BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H404247**

DAVID BONEWELL, EMPLOYEE — CLAIMANT

VAN BUREN SCHOOL DISTRICT, EMPLOYER — RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION, CARRIER/TPA — RESPONDENT

OPINION FILED **MAY 21, 2026**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JARROD S. PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 20, 2026, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 12, 2026, and a pre-hearing order was filed February 13, 2026. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 employee/employer/carrier relationship existed on April 22, 2024.

3. Claimant sustained a compensable cervical spine, right shoulder, and lumber back injury on April 22, 2024.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether this claim was controverted so as to entitle claimant to an attorney's fee.

All other issues are reserved by the parties.

The claimant contends that " The claimant contends that any disability benefits paid or payable in regard to the claimant's cervical spine have been controverted and therefore claimant's attorney is entitled to an appropriate attorney's fee."

The respondents contend that "They have approved surgery as recommended by Dr. Peterson, and it has been scheduled for March 19, 2026. After Dr. Peterson recommended surgery, the nurse case manager asked him for clarification as to his recommendations and whether they were causally related to the work injury since the problems the doctor aimed to treat included stenosis and other conditions that were traditionally viewed as being degenerative/chronic in nature. Dr. Peterson would not initially provide a response. On January 8, 2026, he provided a brief note wherein he stated that he did not have an opinion regarding the causation of the problems that he felt made surgery necessary. The adjuster then submitted the case for a peer review. Upon receipt of the peer review report, the adjuster approved the surgery and authorized its scheduling."

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on February 12, 2026, and contained in a pre-hearing order filed on February 13, 2026, are hereby accepted as fact.

2. Claimant's attorney is entitled to an attorney fee on temporary total disability benefits previously paid to claimant, and on future indemnity benefits, if any.

FACTUAL BACKGROUND

At the outset of the hearing, respondents moved to amend their contentions to add the argument that no award of benefits has been entered as required by § 11-9-715(a)(2)(B)(ii). Claimant's attorney objected on timeliness grounds. The objection is sustained as untimely. However, respondent's request that I take judicial notice of both requirements of the statute is granted.

The parties submitted briefs in support of their respective positions, and those are blue backed to the record of this case.

HEARING TESTIMONY

Claimant was employed by the Van Buren School District when he sustained a compensable injury on April 22, 2024. As stipulated, these injuries included the cervical spine, right shoulder, and lumbar back.

Claimant was first treated at Mercy Occupational Medicine in Fort Smith, and subsequently referred to Dr. Luke Knox, a neurosurgeon at Washington Regional in Fayetteville. Claimant testified that in the fall of 2025, Dr. Knox determined that he needed surgery on his neck, but did not offer surgery at that visit. He was thereafter directed by the nurse case manager to see Dr. Brent Peterson, also a neurosurgeon at Washington Regional. Dr. Peterson likewise recommended cervical surgery.

Claimant stated that surgery with Dr. Peterson was scheduled for December 1, 2025. He testified that he intended to have the surgery on that date, that he prepared for it, but on November 30, 2025, the day before the scheduled procedure, he was notified it was canceled. He stated that there was no authorization number, and that someone attempted to obtain his Medicare information in order to charge him for the procedure.

On cross-examination, claimant acknowledged that respondents had paid for his visits with Dr. Knox and Dr. Peterson, had paid or were in the process of paying his mileage reimbursements,

and that the surgery was ultimately paid by the carrier. He acknowledged that he was not aware of the steps the adjuster and nurse case manager had taken behind the scenes to pursue causation clarification from Dr. Peterson, or that the adjuster had ultimately obtained a peer review opinion supporting the surgery's work-relatedness.

On redirect, claimant confirmed that his attorney had written to respondents' attorney on November 26, 2025, five days before the scheduled surgery, demanding that respondents state their position on whether they would authorize the procedure. He noted that the nurse case manager's first written attempt to obtain causation clarification from Dr. Peterson was dated December 2, 2025, one day after the surgery had already been scheduled to take place.

The surgery was eventually authorized and performed on February 13, 2026. Claimant testified that temporary total disability payments began after the surgery without the necessity of a hearing or hearing request, and that he was still receiving those payments at the time of the April 20, 2026, hearing.

I found claimant to be a credible witness. His testimony is consistent with the exhibits.

REVIEW OF THE EXHIBITS

Claimant's Exhibit #1 is one page of index and 19 pages of medical records; Claimant's Exhibit #2 is one page of index and one page of documentary evidence. Respondents' Exhibit #1 is one page of index and 29 pages of medical records; Respondents' Exhibit #2 is one page of index and four pages of non-medical records.

Claimant received initial treatment at Mercy Occupational Medicine following the April 22, 2024, accident with a cervical strain documented among his diagnoses. (CL.X.1 p.1) He was thereafter referred for a neurosurgical evaluation of his cervical spine. A cervical MRI obtained at Baptist Health Fort Smith on September 30, 2025, showed mild to moderate multilevel cervical spondylosis with

severe bilateral neural foraminal narrowing at multiple levels. (R.X.1 p. 1-2) Dr. Knox reviewed that imaging at his October 8, 2025, visit and recommended anterior cervical diskectomy and fusion at C3-4, C4-5, and C5-6. (R.X.1 p. 3-10) Dr. Peterson saw claimant on October 30, 2025; his findings were consistent with Dr. Knox's, and he concurred in the surgical recommendation. (CL.X 1 p. 4-13); (R.X.1 p. 11-18).

