BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO.: H403779

JAMES E. EDENS, EMPLOYEE	CLAIMANT
LAKE CATHERINE STATE PARK, EMPLOYER	RESPONDENT NO. 1
ARKANSAS PUBLIC EMPLOYEE CLAIMS, CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 28, 2026

Hearing held before Administrative Law Judge Chandra L. Black, in Hot Springs, Garland County, Arkansas.

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

Respondent No. 1 represented by the Honorable Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the Honorable Christy King, Little Rock Arkansas. (Ms. King waived her appearance at the hearing).

STATEMENT OF THE CASE

On February 27, 2026, the above-captioned claim came on for a hearing in Little Rock, Arkansas. Previously, a pre-hearing telephone conference was held on this matter on October 15, 2025. A Pre-hearing Order was entered that same day pursuant to the telephone conference. Said order was admitted into evidence along with the parties' pre-hearing information filings without objection from the attorneys as Commission's Exhibit 1.

Stipulations

During the pre-hearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

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

2. The employee-employer-insurance carrier relationship among the parties on or about October 24, 2013, when the Claimant sustained injuries to his left foot and left hip, Respondent No. 1.

3. The Claimant earned an average weekly wage of $429.91 which entitles him to a temporary total disability benefits rate of $287.00 per week, and a permanent partial disability rate of $215.00 per week.

4. The Claimant was assigned a 30% physical impairment to the body as a whole on May 5, 2022 for his left hip injury. The Claimant reached the end of his healing period on May 11, 2022.

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

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

Issues

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

1. Whether the Claimant sustained an injury to his lower back.

2. Whether the Claimant is entitled to additional medical treatment for his back.

3. Whether the Claimant has sustained wage-loss disability benefits due to the rating assigned for his left hip injury, or in the alternative whether the Claimant has been rendered permanently and totally disabled by his hip injury.

4. Whether the Claimant's attorney is entitled to a controverted attorney's fee on any indemnity benefits awarded pursuant to the hearing.

Contentions

The Claimant's and the Respondents' contentions are listed below:

Claimant:

The Claimant contends that on or about October 24, 2013, Claimant was in the scope and course of employment when he was moving a sleeper sofa and his foot got caught — causing him to fall, with the sofa falling on top of him. Claimant sustained a left hip and low back injury. Respondent No.1 accepted the injury as compensable and began paying for benefits. On May 5,

2014, Dr. Rudder performed a total left hip arthroplasty. Claimant still experienced significant pain following the surgery, and a CT to Claimant's lumbar spine revealed bulging at L2-3, L3-4, and L4-5. Claimant underwent injections with Dr. Hass and Dr. Jacob Abraham. On September 2, 2015, Dr. Newbern performed a revision left total hip replacement. Still in pain, Dr. Abraham recommended a rhizotomy, which was denied by Respondents. Claimant continued to treat with Dr. Newbern, and another revision of the total hip replacement was performed on August 9, 2016. On March 15, 2019, Dr. Newbern placed the Claimant at MMI for the left hip injury. He noted that the Claimant had an antalgic limp and used a cane for walking. Dr. Newbern assigned him a 20% whole limp and used a cane for walking. Dr. Newbern assigned him a 20% whole body impairment rating. Claimant continued to treat with pain management; however, on September 9, 2020, Dr. Newbern performed an arthrotomy with resection of the anterior ¼ of left hip joint capsule. Still in pain, the Claimant followed up with Dr. Newbern, who opined that an MRI to the lumbar spine needed to be obtained to rule out impingement. A CT of the lumbar spine revealed no disk herniations or protrusions. An EMG/NCV came back positive for neuropathy. Claimant continued with pain management and on March 11, 2022, Dr. Newbern recommended vocational retraining through Arkansas Vocational Rehab Program. On June 8, 2023, Dr. Newbern gave the Claimant a sedentary work restriction and ordered labs to rule out infection. Claimant has continued to follow up with Dr. Newbern, and it was noted on June 14, 2024, that the Claimant had been experiencing a pop in his hip and falling more frequently. Respondent No. 1 then requested an IME with Dr. Roman for his pain medications. Claimant's prescriptions were renewed. Claimant continues to treat at Proper Pain Solutions for his pain management with regard to this injury. In March 2023, Claimant requested Vocational Rehabilitation. In April 2023, the Respondents sent the Claimant for Vocational Rehabilitation.

It was note that on March 29, 2022, Claimant underwent a reliable Functional Capacity Evaluation with 54 of 54 consistency measures. Overall, he could return to work in the Light Duty category of work. Claimant is currently 67 years old with a high school education and a military background. Claimant was employed with respondent- employer from 2011 to 2020, when he was officially terminated. During his Vocational Rehabilitation with Kendra Hampton, Claimant's doctor (Dr. Newbern) assigned him sedentary restrictions. Claimant's file was subsequently closed. Claimant contends that he is permanently and totally disabled as a result of the 2013 work injury, or in the alternative that he sustained significant wage loss and that his attorney is entitled to an attorney fee.

All other issues are reserved.

Respondent No. 1:

Respondent No. 1 contends that the Claimant reported having an injury to his left hip and left foot occurring October 24, 2013, which Respondent accepted as compensable, and Respondent No. 1 has provided benefits to or on behalf of the Claimant for this claim. The Claimant has been provided medical treatment reasonable and necessary for the injury, including surgeries on his hip by Dr. Rudder and by Dr. Newbern, and ongoing pain management treatment. Respondent No. 1 does not provide the Claimant with marijuana. The Claimant has been paid TTD benefits while in a healing period and unable to return to work, with an overpayment because he had been paid TTD benefits through July 26, 2022, but had reached MMI March 11, 2022, according to Dr. Newbern. The Claimant was assigned a 30% impairment rating to the body as a whole by Dr. Newbern, for which Respondent No. 1 has paid PPD benefits to the Claimant, with a credit for the overpayment of TTD benefits. The Claimant did return to work after his date of injury, and in fact reported having another injury on April 9, 2018 (G802508). The Claimant tested reliably in the Light

classification of employment on March 29, 2022, at a Functional Capacity Evaluation. The Claimant, now age 67, ended his employment when he retired at the end of December 2019. The Claimant was offered vocational rehabilitation on August 4, 2022, but did not accept that offer until March 2023 and by June 10, 2023, the Claimant was not responding to the counselor, so the file was closed. Respondent No. 1 contends that the Claimant cannot meet his burden of proving that he is permanently and totally disabled or unable to earn any meaningful wages at the same or other employment. Respondent No. 1 contends that the Claimant lacks motivation to return to the workforce and cannot meet his burden of proving that he is entitled to disability benefits in excess of his anatomical impairment rating for wage loss. Respondent No. 1 contends that the Claimant cannot prove that a work injury is the major cause of his permanent disability he contends to have. Respondent No. 1 reserves the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

Respondent No. 2:

Respondent No. 2 contends that if the Claimant is found to be permanently and totally disabled, the Trust Fund stands ready to commence weekly benefits in compliance with A.C.A. §11-9-502. Therefore, the Trust Fund has not controverted the Claimant's entitlement to benefits. The Death and Permanent Total Disability Trust Fund defers to the outcome of litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the medical reports, the documentary evidence, and other matters properly before the Commission, and after having had an opportunity to listen to the Claimant's testimony and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The proposed stipulations set forth above are reasonable and hereby accepted.

3. The Claimant proved by a preponderance of the credible evidence that his that he suffered a compensable back injury on October 24, 2013.

4. The Claimant failed to prove his entitlement to any additional medical treatment for his back.

5. The Claimant proved his entitlement to wage loss disability in the amount of 12%.

6. The Claimant failed to proved he has been rendered permanently and totally disabled due to his compensable injury of October 2013.

7. The issue pertaining to a controverted attorney's fee for the Claimant's attorney has been rendered moot and not discussed in this Opinion.

8. All issues not litigated herein or addressed in this Opinion are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

The sole witness was the Claimant, Mr. James R. Eden.

The record consists of the hearing transcript of February 27, 2026, and the exhibits held therein. In addition to the Pre-hearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1consisting of the Claimant's medical records of 502 pages; Claimant's Exhibit 2 consisting of non-medical records encompassing 10 pages; Respondents No.1's Medical Exhibit include 230 pages of the Claimant's medical records; and Respondents No. 1's comprises 36 pages of the a Non-Medical Exhibit.

HISTORY

Testimony

At the time of the hearing, the Claimant was aged 67. He is a 1978 high school graduate. Following completion of high school, the Claimant joined the Marine Corps. The Claimant stayed in the military for three years. Later, the Claimant enlisted in the National Guard. He stayed in

the Guard for three years. After that, the Claimant signed up for the Coast Guard and stayed there for only four months. According to the Claimant they had a school that he had planned to attend but it was going to be two years before he could start school. They offered the Claimant work as an icebreaker. However, the Claimant did not want to be “a penguin," so he took an honorable discharge and got out of the Coast Guard.

Subsequently the Claimant returned home and went to work driving a truck for Evan’s Construction. He did just local driving and did not require a CDL. Currently, the Claimant holds a CDL. He previously worked at Georgia Pacific for two years basically cleaning up. Per the Claimant he was part of the bull crew. They did whatever needed to be done. He worked performing heavy duty work, which included using a wheelbarrow all day. The Claimant admitted that he worked this job in the 1980’s and was paid only $3.59 an hour. He worked for Scott’s Gas for five years driving a fuel truck locally. The Claimant next worked at Ralph Mann, doing industrial painting. He left there and went to work at Felsenthal National Refuge during a six-week program. This was a heavy-duty type of job that included tearing down camps, tearing down buildings, “burning stuff” and “basically cleaning up Felsenthal.” The Claimant also worked at Crossett Concrete driving a concrete truck. He then went to the gravel pit area and ran all their heavy equipment. He worked at the Quapaw House as a night watchman. The Claimant worked for Ronnie Hunter Construction as a laborer performing heavy work duties. He worked at Superior Marble and Glass Company. After working his way up from the bottom, the Claimant worked as the shop foreman. This included heavy duty work as well. The Claimant testified that he worked for Mr. Hobbs for 11 years. He left that company due to health concerns of having to breathe in dust, use a spray coat of gel, and inhale other chemicals. The Claimant went to work for Cracker Barrel for approximately 10 years. He performed various job duties of cooking, cleaning, night

maintenance, and other duties in the restaurant. The Claimant agreed that he "fixed things" and "cleaned things."

He confirmed that he went to work for the Arkansas Department of Parks and Tourism in 2012 as a carpenter. The Claimant testified that he worked his way to a supervisory position. He explained his duties to include having to do a little computer work and take care of everything in the buildings, such as electrical, and plumbing work. According to the Claimant, he and his crew fixed everything. The Claimant was stationed at Lake Catherine State Park. The Claimant had to do the same work that his crew performed. According to the Claimant, he was what "you call a working supervisor." The Claimant agreed that not only did he do time sheets, but he also had to do physical labor. He testified that they had anywhere from 50 to 52 buildings, but he could no give straight number. The Claimant stated that the acreage that they had out at Lake Catherine 3,000. They had to do outdoor maintenance that required them to keep everything cut, painted, in good working order, and safe. On the property, they had 20 cabins that had to be taken care of because they rented them out to the general public. Therefore, the safety of the workers and people coming to stay on the property was of the upmost importance. The Claimant and his crew performed a varied range of duties that included building decks and docks, weed eating, installation of every building and anything that needed to be done. He testified that he had to physically crawl into buildings, on top of building. According to the Claimant, they would get calls from people who had pressed the wrong button their television, this was just the beginning of some of the tasks they had to straighten out. The Claimant's off days were Sundays and Mondays. Per the Claimant, he had to obtain a wastewater license in order to be able to run the wastewater plant at Lake Catherine.

The Claimant also attended a two-day chainsaw school. He was taught the safety techniques for handling a chainsaw to cut trees and anything else that needed to cut on the property. Also, the Claimant was responsible for taking care of the Boy Scouts' Camp at Lake DeGray. This was the Claimant's second job and not part of his job through the Arkansas Department of Parks and Tourism. It was through the Boy Scouts. The Claimant worked in this job for 17 years. According to the Claimant, he last worked this job about nine years ago. However, he was not able recall the exact dates that he worked on this job. He testified that the Boy Scouts went out of business in Hot Springs. At that point, the Boy Scouts Council oversaw the camp. Another group came over and took all of the equipment, tractors, and tools from the place where they were living and moved it to a little cabin there on the lake. The Claimant explained, "… - - a pitiful thing – a nice cabin and I hate that we're not there anymore, but the moved into that little cabin and never got us anything to work with. Finally, the job just played out and we ended up moving." He admitted that they were providing him with a place to live. The Claimant further admitted that this occurred during the course of his injury and treatment.

About prior injuries, the Claimant confirmed that he has had previous medical conditions and injuries. He admitted that he had a prior workers' compensation injury while working at Cracker Barrel. His teeth got knocked out. The Claimant previously hurt his lower back a few a years ago. According to the Claimant, he worked through that. This injury occurred while he was working at a marble shop. He confirmed that during his deposition he testified that he had a prior sciatic event 20 to 25 years ago, which is the same injury. The Claimant received medical treatment for his back in the form of injections, which did not help much at all. He returned to work after that injury and his condition improved. The Claimant denied that he missed any

subsequent work due to his prior back injury. He denied any other accidents, or injuries. The Claimant admitted that he has other medical conditions.

Specifically, about three months ago, the Claimant had stents put in his legs due to blockage. He had 75% blockage in his right left leg. The Claimant has had diabetes for seven years, which is treated wtih insulin. He has had a pacemaker for about 14 years. Per the Claimant, he had cancer of the eye about five years ago. The Claimant had surgery 10 years ago to repair an umbilical hernia. He had two hydroceles fixed, which was done at the same time that he had the umbilical hernia fixed. The Claimant had his appendix removed nine years ago. He had a 90% blockage in his artery in his throat and carotid artery. The Claimant had a mini stroke five years ago. Several of these conditions arose after the date of his injury.

On the date of his alleged injury of October 24, 2013, the Claimant was on one end of the sleeper sofa which was really heavy and hard to move. The Claimant was walking backwards. There was another man on the other end and he was walking forward, as the Claimant was walking backward, his foot hung on a pair of forks on the tractor. The Claimant lost his balance and fell on the concrete and the sofa landed on him. He waited a month before seeking medical treatment to get checked out. Since this time, the Claimant has been suffering problems with his low back and left hip and left foot. He confirmed that the workers' compensation carrier accepted the claim and started paying benefits. The Claimant admitted that he ended up having a total left hip arthroplasty by Dr. Rudder in 2014. He confirmed that this was his first surgery. The Claimant testified that when Dr. Rudder "messed up" and put the wrong part in, he started treating with Dr. Rudder. According to the Claimant, he saw Dr. Newburn and he found out what was going on. Both Dr. Rudder and Dr. Abraham were his authorized treating physicians. The Claimant

confirmed that Dr. Abraham recommended some ablations for his lumbar spine. He denied that he has received any of those. Nor has the Claimant received any injections on his lumbar spine.

The Claimant agreed that he had some prior injuries to his back. Per the Claimant, it is kind of hard to explain the difference in his back pain since his fall. However, the Claimant testified that his hip pain outweighs the pain in his back. He agreed that he cannot describe how different the pain in his back was because the pain in his hip was so significant. The Claimant admitted that he returned to work after Dr. Rudder performed the total left hip arthroplasty. In 2018 the Claimant had another injury while at work. The Claimant was walking and lost his balance and fell. At the time of that injury, the Claimant was in the park cleaning when he fell backwards and hit a hole. He injured his hip in that accident as well. The Respondents accepted that incident but hey just continued it as part of this one claim. At that time, the Claimant was still receiving treatment on the left hip. The Claimant testified that there was no need for him to set up a separate claim because they paid for everything.

In 2016, the Claimant was sent over to Dr. Newbern, and he performed a total revision of that hip. Dr. Newburn assessed the Claimant with a 20% whole body rating. He was still having problems, so he continued to treat with Dr. Newburn. In September 220 Dr. Newburn performed another surgery to his hip. The Claimant denied that the surgery helped. He underwent a functional capacity evaluation with a 54/54 consistency measures. Per this evaluation, the Claimant had the capability to return to the light duty category of work. Dr. Newburn then assessed the Claimant with a 30 whole body impairment rating. During this time frame, the Claimant continued to work and was able to perform the essential functions of his job. According to the Claimant, his guys helped him out a lot.

The Claimant eventually filed for retirement at the age of 65 because he could not continue to do his job. He explained that although his injury was in 2013, he continued to work for a really long time because his employer accommodated him. According to the Claimant, he had planned to retire when he was 67, which would have been full retirement age for him. He admitted that he went back to work after his fourth surgery. The Claimant had numerous surgeries and a lot of procedures. He admitted that he fell on a regular occasion while working. The Claimant testified that he has fallen due to pain in his left leg. He uses a cane to keep from falling. Prior to 2013, the Claimant did not have the pain.

Per the Claimant he is able to stand for 20 minutes before having to take a break. On a daily basis the Claimant testified he goes from his bed to the couch. Prior to his accident, the Claimant confirmed that he was an avid fishman. Approximately 40 years age, the Claimant had a little job wholesaling "fly jigs."

The following exchange between the Claimant and his attorney:

> Q. Can you tell me what that means?
>
> A. I had gotten me some cards made up with name and my product and I I was tying flies and jigs and putting them 12 to a card and wholesaling them to stores, and I had several stores in south Arkansas, El Dorado and back over in there, and a couple of Louisiana that were buying my stuff.

He sold so much of his product until he was tying about 14 hours a day and just got burned out. The Claimant got to the point where he had to take a break. During the last five years, the Claimant has not done very much fishing. He maintained that he has a kayak, but he is unable to get comfortable in it so he does not use it. During the day, the Claimant does some of the cooking for his wife so that when she gets off work, she has less to do. His yard is less than an acre. The Claimant is able to do his yard in 15-minute increments. According to the Claimant, it takes him about two days to do his entire yards.

The Claimant testified that his pain on a scale of 10 is a seven or eight. He testified that he is now taking Hydrocodone for his pain. According to the Claimant, he has been on Opana, Morphine, Dilaudid and some of everything for his pain. He admitted that he met a vocational expert, Keondra Hampton. Per the Claimant, there was nothing that she could do to help him. Ms. Hampton identified some jobs for him, but the Claimant did not recall the jobs she identified. He admitted that he did not apply for any of those jobs. The Claimant denied that he could do any of the jobs she identified. He agreed that he was hoping that Ms. Hampton would identify some form of work for him. The Claimant admitted that he has not talked to anybody about finding other jobs that would be available. He admitted that he used the computer at work and knows how to use his email. However, the Claimant denied that he also knows how to use a Word document or operate Excel. According to the Claimant, he used the computer to keep track of the guy's time. Per the Claimant, he was on the computer about five minutes a day.

On cross-examination, the Claimant admitted that during his senior year of high school he went to Vo-Tech for three hours a day. He did not learn anything about repairing heat and air. While in the Marine Corps, the Claimant was an infantryman. He primarily learned to shoot a rifle and about battle skills. The Claimant testified that he drove large trucks but did not receive any training, he just got in started driving. He worked for the marble shop for 10 years. The Claimant began working there in the mid 90's. Ultimately, the Claimant became a foreman at the marble shop. He took orders, dealt with the customers, did measurements and set up all the molds. He also ordered supplies to make the marble products. The Claimant learned how to mix the colors and made the swirls. The company was shut down by OSHA is what the Claimant was told.

The Claimant admitted that when he went to work for Lake Catherine State Park, he went to work as a carpenter and later became a supervisor. He admitted that he had an understanding

of how to coordinate projects. He admitted that when he built the deck, he had others help him. The Claimant supervised anywhere from four to five people.

He admitted that he did all of the work for the Boy Scout Camp and they allowed him to live rent free. Per the Claimant, a different organization took control of the camp and wanted to change the relationship between them and make him pay rent. That is when the Claimant moved. This occurred in 2017. He agreed that he was working for the park and had the injury and it was sometime after that he left the Boy Scout camp.

The Claimant admitted that he waited before reporting his 2014 injury. He stated that his boss, Ms. Vinson, witnessed his injury. He was shown paperwork dated January 22, 2014. The Claimant testified that Ms. Vinson probably completed the paperwork. Per this document, the nature and location of his injury was his "left hip foot." The witness was Connie Thorbs. Counsel for the Respondent No. 1 showed the Claimant another document that had a date of April 10, 2018. It appears that the Claimant fell down while doing some training at another park and fell down. A couple of guys picked him up. The Claimant was shown a document dated April 11, 2018. He admitted that he testified about an injury that occurred earlier on October 24, 2013. The Claimant admitted that testified that he the injury was to his left foot and left hip. During his deposition, the Claimant admitted he testified that the injury to his left foot resolved without any problems today. However, the Claimant admitted that he has diabetes, and his toes feel like they are trying to fall off. The Claimant admitted that he also had problem with his right foot/a sore, but it healed. However, the Claimant confirmed that now he is having problems with his left foot from diabetes. The Claimant admitted that he had some pain in his left foot, but it was really coming from his left hip. He confirmed that when he fell, the most impact was to his butt.

According to the Claimant, he as had four surgeries to his hip. He confirmed that his hip is the problem. The Claimant confirmed that in the Respondents' medical exhibit page 1 is actually a peer review and it was determined that a lumbar radiofrequency rhizotomy was not medical appropriate and that was from December 21, 2015. He confirmed that he has not had medical treatment on his back since 2015.

The Claimant confirmed that he underwent procedures to his hip. He admitted that after each procedure he went back to work at the park. The Claimant admitted that he retired at the end of 2019. He admitted that he has been hospitalized a lot. He was treated at the heart hospital. They had to go in both legs, and on one of his legs twice. He had a carotid artery where they went into the back of his neck. This was seven or eight years ago. The Claimant testified that he quit at 63 because he could not stand on his hip for full day. He continues to see a pain doctor. The Claimant admitted that he does not have surgeries scheduled for his left hip.

Dr. Gordon Newborn last operated on the Claimant's left hip. He released the Claimant to maximum medical improvement on March 11, 2022. He admitted that he is now taking less pain medication since he started treating Dr. Roman. According to the Claimant, he takes Tizanidine to help him sleep. The Claimant takes marijuana a couple of times a week. He received his marijuana card from Dr. Roper, in Hot Springs.

Other conditions include the Claimant having his gallbladder removed and some hernias. The Claimant testified that he uses the cane because of his left hip. He admitted that he did not apply for any of the jobs led to him by Ms. Hampton.

On redirect examination, the Claimant admitted that he located Dr. Abraham through Advanced Interventional Pain Management. He admitted that the Respondents paid for him to see Dr. Abraham or one of his associates up until July of 2024.

He confirmed that the only treatment that Dr. Abraham recommended and they did not pay for was the rhizotomies. This recommendation was in 2017 and until the Claimant began treating with Dr. Roman.

The Claimant admitted that the Daisy State Park injury back in 2018 was all under the Claimant's job duties at Parks and Tourism. This is not a different employer.

Medical Evidence

On January 23, 2024, the Claimant sought medical treatment from the Dr. Robert Parrot, at CHI St. Vincent. The Claimant reported that he fell while moving a couch, which landed on top of him. At that time, the Claimant complained about left hip, back, and left foot pain. X-rays were taken of the Claimant's left hip and foot. No fracture, no dislocation, normal alignment, loss of joint space, along with some mild to moderate degenerative changes were revealed of his left hip. The foot x-rays were essentially normal with no fractures, no dislocation, with the joint space being well preserved, and normal alignment. Dr. Parrot assessed the Claimant with "1. Contusion of the hip and thigh. 2. Muscle strain." Per this note the Claimant's symptoms were persistent since his October work injury. Dr. Parrot also directed the Claimant to do weight bearing as tolerated and refrain from PT until he could undergo an evaluation by an orthopedic physician.

The Claimant presented to Dr. Sawn D. Rudder, an orthopedic surgeon on February 5, 2014, for evaluation of his left hip and left foot injuries due to his work-related fall. At that time, the Claimant reported that he had no back pain.

A CT of the Claimant's back was performed on June 6, 2014, which revealed that the Claimant had "Mild levoscoliosis in the lumber spine with bulging discs at L2-3 though L4-5 including some mild neural foraminal narrowing on the left at L2-3. Mild bilateral neural foraminal narrowing present at the L3-4. No other significant lumbar spine pathology was seen."

The Claimant underwent lumbar spine injections on July 1, 7 and 14, 2014, by Dr. Farrel Hass.

Dr. Jacob Abraham also performed lumbar injections on October 14, 2014; November 3, ; November 14, December 4; and January 21, 2015.

On November 23, 2015, Dr. Abraham recommended that the Claimant undergo a Lumbar Radiofrequency Rhizotomy.

Peer reviewed stated on November 21, 2015, that the above recommended procedure was inappropriate.

Dr. David Newbern performed left hip surgery on September 2, 2015.

The Claimant underwent a Functional Capacity Evaluation/FCE on March 29, 2022, with a reliable result of 54 out 54. He demonstrated the ability to perform light duty work.

Adjudication

A. Compensable

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i).

On October 13, 2013, the Claimant was performing his employment duties for the respondent-employer/Lake Catherine State Park moving a sleeper sofa. The Claimant slipped and fell won to the concrete with the sofa falling on top of him. The Claimant fell onto the concrete and injured his left hip and back. Respondent No. 1 accepted the back injury and began paying

benefits for his back injury. A CT scan was performed on June 20, 2014, of the Claimant's lumbar spine revealed bulging at L2-3, L3-4, and L4-5. He came under the care of Dr. Abraham who recommended a lumbar radiofrequency rhizotomy. At that point, Respondent No. 1 controverted this treatment modality on the basis of its inappropriateness.

The Claimant proved by a preponderance of the evidence that he sustained an injury to his back while performing his employment duties. This accidental injury is identifiable by time and place of occurrence. The Claimant sought medical treatment services as a result of his injury. His back injury is established by medical evidence supported by objective findings pursuant to the CT performed on his back. Under these circumstances, I find that the Claimant has proved by a preponderance of the evidence every element for proving a compensable back injury on October 13, 2013.

B. Medical Benefits

An 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).

Here, Respondent No. 1 have paid for several conservative treatment modalities for the Claimant's compensable back injury of October 24, 2013. Said treatment modalities include a medication regimen and injections. In 2015 Dr. Abraham recommended that the Claimant under a lumbar radiofrequency rhizotomy. Respondent No. 1denied this treatment after a December 21, 2025, peer review found that this treatment was not medically appropriate based on the medical records provided to them. Since this time, the Claimant has not had any medical treatment specifically geared toward his back condition. The Claimant returned to work and worked until he voluntarily retired from his position with Lake Catherine. His testimony demonstrates that he

retired at the age of 63. He was born in July 1958; this means that the Claimant retired in 2021. During a period of time, in addition to working at Lake Catherine, he worked a second job with the Boy Scouts. As of the date of the hearing, the Claimant was under the care of Dr. Roman for pain management primarily for treatment of his left hip pain.

Based on all of the foregoing facts, I find that additional medical treatment for the Claimant's compensable back injury is not reasonably necessary for the injury he received on October 13, 2013, some 13 years. Moreover, it is particularly incomprehensive to conceive that medical treatment recommended for the Claimant's back injury in the form of a lumbar radiofrequency rhizotomy made over 13 years ago is reasonably necessary medical treatment.

C. Wage-Loss Disability

When a Claimant has sustained a permanent impairment rating to the body as a whole, the Commission is authorized to increase the disability rating based on wage-loss factors. The wage-loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Grimes v. North Am. Foundry*, 316 Ark. 295, 872 S.W.2d 59 (Ark. 1994). Ark. Code Ann. § 11-9-522(b) (Repl. 2012) provides, in pertinent part:

> (1) 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.

Such other matters are motivation, post injury income, credibility, demeanor, and a multitude of other factors. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984); *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990); *Cross v. Crawford County Memorial Hosp*., *supra*. It is

well established that a Claimant's prior work history and education are factors to be considered in determining eligibility for wage-loss benefits. *See Cross v. Crawford County Memorial Hosp., supra.; Glass v. Edens, supra.; City of Fayetteville v. Guess, supra.; Curry v. Franklin Electric, supra.*

Here, the Claimant sustained a compensable left hip and back injury on October 13, 2013. The Claimant has had four surgeries on his left hip. After each procedure, the Claimant has returned to work. The Claimant testified that he quit work because of his hip pain and related symptoms. He retired from Lake Catherine State Park at the age of 63. The Claimant retired in 2021. At the time of his retirement, the Claimant was working in the same position. There is no probative evidence demonstrating that the Claimant suffered an inability to return to work at the light duty category. However, the Claimant has not looked for work since retiring. He is not motivated to return to work.

Majority of the Claimant's work has been laborious heavy-duty work. The Claimant has no transferrable skills and a limited education. The evidence before me shows that the Claimant sought early retirement because of his compensable left hip injury.

The Claimant has undergone four surgeries to his hip, which resulted in a 30% impairment rating to the whole body. He is of advanced age.

Considering the Claimant's age, limited education, no motivation to return to work, his 30 impairment rating to the body as a whole for his left hip injury, and based on all of the foregoing facts, I find that Claimant proved his entitlement to any wage loss disability in the amount of 12% over and above his impairment rating.

D. Permanent and Total Disability Benefits

The Claimant contends that he has been made permanently and totally disabled because of his compensable injury of October 24, 2013.

Ark. Code Ann. §11-9-519(e)(1) (Repl. 2002) provides: "Permanent total disability" means an inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Furthermore, the statute provides that the burden of proof shall be on the injured employee to prove their inability to earn any meaningful wages in the same or other employment. Ark. Code Ann. §11-9-519(e)(2) (Repl. 2002).

The burden of proving permanent total disability is on the Claimant. The Claimant must prove entitlement to these benefits by a preponderance of the evidence.

Preponderance of the evidence means the evidence that has greater weight or convincing force. Metropolitan Nat'l Bank v. La Sher Oil Co., 81 Ark. App. 269, 101 S.W.3d 252 (20

Here, the Claimant has the physical capacity to earn meaningful wages in at least the light classification of work. The Claimant clearly demonstrated this physical ability during an FCE examination, in March 2022. Per this evaluation, the Claimant put forth a reliable effort with a 54 out 54 consistency measures. This evidence clearly preponderates a finding that the Claimant has not been rendered permanently and totally disabled from performing gainful employment. Moreover, the vocational specialist has idented several jobs that the Claimant has the physical abilities to perform. The Claimant worked until he was 63 years of age. Although the Claimant maintained he quit working because of significant hip pain. The evidence before me shows that the Claimant suffers from several debilitating conditions, such as heart problems, blockages in his legs, hernias, carotid artery problems, diabetes associated with occasional open sores of the foot. These conditions are unrelated to the Claimant's work-related injury. However, these conditions

profoundly attribute to the Claimant's inability to work rather than his compensable injury. His testimony shows that his toes feel as though they are going to fall off due to his diabetic condition. Dr. Gordon Newborn last operated the Claimant's left hip and in March 2022, he released the Claimant to maximum medical improvement.

E. Controverted Attorney's Fee

The parties that Respondent No. 1 has controverted this claim for additional benefits in its entirety. As a result, the Claimant's attorney is entitled to a controverted attorney's on the indemnity benefits award.

AWARD

The Claimant proved that sustained a compensable injury to his back on October 24, 2013. He failed to prove his entitlement to any additional medical treatment for his back. The Claimant proved his entitlement to wage loss disability in the amount of 12% over and above his 30% impairment rating to the body as a whole for his left hip injury. He failed to prove by a preponderance of the credible evidence this he was rendered permanently and totally disabled by his compensable injury.

The parties stipulated that the Respondent No. 1 has controverted this claim for additional benefits. As a result, the Claimant's attorney is entitled to controverted attorney's fee on the indemnity compensation awarded herein. Respondent No. 1 is directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without a discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012).

Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), 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 insurance carrier and one-half by the Claimant.

All issues not litigated herein are reserved under the Act.

IT IS SO ORDERED.

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CHANDRA L. BLACK
Administrative Law Judge