The claimant then presented to Trent Tappan again on 7 October 2020 for his back pain. Mr. Tappan noted that Mr. Hodge was doing much better since the injection and released him to full duty at MMI without any restrictions. [Cl. Ex. № 1 at 121-122.]

Mr. Hodge saw Dr. Martin for his foot again the following day, 8 October 2020, and was released related to his foot at MMI with no restrictions and a zero percent (0%) impairment rating. [Cl. Ex. № 1 at 125].

On 26 October 2020, the claimant presented to Dr. Reynolds again to review the shoulder MRI results and discuss treatment options. They agreed that right shoulder surgery was appropriate, and Dr. Reynolds continued the claimant's modified work duty status, restricting his right upper extremity use. [Cl. Ex. № 1 at 130.] Mr. Hodge testified that his TTD benefits continued at this time. [TR at 24.] The right shoulder arthroscopy was performed on 19 December 2020. [Cl. Ex. № 1 at 131-134.] Part of the tear was irreparable, but the procedure was otherwise completed without issue. The Claimant followed up with Dr. Reynolds on 28 December 2020, where he was found to be doing well without new complaints. A return visit was scheduled for one month out. [Cl. Ex. № 1 at 138.]

The claimant then saw Trent Tappan for back pain again on 13 January 2021. The note reflects that "he seemed to do great with the last injection," but was experiencing pain again. [Cl. Ex. № 1 at 144.] They discussed surgical and non-surgical treatment options and decided to move forward with another injection.

Mr. Hodge returned to Dr. Reynolds on 25 January 2021, where he was found to be recovering satisfactorily from the shoulder procedure. A recent MRI study of his cervical spine was reviewed, and Dr. Reynolds noted "degenerative disc disease with bulges at C5-C6 and C6-C7." [Cl. Ex. № 1 at 151]. The note reflects that he did not see any surgical indications in the cervical process but referred the claimant back to Mr. Tappan for further

review. Mr. Hodge's modified duty status was continued at that time, with a visit scheduled in another six weeks.

A second spine injection was performed on 29 January 2021, and the claimant followed up again with Tappan on 8 February 2021. Tappan noted that the pain on the right side of the back had improved, but some chronic pain persisted. He also noted at that visit that, "[h]e seems somewhat down [and] out today because he has not worked in the past few months" and "feels like his pain limits him." [Cl. Ex. № 1 at 157-159.] Mr. Hodge also reported neck pain, and they reviewed the MRI study of his cervical spine. Tappan saw some foraminal stenosis around C6-C7 and possibly at C7-T1 and believed that Mr. Hodge's neck complaints were related to the stenosis. They discussed again the possibility of a lumbar decompression procedure if his back pain did not improve, and he was directed to return as needed. *Id.*

At a 9 March 2021 visit with Dr. Reynolds, they discussed his status and progress three months after the right shoulder arthroscopy and that the only "cure" for his irreparable tear would be a reverse shoulder arthroplasty. The claimant's restrictions were continued, he was found not to be at MMI, and a return visit was set for six weeks out. [Cl. Ex. № 1 at 163.]

The claimant then saw Tappan again on 3 May 2021, when he reported a new complaint of left side back and leg pain. Tappan noted the first back injection provided great relief, but the second one did not. He described discussing being at a "fork the road" and he needed to reconsider surgery or "just leave this alone altogether." Claimant was referred to Dr. Bruffett for further discussions on surgery, and an updated MRI was ordered. [Cl. Ex. № 1 at 168.]

Mr. Hodge presented again to Dr. Reynolds on 10 May 2021 to review his post-operative shoulder condition. They discussed the risks of a reverse arthroplasty and the

benefits of continued strengthening at home. The claimant declined an injection that was offered in the clinic, and he was not interested in pursuing arthroplasty. Dr. Reynolds placed the claimant at MMI and referred him for a Functional Capacity Evaluation (FCE) for an assessment of his deficits, noting that he would follow that report with permanent restrictions and any appropriate impairment rating. [Cl Ex. № 1 at 175.] The FCE found him to have an eight percent (8%) impairment rating to the upper extremity which translated to a five percent (5%) permanent rating to the whole person. [Cl Ex. № 1 at 184.] He was also recommended in the Light Classification of work. [Cl Ex. № 1 at 187.]

The claimant first saw Dr. Bruffett, after a referral from Tappan, on 26 May 2021. They discussed possible surgical intervention to alleviate his symptoms, but decided that spine surgery was be “a last resort.” [Cl. Ex. № 1 at 209.] The note makes no mention of work restrictions.

On 16 June 2021 the claimant saw Dr. Bruffett again, and after another steroid injection, where they discussed different directions for his course forward. [Cl Ex. № 1 at 215.] Low back pain and right knee pain were noted as the presenting symptoms. Dr. Bruffett noted his discomfort with simply prescribing opioids and that the claimant should “go get a job,” after which he hoped to release him at MMI. He noted further that Mr. Hodge should discuss his care and continuing prescription pain medication with his primary physician and that they could “need to have surgery” despite concerns around its uncertain outcomes. The note ended with, “[w]e will see how this goes.” [*Id.*]

The claimant returned to Dr. Bruffett on 11 August 2021 and was released without restriction and placed at MMI with a seven percent (7%) impairment rating of the whole person. [Cl Ex. № 1 at 220.] They discussed Mr. Hodge’s primary physician prescribing as-needed medication for pain, and the note reflects that those prescriptions “would be under Mr. Hodge’s regular insurance not Workers’ Comp.” It goes on, “I think he has completed

the healing phase for his work injury. He really does not want to have surgery because I cannot guarantee him that it would completely alleviate his pain.” [*Id.*]

Mr. Hodge returned, again, to Dr. Bruffett on 8 November 2021, when they discussed, again, the risks and benefits of spinal surgery against the option to “just leave this alone and live with what he has.” [[CI Ex. № 1 at 235.] The claimant opted for surgery to address the ongoing pain in his lower back. That procedure, bilateral hemilaminotomies at L4-L5 with decompression for stenosis, occurred on 2 December 2021. [CI Ex. № 1 at 236.] The claimant testified that his TTD payments were reinstated after the back surgery. [TR at 33-34.]

Dr. Bruffett saw the claimant post-surgically on 29 December 2021 and then again on 9 February 2022. [CI Ex. № 1 at 243, 248.] During the latter visit, he ordered physical therapy and discussed a return-to-work status and possible FCE, along with anticipating placing him at MMI at the next visit. At the subsequent visit on 11 April 2022, Dr. Bruffett ordered the FCE, noting, “I will see him back afterwards and then I can calculate his impairment rating and such. There is currently no change in his work status.” [CI Ex. № 1 at 255.]

The FCE occurred on 25 April 2022, and the report showed that the claimant gave reliable effort. Dr. Bruffett reviewed the report with him on 2 May 2022 and adopted its recommendation for a Light Classification of work. The claimant was released at MMI with permanent light duty restrictions and a ten percent (10%) whole body impairment. [CI Ex. № 1 at 281.] The note also reflected a referral to Dr. Becker for pain management. A letter from the Arkansas Insurance Department to Mr. Hodge, dated 4 May 2022, acknowledged Dr. Bruffett’s permanent impairment rating and advised of him associated PPD benefits beginning on 3 May 2022. [CI Ex. № 1 at 284.]

The claimant testified that the respondents have covered the costs of his ongoing care under Dr. Becker. [TR at 36.] He also testified, consistent with his Contentions, that he felt that he was entitled to an impairment rating and compensation for pain in his neck, agreeing with his attorney that he should be entitled to a rating of at least five percent (5%). [TR at 35].

Mr. Hodge also testified about his work history and recent coordination with a vocational counselor. [TR at 38-46.] He said that he was awaiting a determination on a Social Security Disability application and that he was already receiving some retirement benefits from the state. When asked how long he intended to work, he said until the age of 67, “but if, you know, working for myself, there’s no retirement. There are no benefits. I would have to work until I just couldn’t work anymore. I would just have to continue to work.” [TR at 50.] He affirmed that he was requesting wage loss beyond the benefits already assigned for his impairment ratings. [TR at 51.]

On cross examination, Mr. Hodge confirmed various aspects of his work history, certifications, and experience, including work as a Certified Welding Inspector, Certified Appraiser, Licensed Home Inspector, Certified Lead Paint Inspector, and Licensed General Contractor, with knowledge of HUD quality standards, and Life Safety Code(s). He previously owned a home remodeling company and a truck washing and soap manufacturing business. [TR at 57-58.] In his role at DHS, he was a supervisor responsible for four to five other employees. He discussed the intersection of or referencing between Life Safety Code and five prevention, electrical, and plumbing codes and that he trained and oversaw others’ work ensuring compliance with the same. [TR at 60-61.]

The claimant explained that he recalled discussing surgical options for his back with Dr. Bruffett, but that he was hesitant given stories he heard from others who had not have favorable post-surgical outcomes. He said that he vaguely remembered being in shock when

Dr. Bruffett released him at MMI on 11 August 2021, because he was “still having lots of pain.” [TR at 75.] Mr. Hodge agreed that he began receiving TTD benefits again after having the back procedure in December of 2022. [TR at 77.]

Discussing his current happenings, Mr. Hodge testified that he was currently doing contract inspection work, but that he was looking for other work with good benefits. [TR at 79-80.] He said that he could drive a couple of hours before needing to get out of the car to take a break. When not working, he might go back to bed until the middle of the morning after seeing his wife off to work in the early morning hours. He often spends time on social media, watching tv, or visiting with family. He likes to fish when he feels up to it or to spend time with his grandchildren. [TR at 81-84.]

On Redirect examination, the claimant stated that he would love to try going back to work, “if they would allow me accommodations and stuff, you know, everything I need to get through the day, I would love to give it a shot.” [TR at 87.] He is currently not interested in shoulder replacement surgery, but “if I ever get the chance to retire, then, it would be an option, then, because I wouldn’t have to work.” [TR at 90.]

The claimant provided several letters reflecting his vocational rehabilitation meetings with Keondra Hampton. According to her initial report, dated 27 May 2022, the claimant was not interested in returning to work for any state agency. [Resp. Ex. No2 at 15.] He confirmed the same in his testimony, saying that he “did not think it was advantageous at all for me to pursue that.” [TR at 86.] In her 1 July 2022 Progress Report, Ms. Hampton stated, “Mr. Hodge is an excellent candidate to return to the workforce. He has a stable work history and has acquired some skills and transferrable skills from his education, training, and work experience that he should be able to utilize in returning to a new lighter capacity job in the future.” [Cl. Ex. No 1 at 290.] Her 15 September 2022 Progress Report noted that he declined a home inspection job due to the pay. [Cl. Ex. No 1 at 299.] But that

reported went on to note that he remained an “excellent candidate to return to the workforce” and that his work experience “afforded him the opportunity to acquire supervisory and leadership skills, along with other skills.” She noted in a 31 October 2022 report that he again declined a part-time inspector position because he did not believe the work opportunities were consistent enough. [Cl. Ex. № 1 at 304.] A Progress Report from January 2023 noted Mr. Hodge disapproving of another job due to a lower wage than he required. [Cl. Ex. № 1 at at 319.]

The respondents contend that the claimant was overpaid on his PPD benefits. On 16 March 2023, Mr. Hodge received a letter from the Arkansas Insurance Department advising that he was “inadvertently overpaid workers’ compensation benefits in the amount of \$1,859.00 for your PPD payments.” [Cl. Ex. № 1 at 331.] The letter also stated that the overpayment would be credited against any future payments and that he would be responsible for reimbursing any remaining balance. The respondents exhibits, however, reflect that his last PPD payment was issued on 9 March 2023. [Resp. Ex. № 1 at 6.]

IV. ADJUDICATION

The stipulated facts, as agreed during the pre-hearing conference, are outlined above. It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. The Claimant is Not Entitled to Additional Temporary Total Disability Benefits.

Temporary Total Disability is that period *within the healing period* in which an employee suffers a total incapacity to earn wages (emphasis added). *Arkansas State Highway and Transportation Dept. v. Breshears*, 272 Ark. App. 244, 613 S.W.3d 392 (1981). It is the claimant’s burden to prove that he or she is within the healing period *and*

suffers a total incapacity to earn wages in the same or other employment. *Paalazolo v. Nelms*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

The parties stipulated that the claimant was found to be at MMI for his low back injury on 11 August 2021. Their disagreement on his entitlement TTD benefits runs, however, between the dates of 20 May 2021, when the records⁶ show that they stopped, and 5 December 2021, when they began again following his back surgery. The records reflect that the claimant was first released by Trent Tappan without restrictions and without an impairment rating for his back on 7 October 2020. He contends that despite that release, he continued to treat. While the claimant remained off work and received TTD benefits beyond the release from Tappan, his work and benefits status during that time was related to his shoulder injury.

The claimant first saw Dr. Bruffett, to whom he was referred for possible surgical options after release from Tappan, on 26 May 2021. That encounter made no mention of work status or any restrictions. Instead, they discussed possible surgery being agreed as a “last resort.” No return appointment was set at that time.

Mr. Hodge next saw Dr. Bruffett on 16 June 2021. The notes indicate that Dr. Bruffett lifted “any restrictions” and advised Mr. Bruffett to go get a job—something that is clearly inconsistent with the notion of him being totally disabled and unable to work for medical reasons. At the 11 August 2021 visit, stipulated by the parties as the MMI date, Dr. Bruffett made clear that the claimant had “completed the healing phase” for his back injury. He noted, again, that he did not have any physician-directed restrictions and even advised that future visits with his PCP for pain medication would be “under Mr. Hodge’s

⁶ See Resp. Ex. No 1 at 1-3.

regular insurance and not Workers' Comp." This clearly indicates Dr. Bruffett's anticipation⁷ that the life of Mr. Hodge's claim had ended.

That the claimant ultimately decided to undergo a covered surgical procedure and was then entitled TTD benefits does not impart any entitlement to TTD benefits looking back to the time when he was first released, having opted against surgery at the earlier time. The record lacks medical findings or other evidence to support finding that the claimant was incapable of working after May of 2021 (and until his surgery in December of that year). Whether he could have been still considered in a healing period between May and the 11 August MMI finding is not dispositive. There is insufficient evidence to find that he was in a healing period *and* incapable of working between May and December of 2021.

B. The Claimant Failed to Prove an Underpayment on Permanent Partial Disability Benefits.

In his Contentions, the claimant stated, "his PPD benefits should have started on May 3, 2022...." The records introduced by the respondents, however, show that he received PPD benefits for periods between 7 June 2021 and 5 December 2021 and then again between 3 May 2022 and 13 March 2023 (with a terminal check issued for the latter period on 9 March 2023).⁸

C. The Claimant Failed to Prove that he was Entitled to an Impairment Rating for a Cervical Injury.

The claimant provided scant testimony on a neck injury. The medical records show little reference to any diagnostic or treatment efforts associated with neck pain beyond the MRI that showed some evidence of degenerative disc disease. None of the providers attempted to

⁷ Here, I refer to Dr. Bruffett's practical application of his apparent understanding of the basics of our Workers' Compensation laws and do not intend to expand his statement beyond that. That is, whether Dr. Bruffett failed to consider or is even aware of a respondent's potential responsibility for ongoing prescriptions related to a compensable injury after a finding of MMI is not of consequence.

⁸ See Resp. Ex. No 1 at 4-6.

address a cervical injury with regard to it being a focus of treatment or rehabilitative efforts. Instead, it seems that the claimant, at times, mentioned that he had neck pain, it was considered and then left alone, either as not rising to the level of further clinical effort or as not related to the workplace injury and of a degenerative nature. In either case, I do not find evidence supporting a finding of an impairment rating, especially when no provider attempted to offer the same.

D. The Claimant Failed to Prove that he was Entitled to Wage-Loss Benefits.

The wage-loss factor is the extent to which an injured worker's compensable injury negatively impacts that person's ability to earn a livelihood. *Rice v. Ga.-Pacific Corp.*, 72 Ark. App. 148, 35 S.W.3d 328 (2000). "In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity." Ark. Code Ann. § 11-9-522(b)(1). A claimant's motivation to return to work may be considered also. *Rice, supra*. If a work-related injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong the disability or need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). Major cause means something that is more than fifty percent (50%) of the cause. Ark. Code Ann. § 11-9-102(14)(A).

I do not find that the claimant met his burden for proving that he is entitled to wage-loss benefits in excess of the anatomical ratings assigned by his physicians. At the time of the hearing, the claimant was, in fact, working in a field commensurate with his area of knowledge and experience. The records from his vocational rehabilitation showed

that he had other work opportunities that he was not interested in because he hoped for a higher wage. He did not provide sufficient evidence that his difficulty in finding work or that any decrease in his ability to earn was causally connected to his compensable injuries or resultant disabilities. Mr. Hodge's concerns about accommodations do not rise above his own speculations as to what he may need to be successful in some future job, not actual experience. He did, however, relay at one point to the vocational consultant that he felt his difficulty in finding a satisfactory position was due to his not having a bachelor's degree.⁹ On this claim, his evidence simply fails to meet the burden for an entitlement to additional benefits above the anatomical ratings already assigned.

E. Attorney's Fee

Based on the findings above, the claimant has not proven that he is entitled to an attorney's fee.

V. ORDER

Consistent with the findings of fact and conclusions of law set forth above, this claim is denied and dismissed.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE

⁹ See Cl. Ex. No 1 at 319.