The peer review obtained by the adjuster from Dr. Sumeet Vadera through the Medical Review Institute of America, dated January 15, 2026, concluded that the proposed procedure was indicated, medically appropriate, and necessitated by the April 22, 2024, injury. Respondents' Exhibit #1 at pp. 26-29. Dr. Peterson performed the anterior cervical discectomy and fusion at C3-4, C4-5, and C5-6 on February 13, 2026. (CL.X.1 p.14-17) Postoperative work releases from both Dr. Peterson and Dr. Knox placed claimant on full restrictions pending further evaluation. (CL.X.1 p.18-20)

ADJUDICATION

The issue before me is whether claimant's attorney is entitled to a fee under Ark. Code Ann. § 11-9-715(a)(2)(B)(ii) in connection with the cervical spine claim. That statute requires two findings: that the benefits in question were controverted, and that they were awarded. Both elements are in dispute, and I will address each in turn.

I. Controversion

Whether a claim has been controverted is a question of fact for the Commission. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). The mere failure to pay benefits does not, standing alone, constitute controversion. *Osborne v. Bekaert Corp.*, 97 Ark. App. 147, 245 S.W.3d 185 (2006). An employer's reasonable investigation of a claim before accepting liability does not require a finding of controversion. *Lee v. Alcoa, supra.*

Respondents argue that they did not controvert the cervical spine claim. They contend that after Dr. Peterson recommended surgery, the nurse case manager submitted the case for pre-certification, and that the medical personnel reviewing the recommendation determined that "injury relatedness appears questionable based on the cervical spine pathology being degenerative in nature." (R. Brief p. 1) Respondents further contend that the nurse case manager then sought clarification from Dr. Peterson as to whether his recommendations were causally related to the work injury. When Dr. Peterson declined to provide an opinion, the adjuster "promptly submitted the case for a peer review," accepting the surgery "within three (3) business days (five (5) days total)" of receiving the peer review report. (R. Brief p. 1-2) Respondents argue that they "should not be punished by an award of fees for thoroughly investigating the claim," (R. Brief p. 4), and that had they "just sat idle and not taken any proactive steps to discern whether the surgery was related, or if claimant had been the one to get a second opinion about surgery to address Peterson's neutrality on the subject, then there would be a stronger argument for controversion." (R. Brief p. 4) Respondents were, in their view, the ones who "developed the medical proof that ultimately established the procedure's work-relatedness." (R. Brief p. 4)

The timeline in this matter does not support respondents' contention that they thoroughly investigated the claim in a reasonable and timely manner. The causation concern was identified at the preauthorization stage on November 7, 2025. Surgery had already been scheduled for December 1, 2025. Claimant's attorney wrote on November 26, 2025, requesting clarification from respondent's counsel as to whether the scheduled surgery had been authorized. The record contains no reply to that letter. Despite having three full weeks between the identification of the causation question and the scheduled surgery date, respondents took no action to resolve it in time for the surgery to occur on December 1, 2025. The first written inquiry to Dr. Peterson seeking causation clarification was

dated December 2, one day after the surgery was supposed to happen.

Respondents are correct that they ultimately developed the medical evidence supporting authorization, and that obtaining a peer review was a legitimate step. The problem is not what they eventually did, it is what was not done in the three weeks between November 7 and December 1, 2025. The surgery recommended by two neurosurgeons was allowed to reach its scheduled date and then canceled the eve before it was to occur, without any formal denial, without any timely attempt to resolve the causation question, and without any response to claimant's attorney's request for its position. Claimant's attorney requested a hearing on this issue on December 8, 2025, a month before the peer review was requested. Under these facts, I agree with claimant that this delay was unreasonable and amounts to controversion.

II. Award

Respondents argue that even if controversion is established, no fee is due because temporary disability payments began voluntarily after surgery without a hearing or order, and § 11-9-715(a)(2)(B)(ii) requires both controversion and an award. They contend that *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998), itself involved an actual award, and that the Commission and Court of Appeals decisions extending *Cleek* to fee awards without a formal order have drawn on *Cleek*'s dicta rather than its holding. Standing alone, that is a fair reading of *Cleek*. However, it does not account for twenty-five years of consistent appellate and Commission construction of the statute.

As the Arkansas Supreme Court recognized in *E.C. Barton & Co. v. Neal*, 263 Ark. 40, 562 S.W.2d 294 (1978), the construction of a statute by the appellate courts becomes as much a part of the statute as the words of the statute itself, and change is a matter that addresses itself to the General Assembly. The Court of Appeals has applied *Cleek* to support fee awards on controverted benefits later paid voluntarily since at least *Wal-Mart Stores v. Brown*, 73 Ark. App. 174, 40 S.W.3d 835 (2001).

The General Assembly has had twenty-five years to correct that construction if it believed it was wrong and has not done so. As such, Claimant's attorney is entitled to a fee on indemnity benefits paid in connection with the cervical spine claim following the February 13, 2026, surgery, calculated in accordance with Ark. Code Ann. § 11-9-715.

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums, if any, shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one half by the carrier and one half by the claimant.

The respondent shall pay the court reporter's fee in the amount of $350.00.

All issues not addressed herein are expressly reserved under the Act.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE