

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G805625

TRACY SMITH, Employee	CLAIMANT
ALTES SANITATION SERVICES, INC., Employer	RESPONDENT NO. 1
QBE INS. CORP., Carrier	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 12, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by AMY TRACY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by CHRISTY KING, Attorney at Law, Little Rock, Arkansas; although not present at hearing.

STATEMENT OF THE CASE

On February 17, 2022, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 27, 2021, and a Pre-hearing Order was filed on October 27, 2021. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on August 21, 2018.
3. The claimant was involved in a crush injury at work and sustained injuries to his neck, back, pelvis, legs bilaterally, lung and urethra. Claimant suffered a compensable consequence in the form of high blood pressure and infections as a result of his injuries.

4. The claimant's weekly compensation rates are \$283.00 for temporary total disability and \$212.00 for permanent partial disability.

5. The claimant sustained an anatomical impairment rating of 28% to the pelvis and 17% to the urethra for a combined impairment of 40% to the body as a whole.

6. Claimant reached final maximum medical improvement on December 14, 2020.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether claimant is entitled to temporary total disability from July 14, 2020, to December 14, 2020.

2. Whether claimant is entitled to permanent and total disability or in the alternative wage loss.

3. Attorney fees.

Claimant's contentions are:

"On 8/21/2018, claimant was involved in a crush injury at work, in which he was pinned between trucks. Claimant sustained injuries to his neck, back, pelvis, legs, lungs and bladder. The claimant's sacrum separated from his spine, fractured his pelvis and crushed his urethra. Claimant underwent numerous surgeries. Claimant suffered high blood pressure and infections as a result of his injuries.

Claimant underwent an FCE with reliable results that returned him to work in the Light Duty Category and assigned him a 28% whole body impairment rating. Dr. Cherney placed the claimant at MMI for his pelvis injury on 7/14/20. Respondents stopped his TTD, despite not being at MMI for his other injuries.

Claimant treated with Dr. Knox for his lumbar injury on 10/19/2020.

Claimant treated with Dr. Grand (a Urologist) who placed the claimant at MMI on 12/14/20 for his urethra. Dr. Grand assigned an impairment rating of 17% whole body. He must continue to receive injections every three months, however, these were denied for approximately three months by the respondents.

At this point, the respondents stopped providing the claimant with Nurse Case Management services and subsequently stopped allowing him to treat for all of his injuries. His blood pressure

medications were denied. His return appointments to infectious disease specialists were denied and then his regularly scheduled medications began being denied. Claimant's medication costs over \$1,000 per month. All medications were denied by the respondents and subsequently approved after several weeks without medications.

Claimant's employer cannot accommodate the claimant's permanent light duty restrictions. The claimant is 48 years old with a 10th grade education. He subsequently obtained a GED. His work history consists of maintenance work, plumbing, repairing vehicles, driving forklifts, and other heavy manual labor jobs.

Claimant contends the following:

- (1) He is entitled to TTD from 7/14/20 to 12/14/20;
- (2) additional medical treatment;
- (3) payment of prescription medications;
- (4) Attorneys fees;

All other issues are reserved.”

Respondent No. 1's contentions are:

“Respondents contend all appropriate benefits have been paid.”

Respondent No. 2 defers to the outcome of litigation and waives its right to attend the hearing.

The claimant in this matter is a 49-year-old male who was employed by the respondent on August 21, 2018, when he was involved in a crush injury. In that accident, the claimant sustained compensable injuries to multiple body parts including his neck, back, pelvis, legs bilaterally, lung and urethra. Additionally, the claimant suffered compensable consequences from his compensable injuries in the form of high blood pressure and infections. Due to his compensable pelvis injury, the claimant sustained an anatomical impairment rating of 28% to the body as a whole. The claimant's compensable urethra injury resulted in a 17% impairment to the body as a whole. These two body as a whole ratings combined for a total whole body impairment of 40% due to the claimant's August 21, 2018, compensable injuries.

The claimant was asked on direct examination to describe the events surrounding his August 21, 2018, injury as follows:

Q Okay. So let's talk about what happened August 21st of 2018. Do you recall that day?

A Yes, ma'am.

Q Okay. Tell us what happened on the day of your injury.

A. It was August 21st. I came in. It was like 5:00, 5:30, and I came in and checked the fluids on the trucks, which was the normal thing we do, check the fluids before we go and check the tires and they said the brakes needed to be adjusted.

So I checked fluids. And they had it chocked – they had it chocked already and I built the air up, got the truck running after checking the fluids. I built the air up and released the brakes and it rolled over the chock. So I reset the brakes and chocked it and went to the shop and got another chock for it so it will hold.

I told Bobby, "Bobby, I've got to adjust the brakes. They said they need the brakes adjusted." So I adjusted the brakes. We got the tools. Adjusted the brakes. Went to adjust the front brakes and walked over to the driver's side door. The door was open, the driver's side door, and there was a truck that was parked next to it and it had a quarter-inch piece of steel, which is a guard for the back of the trucks, and that guard is to protect the truck and protect the operator from not getting hit with the dumpster. Like I said, it's about three-foot long and a quarter-inch thick and that is what was right next to me.

I guess the first chock gave out and when the first chock gave out, I guess it rolled. When it rolled, it pushed the chock. Instead of holding it pushed it and when it did, the fuel tank and the steps caught me right here (indicating).

Q You are pointing to about your belt line?

A. I'm sorry, my groin, pelvic, and privates, and the steps and the fuel tank caught me there. The truck that was behind it on that quarter-inch thick metal caught me on my pelvic, buttocks, sacrum, spine and my back. And what it did, when it crushed me, it had me pinned there. I couldn't do anything. It was the wrong time and the wrong place.

And I hollered the best I could and when I was pinned, thank God with the trucks running and everything that somebody was able to hear me. But it was Jason that was able to hear me and they came out there and they was able to get the truck off and Shastine (phonetic), I believe, got the truck off and Jason was holding me while they got the truck off and everything.

And then they laid me down and everything and got me some water and everything until the ambulance came. I believe that is what happened, yeah.

Q So you were crushed between two trucks?

A Yes, ma'am. The fuel tank and the steps of the driver's side door caught me in the front of the pelvic and private area and then the truck next to it where it was parked with the quarter-inch steel metal, it crushed my sacrum, pelvic, and urethra and all of that.

Q And an ambulance was called for you; correct?

A. An ambulance was called for me and they rushed me to the Sparks Hospital at the time. It's HealthSouth now. They took me there. I think they did x-rays and an MRI or – I know they did x-rays and that is when it starts kind of fading out. They couldn't do the work there, so they had to Life Flight me to Little Rock in a helicopter and they lifted me there and that is where I had all my surgeries at. All the surgeons were from Little Rock, UAMS.

The claimant received extensive medical treatment for his August 21, 2018, compensable injuries. The medical records submitted into evidence by the claimant are 507 pages in length and span from August 21, 2018, to December 13, 2021. The claimant has been treated by more than 20 different physicians for his compensable injuries. As the medical records and treatment are so voluminous, I have attempted to place small portions of the claimant's medical records in this opinion in order to provide a snapshot in time of the claimant's medical treatment. I believe these medical records demonstrate the complexity of the claimant's medical treatment and help to explain the ongoing difficulties the claimant currently suffers.

Following the initial medical treatment at the time of the injury, the claimant was seen at HealthSouth Rehab Hospital of Fort Smith on August 28, 2018. Following is a portion of that report:

HISTORY OF PRESENT ILLNESS: Tracy is a 45-year-old gentleman who has a history of significant tobacco use and abuse, who presented to UAMS after being injured between 2 trash trucks. He reportedly was struck and pinned between them for 15 minutes. After being removed, he was transported to UAMS where he was diagnosed with a right superior pubic ramus fracture, right inferior pubic ramus fracture, fracture of the right side of the symphysis pubis and diastasis, sacral fracture and proximal urethral injury. A suprapubic catheter was placed and urology was consulted. He underwent external fixation device for stabilization of his pelvis fracture with percutaneous pinning to the pelvis and urethral realignment by Dr. Cernv. Seen by Dr. Walters and Dr. Altahaway on 8/22/2018. On

8/22/2018 he underwent urethral catheter placement and a suprapubic catheter was removed. On 8/23/2018, he underwent lumbopelvic fixation for sacral fracture. On 8/24/2018, he underwent an adjustment of the anterior pelvic external fixation device. The patient is to remain nonweightbearing bilateral lower extremities until further notice with transfers sliding board transfers only, and he is to follow up with orthopedics in six weeks. He was eventually stabilized in acute care and after careful evaluation, he displayed generalized weakness following his injury and hospitalization and surgeries and has significant deficit in strength, sitting, standing balance and activity tolerance needed for functional activities and it is believed that with acute inpatient intervention, this gentleman can significantly reduce these deficits and become more independent with ADL's, self-care. He demonstrates decreased coordination, strength, balance, activity tolerance following surgery, hospitalization and his injury, and these factors are currently limiting his ability to be independent with ADLs, self-care and mobility.

PLAN:

1. Comprehensive rehabilitation program consisting of PT for bed mobility, sitting balance, transfers, bed mobility, wheelchair skills, maintaining his nonweightbearing status and modalities to decrease pain with a goal of modified independent for these activities to independent and to fit him for a wheelchair.
2. Occupational therapy for upper and lower extremity dressing, bathing, grooming, toileting, joint protection, energy conservation techniques to eval for any necessary adaptive equipment or assistive devices with a goal of modified independent to independent; upper extremity ADLs, moderate to minimal assist in lower extremity ADLs.
3. Rehab nursing for pin site management, incisional management, monitor for evidence of infection. Monitor for hyper/hypotension, mental status changes, falls, skin integrity, disintegrity, pain control and to work with discharge planning and bowel and bladder continence. Because of his urethral injury, I am reluctant to remove his Foley catheter, so he will need a catheter training until he follows up with urology, unless we hear otherwise, and discharge planning and teaching.
4. Case manager for discharge planning and team conference and due to his multiple medical comorbidities complexities will ask for hospitalist consultation to assist with this very complicated case.

We will also consider discontinuing Lovenox and adjusting him to Eliquis for DVT prophylaxis in anticipation of discharge to home, as it would be difficult for him to use injectable medicines.

On September 24, 2018, the claimant was seen by Dr. Carlos Roman. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS: He is a 45-year-old gentleman who was impaled between two trucks. He worked for the sanitation department and had a severe crush injury of his pelvis on August 21, 2018. He has had multiple surgeries in relation to that injury. He had open reduction and internal fixation of his pelvis. A suprapubic catheter was placed. He had a percutaneous pinning of his pelvis. He had urethral realignment surgery with pelvic fixation for the sacral fracture. He currently will still be due further surgery. He just got out of rehabilitation last week from his injury, so he has been one week at home. He will be due for a cystoscopy to check for any urethral scarring. He has a grade III urethral injury. That is going to be done in two weeks. He is also going to have external pelvic anterior fixator removed in three weeks. He also has some pins in his sacrum that will be removed in approximately six months' time.

MEDICAL ASSESSMENT:

1. Severe pelvic fracture from crush injury.
2. Urethral disruption, grade III.
3. History of substance misuse.
4. Anxiety and depression.

PLAN:

Cymbalta 30 mg tablets once a day, tizanidine 4 mg tablets two at night, gabapentin 300 mg tablets three times a day, OxyIR 5 mg tablets up to three or four times daily.

Discontinuation of fentanyl patch.

Continue with physical therapy.

I will see him back in three to four weeks' time, sooner if necessary.

On September 18, 2019, the claimant was again seen by Dr. Carlos Roman. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS:

The patient is a 46-year-old gentleman who comes in today. He suffered a severe crush injury to his pelvis when he was crushed between two vehicles. He had severe urethral disruption and pelvic fracture. His injury was over one year ago. Date of injury was 8/21/2018. He underwent urethral reconstruction surgery in July. He has healed up from that and has done very well. He still

deals with low back pain. He is still in rehab. He is still having some right low back pain and right buttock pain. He has had several episodes of severe sciatica-type symptoms down his leg. Those have become more frequent. He had a period of time that he couldn't get through the Physical Therapy due to the severe pain. He has a little bit of abdominal distention. He underwent liver function tests. He denies history of hepatitis or any alcohol use.

FINAL DIAGNOSES:

1. Status post crush injury of his pelvis.
2. Chronic pelvic pain.
3. Long-term use of an opiate agent.
4. History of substance misuse.
5. Opiate dependence.
6. Lumbar radiculopathy on the right side at L5.
7. Low back pain.
8. Status post urethral disruption.
9. Gluteal bursitis on the right side.
10. Sacroiliac joint pain.
11. Sacroiliitis on the right side.
12. History of infected hardware in the spine.
13. Status post lumbar fusion.
14. Lumbar Spondylosis.
15. Lumbar disc disease.

PLAN:

1. Gluteal bursa injection was performed as described.
2. We continue to address his polypharmacy and opiate dependency.
3. We are going to obtain a CT of his lumbar spine. He has history of infection and he did say his symptoms got better when he was on antibiotics from the urologic surgery. We are going to get a CT to rule out any possible residual infection or osteomyelitis or discitis.
4. A urine drug screen was done per protocol and was appropriate.
5. This is an extensive consultation.
6. The patient will follow up in six to eight weeks.

On June 23, 2020, the claimant was again seen by Dr. Carlos Roman. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS:

The patient is a 46-year-old gentleman. He suffered a severe crush injury to his pelvis with urethral disruption. He has had a

complicated path due to MRSA infections of his hardware in his low back and pelvic area. He was recently hospitalized in February and had to undergo repeat surgery by Dr. Cherney to debride the sacroiliac joint where there was a smoldering infection causing a lot of his back pain. He is doing much better now. He is off any IV antibiotics. He is on doxycycline, 100 mg tablets twice a day. They look to keep him on that for the foreseeable future.

On July 14, 2020, the claimant was seen by Dr. Steven Cherney. Following is a portion of that report:

Chief Complaint:

work comp injury, date of service 7/14/2020, last surgery date 2/19/2020, date of injury 8/21/2018.

History:

overall he reports that he is doing better. He feels as though he has plateaued. He has seen infectious disease specialist with a recommending lifelong suppression on doxy.5

Assessment:

47-year-old male status post crushing injury to his pelvis date of injury 8/21/2018 now at MMI as of 7/14/2020.

Plan:

at this point I do not think that he is going to make much additional improvement. We have reviewed the FCE. He is going to be light duty likely for ever. The impairment rating will be determined by the provider that performed the FCE.

Anticipate he will stay on antibiotics for a long time unless he starts having complications from it. I think this is likely given his best interest given that he has recalcitrant infections in the posterior pelvis requiring multiple surgical debridements.

On December 22, 2020, the claimant was again seen by Dr. Carlos Roman. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS:

The patient is a 47-year-old gentleman who comes in today for follow-up. He had a severe crush injury of his pelvis. He had significant urethral disruption and had a long recovery course. It was complicated by some hardware infections and had some severe back pain with it. He saw his urologist at UAMS. They did a cystoscopy. He had significant urethral disruption and they

put him at MMI, and the structural integrity of the urethroplasty looks very good. He still deals with some chronic erectile dysfunction from the injury. His back pain is still there, but no radicular component. The pain is across the low back, particularly more on the left side. He has a multilevel lumbar fusion there. He had pelvic stabilization surgery. He is on lifetime doxycycline 100 mg tablets twice a day. We went through his other medications.

FINAL DIAGNOSES:

1. Crush injury to his pelvis.
2. Pelvic fracture.
3. Chronic pelvic pain.
4. Long-term opiate use.
5. Opiate use by way of oxycodone.
6. History of substance misuse.
- 7 Lumbar radiculopathy.
8. Osteomyelitis.
9. Urethral disruption.
10. Sacroiliac joint pain.
11. History of infected hardware.
12. Chronic low back pain.
13. Lumbar spondylosis.

On January 26, 2021, the claimant was again seen by Dr. Carlos Roman. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS:

The patient is a 47-year-old gentleman who has been a long-term patient here. He suffered a severe crush injury to his pelvis about three years ago. It was a long road to recovery. He had a very complicated course with hardware infections in his lumbar spine and urethral disruption. All surgical procedures are completed. Infections have healed.

We are trying to work on his medications to achieve the best outcome for him after his very severe injury.

REVIEW OF SYSTEMS:

No major change in medical health systems. He underwent a Functional Capacity Exam which showed a reliable effort and placed him at light classification of duty.

FINAL DIAGNOSES:

1. Low back pain.
2. Lumbar disc disease.
3. Lumbar spondylosis.
4. Status post lumbar fusion.
5. Long-term use of an opiate agent.
6. Opiate use by way of oxycodone.
7. Depression and anxiety.
8. Pelvic pain.
9. Osteomyelitis.
10. Urethral disruption.

The claimant has undergone multiple surgeries due to his compensable injuries or the compensable consequences of those injuries. Some of the surgical interventions were quite extensive particularly involving the claimant's pelvis and urethra and some surgeries were minor involving infections in or around surgical sites. The claimant has had hardware placed in his body during surgery and has had that hardware removed due to issues with it remaining including a bone infection that will remain with the claimant for the remainder of his life. This requires the claimant to maintain a constant regiment of antibiotics.

On July 8, 2020, the claimant underwent a Functional Capacity Evaluation performed by Stuart Jones, PT, DPT, and Charles Davidson, M.Ed., CEAS, CSDA, CFE at Functional Testing Centers, Inc. The report from the FCE showed that the claimant put forth a reliable effort with 51 of 52 consistency measures within the expected limits. The FCE report in part states "Mr. Smith demonstrated on occasion bi-manual lift/carry of up to 20 lbs. He also demonstrated the ability the perform lifting/carrying of up to 10 lbs. on a frequent basis." A chart was prepared and placed inside the claimant's FCE report which notes the claimant's level or ability to perform activities. That chart is found at Claimant's Exhibit 1, page 458. That chart indicates that for up to 2 hours and 40 minutes per workday the claimant is able to walk, stoop, crouch, kneel with upper extremity assistance, climb stairs with upper extremity assistance, and push or pull a cart. The chart notes that for up to 5 hours and 20 minutes of a workday the claimant is able to reach overhead bilaterally and reach for a 5 lb. weight bilaterally. The chart notes that the claimant is able to perform handling and fingering bilaterally for up to 8 hours, as well as reaching immediately

bilaterally. The claimant was also noted as to be able to stand frequently which would mean up to 5 hours and 20 minutes per workday. The claimant was assessed to be able to sit constantly, which is up to an 8-hour workday. That same chart also notes difficulties with the claimant's balance in that it states the claimant's balance is below normal as assessed throughout the evaluation. The conclusionary portion of that report indicates that the claimant gave reliable results and was able to work in the light classification as defined by the US Department of Labor guidelines over the course of a normal 8-hour workday.

The claimant has asked the Commission to determine if he is permanently and totally disabled. Pursuant to A.C.A. §11-9-519(e)(1), in order to prove that he is permanently and totally disabled, the claimant must prove that he is unable to earn any meaningful wages in the same or other employment due to his compensable injury. Again, the claimant is a 49-year-old male who completed the 10th grade but dropped out of school thereafter. The claimant eventually completed his GED. Throughout the claimant's work life he has been able to participate in and complete several vocational certificates including chemical process technician, American auto air conditioner certification, DOT brake certification and training to repair Liebherr cranes and a certification in halodex brakes that allowed him to inspect and replace brakes.

The claimant worked early on in his work life in restaurants, janitorial work, and maintenance. The claimant then worked for an independent trucking company as a maintenance mechanic and maintenance manager. Eventually, around the claimant's 21st birthday he started his own business repairing tractor trucks and trailers. The claimant worked for himself for about 5 years and then worked for a company in Houston doing similar mechanic work and working for himself in the same field on the weekends.

The claimant then moved to Oklahoma and went to work for Hiram Walker as a maintenance mechanic and then a machine operator. It was at this point in the claimant's life that he began to develop alcohol and substance abuse problems. In 2015, the claimant went to work for the respondent for the first time. At that time the claimant was servicing and performing maintenance on the respondent's truck fleet.

The claimant testified that he had several breaks in his employment with the respondent. It appears those breaks were due, at least in part, to drug and alcohol problems. Prior to the claimant's August 21, 2018, compensable injury he had been employed by the respondent for approximately 2 years. At the time of his August 21, 2018 compensable injury he was primarily employed to "throw trash."

At the hearing in this matter the claimant testified about his criminal history and arrest shortly before his compensable accident, and his employment status with the respondent after that arrest as follows:

Q I understand that you've had some criminal history in Oklahoma and Arkansas; is that correct?

A Yes, ma'am.

Q Can you tell us about some of those things.

A In the past I used to drink and I got a couple of DWIs. I got driving under suspensions. And then I had a possession charge and then two weeks later, maybe, I caught one in Oklahoma. I was with the wrong person and at the wrong time because I didn't have no transportation and they had something in there. They had a pipe in there and they had stuff in the pipe, so they got me with a possession charge. That right there is what – that right there made me wake up and it's time to change.

Q Okay. Do you recall approximately when that was?

A That was back in 2016.

Q Okay.

A August of 2016 and that is what woke me up. Started changing.

Q Okay. Now, we know that you had some other issues, but in August of 2018, had you been clean and sober?

A Yes. When Bobby bailed me out of jail, I was just walking to work with a backpack on because I carried stuff with me and the officer, he – I looked suspicious, I guess, and ran my name. I had a warrant from back in 2016 and I didn't have it taken care of, so I had to take care of it. Then Bobby bonded me out of jail and I started getting my stuff together and started paying things and taking classes.

Q Okay. So is your employer here in the courtroom here today?

A Yes.

Q And is he the one who bailed you out of jail?

A Yes, ma'am.

Q And he kept you employed; is that correct?

A Yes, ma'am.

Q Okay. So he knew your prior drug and alcohol problems?

A Yes, I am sure, yes.

As previously stated, the claimant has several physical limitations due to his compensable injuries that were revealed in his reliable FCE. The claimant also must deal with physical difficulties that do not appear to have been considered by the FCE. The claimant's severe urethra tear and subsequent treatment including surgical intervention has left the claimant with the need to urinate frequently. It was his testimony that he needs to urinate roughly every 30 to 40 minutes. Instead of using an adult diaper at night, the claimant prefers to wake and urinate in that time schedule.

The claimant has also suffered a compensable consequence in the form of high blood pressure which has caused him to take two to three medications to control his blood pressure problems. In addition to blood pressure medications, the claimant also takes the following prescription medications: Irbesartan, Atenolol, Verapamil, Percocet 750, Colace, Cymbalta, and Naproxen due to his compensable injuries or the compensable consequences of them. The claimant testified that the medications cause him to be groggy, nauseated, and his vision to be "a little bit blurry." The claimant also gave direct testimony about sun sensitivity due to antibiotics he takes for a bone infection he will have for the remainder of his life as follows:

Q Do any of these medications cause you sun sensitivity?

A Yes. The antibiotic is real bad on that. I can't be outside. Like I said, if I am outside for 30 minutes, I am out there throwing up. And it doesn't even have to be long. I didn't realize that until I was able to get out in 2021. You know, I was in the house a lot because I couldn't maneuver nowhere. Plus, being laid up in hospitals and staying in the hospitals for months at a time. In 2021 was the first time I was able to get out, really, and it just had me throwing up.

Actually, my boy tried to take me fishing and everything, tried to take me fishing and I started throwing up, so we had to pack up and leave.

Q And that is a side effect of the antibiotic?

A Yes, ma'am, that is bad side effect. And I talked to my doctors and they said that is normal. Just wear a lot of sunscreen and you are going to get sick being outside.

The claimant also testified that he has balance problems. The claimant has been wheelchair bound throughout portions of his treatment, but has since graduated to a walker and currently uses a cane. The claimant's FCE discussed the balance issues and stated "below normal as assessed throughout the evaluation." The claimant testified on direct examination about his balance difficulties as follows:

Q So describe to us why you need the cane.

A It's because my balance is real bad because when it crushed me, it destroyed both of my sciatic nerves. It destroyed them and wiped them out. Steven Cherney, my orthopedic surgeon, said it destroyed them. Basically severed them.

And my bottom right foot is numb. My bottom right foot is numb and my balance is real bad. I never got my balance good. It's horrible. My balance is bad.

The claimant testified that prior to his compensable injury he was able to perform ordinary household tasks and lived alone. Since the accident, the claimant has had to move in with his ex-wife into her home. The claimant testified that he used a riding mower to mow the yard a few times since he has been released to light duty, but must do so in the evening time due to his sun sensitivity. The claimant was asked about his ability to currently perform household chores on direct examination as follows:

Q Okay. Can you do those types of things now, household chores?

A It's hard to take a shower because of balance and everything. It's hard to take a shower. And it's hard to like bend over and do the dog food. It's a five-gallon bucket up on a little thing and I can't hardly bend down to do it.

And I can wash clothes, but when I am bending over to put them in the dryer, it is very hard for me to do and it usually takes me a while to do it.

And then I do dishes to help make me feel like I am doing something, you know, I will do the dishes, but it takes me a long time to do them. That is what I do for the day and it takes me a couple of hours to do them. Instead of like 10 or 15 minutes, it take me like two or three hours to do them. A couple of hours to do them.

The claimant's ex-wife, Melissa Smith, whom he currently resides with was called to testify by the claimant. Following is a portion of her testimony:

Q Okay. And can you describe what his physical condition is now.

A He is unable to do even the most normal tasks that you would normally do without breaks. He can't stand to wash dishes very long. He will start the water. He will leave it there. He will go and has to rest and then he comes back.

He tries to do things around the house to be helpful to me and help to take care of our kids, but it is very difficult for him. Anytime he does anything outside of the normal, like he wanted to try to mow the grass. Every time he cuts the grass, it takes him two or three days to recover from just cutting the grass.

If he does anything out of – you know, just basic, basic stuff, like he doesn't sweep or mop because he can't use his cane and his balance is really not that great. He can do his own wash most days. You know, sometimes we have to have our – and our son will come in there and help him load it into the dryer from the washing machine.

He is more capable than he was, but he can't do – he can't even do a quarter of the things he used to be able to do. He can't stoop. When he leans over, I get nervous that he will fall over, you know, because his balance is bad now. He doesn't have good balance anymore.

The claimant testified that prior to his injury he had lost his wallet. This wallet apparently had all of the claimant's identifying documentation. At the time of his injury, he had no ID, social security card, or birth certificate. The claimant was also without a driver's license; however, that appears to be due to

his failure to pay past due fines for violations of the law including DWI. The claimant testified that he attempted to return to work with the respondent after he was released to light duty. In testimony he stated:

When he released me, I called Bobby and asked him. And I called him a few times, I don't remember how many times exactly, probably six or seven times, and talked to Bobby and the secretary and asked them and they just didn't have nothing for light duty.

And when Bobby wasn't able to accommodate me and everything, which I can understand, you know, because I would have been a liability, probably, me falling down or something.

After the claimant's inability to return to work for the respondent, he began to work towards getting his driver's license reinstated, which he did after paying off fines and completing alcohol and drug classes. He also acquired a new social security card and birth certificate.

The claimant testified that he began to look for other employment at that time. The claimant gave testimony on direct examination about that effort. Following is his direct examination testimony.

Q Okay. Talk to me about some of the places that you have contacted, other than Bobby Altes, about working.

A Burger King, Kelly Services, TEC, Career Solutions, and Walmart. I was going to try to be a greeter at Walmart, but as far as I know, they can't accommodate me for the sitting down part. They have to stand there and move carts. That is what the job description would be, so . . .

Q So Walmart couldn't –

A I guess they can't accommodate me and everything because of having to sit down and take frequent breaks.

Q Okay, So you approached Walmart and they did not have a position for you?

A No, ma'am.

Q And you mentioned Kelly Services. What is that?

A That is a temporary agency that employs people for different things: Industrial, mechanical positions, industrial, office work and everything. I just called them to see if they had

any light duty work for me. And I kind of explained my situation to her and she was very nice. Her name was LaVonna and she was a very nice lady and she said, “Normally we do get positions like that, but right now we don’t have nothing like that, but we will definitely keep you in mind.” And I said, “Ma’am, I would greatly appreciate it. It would be a blessing.” I mean I want to go to work.

Q Has she called you back?

A No, ma’am. This is not me not working. I have worked all of my life and worked two jobs all of my life.

Q Now, you said you contacted TEC?

A Yes. They didn’t have no light duty jobs. Mostly what theirs is is industrial and labor industrial work is what they have.

Q Is that a business?

A It’s a temporary agency in Fort Smith. Sorry.

Q That’s okay. And do you recall who you spoke to at TEC?

A I believe it was Mary.

Q Okay. And no light duty jobs?

A No light duty jobs.

Q Okay.

A And then I called Career Solutions and I guess they are a part of TEC or not. But, you know, trying to figure out what kind of light duty jobs. I am sure, like you all, I mean don’t you all have to bend and twist and lift stuff? I am sure office people have to do that, too.

Then, plus, I don’t have no computer experience at all. You know, I don’t have – I am no computer savvy at all. I never had to do it. I don’t even know how to fill out an application online, but I am going to learn.

And they had a position – they said if you don’t have office experience and everything, we have this one position and everything, but you would have to buy your computers and stuff, two computers and all of that and whatnot and take a typing test. I don’t know how to type. I was all excited for a minute, but I don’t have computer experience.

Q So the job that they had available –

A I would have to take a test and classes and stuff and have to get all the equipment and that was about the only thing I was excited about because I was thinking maybe I found something, you know. I could do it at the house and would be able to do it at the house, but I can't.

It is the claimant's burden to prove that he is permanently and totally disabled in that he is unable to earn any meaningful wages in the same or other employment due to his compensable injuries. Here, the claimant has worked his entire life in heavy work environments. The claimant does have a GED, but the education that he has employed in his work life was that of technical training for heavy maintenance and service work. It is without question that the claimant will never be able to return to the type of employment he was engaged in for the majority of his life given the findings of the Functional Capacity Evaluation, which was found to be reliable.

The claimant, however, has additional roadblocks to his ability to earn a meaningful wage. The multiple medications taken by the claimant cause him to be groggy, nauseated, and have some blurred vision. The claimant must urinate roughly every 30 to 40 minutes. The claimant is also limited to the amount of time he can spend in the sun due to sun sensitivity from antibiotic medication he will take for the remainder of his life. While the claimant's balance difficulties were noted in his FCE report, I had the ability to watch the claimant ambulate at the hearing in this matter on several occasions. My observations of his unsteadiness are supported by the medical records and testimony. I find this to be a major difficulty for the claimant in performing any type of employment.

After considering the stipulations by the parties, the evidence, and the testimony presented, I do not believe that the claimant is capable of earning a meaningful wage in the same or other employment due to his compensable injuries.

The respondent in this matter made arguments and elicited testimony at the hearing at this matter as well as provided a brief after the conclusion of the hearing. However, the respondent's argument and position simply attempted to either call into the question the compensability of the claim itself or evoke some form of intoxication defense that I do not believe exists under the Arkansas Workers' Compensation

Act. The respondent made little or no argument about whether the claimant is able to earn any meaningful wage in the same or other employment, instead arguing compensability of which the respondent had long ago stipulated to and did so again at the beginning of the hearing in this matter.

THE COURT: ... Also, prior to going on the record today, Ms. York withdrew the second issue which was whether the Claimant is entitled to additional medical treatment, including the payment of prescription medications. As she withdrew that issue, Issue No. 2 now has become whether the Claimant is entitled to permanent and total disability or in the alternative wage loss. And Issue No. 3 is now attorney's fees. I have marked that as Commission Exhibit 1.

Are the parties in agreement that these are the stipulations and issues that we are here about today?

MS. YORK: Yes, Your Honor.

MS. TRACY: Yes, Your Honor.

The claimant has proven by a preponderance of the evidence that he is entitled to permanent and total disability pursuant to A.C.A. §11-9-519(e)(1) in that the claimant is able to prove he is unable to earn any meaningful wages in the same or other employment due to his compensable injury.

The claimant has also asked the Commission to consider his entitlement to temporary total disability benefits from July 14, 2020, to December 14, 2020. On July 14, 2020, the claimant was found to be at maximum medical improvement regarding his pelvis injury and was rated at the stipulated rate of 28% to the body as a whole due to his compensable pelvis injury. At that time, the claimant remained under restrictions from work due to his urethra injury and reached his final maximum medical improvement date for that injury on December 14, 2020. The parties have stipulated that December 14, 2020, was the claimant's final maximum medical improvement date. The claimant was still in his healing period from July 14, 2020, to December 14, 2020, and unable to work due to his compensable urethra injury. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from July 14, 2020, to December 14, 2020.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on October 27, 2021, and contained in a Pre-hearing Order filed October 27, 2021, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from July 14, 2020, to December 14, 2020.

3. The claimant has proven by a preponderance of the evidence that he is entitled to permanent and total disability benefits in that the claimant was able to prove that he is unable to earn any meaningful wages in the same or other employment due to his compensable injury as set forth in A.C.A. §11-9-519(e)(1).

4. The claimant has proven by a preponderance of the evidence that his attorney is entitled to an attorney's fee in this matter.

ORDER

The respondent shall pay the claimant temporary total disability benefits from July 14, 2020, to December 14, 2020. The respondent shall pay the claimant permanent and total disability benefits as set forth in the Arkansas Workers' Compensation Act. The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**