

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H106528**

TOMMY O. ELDRIDGE, EMPLOYEE	CLAIMANT
CITY OF HARRISON, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, CARRIER/TPA	RESPONDENT

OPINION FILED **MAY 8, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Harrison, Boone County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MARY K. EDWARDS, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 12, 2025, the above captioned claim came on for a hearing at Harrison, Arkansas. A pre-hearing conference was conducted on October 31, 2024, and a pre-hearing order was filed on that same date. 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 November 4, 2020.
3. Claimant sustained a compensable injury on November 4, 2020.

At the hearing, the parties announced an agreement that claimant's average weekly wage was \$845.80, which would entitle him to compensation at the weekly rates of \$564.00 for total disability benefits and \$423.00 for permanent partial disability benefits.

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

1. Whether claimant is entitled to permanent and total disability, or in the alternative, a wage loss award in excess of the 25% wage loss conceded by the respondents.
2. Attorney's fees.

All other issues are reserved by the parties.

The claimant contends that "He is entitled to permanent and temporary total disability benefits. Claimant reserves all other issues."

The respondents contend that "Claimant cannot prove by a preponderance of the evidence that he is permanently and totally disabled. Claimant reached maximum medical improvement on July 6, 2023. He received a twelve percent (12%) rating; respondents have paid this rating in full. Following a valid FCE, claimant was placed on permanent work restrictions in the LIGHT classification of work. The city offered claimant a job within his permanent work restrictions. See attached Exhibit "A." Claimant accepted this job and worked for the city. *Id.* However, in April of 2024 claimant voluntarily left his employment with the city. Respondents accepted twenty-five percent (25%) wage loss based on the difference between what claimant was making prior to his injury and the amount of the job that he voluntarily quit. Respondents are currently paying out the wage loss. Respondents reserve the right to file an amended response to the prehearing questionnaire or other appropriate pleading and to allege any further affirmative defense(s) that might be available upon further discovery."

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 October 31, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact, as is the stipulation announced at the hearing about claimant's average weekly wage.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent total disability benefits pursuant to A.C.A. § 11-9-519.

3. Claimant has proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits in an amount equal to 50% to the body as a whole as a result of his compensable injury for loss in wage earning capacity.

4. Respondents have controverted claimant's entitlement to all unpaid indemnity benefits above 25% of the wage-loss disability it accepted and is currently paying.

FACTUAL BACKGROUND

In the prehearing order, claimant's only contention was that he was entitled to permanent and total disability benefits. Respondents contended that he could not prove by a preponderance of the evidence that he was so entitled. Before the hearing began, the parties agreed to amend the issues to be litigated to include an alternative claim for a wage-loss claim in excess of the 25% wage-loss which had been conceded by respondents. The amended issue was read to the parties and both agreed to litigate the amended issue. (T.5) This amendment was handwritten on the prehearing order.

HEARING TESTIMONY

Claimant was the only witness called on his behalf. He testified that he had worked for respondent, City of Harrison, from August 2011 until he was injured on November 4, 2020. He was a heavy equipment mechanic which required him to do lifting occasionally of one hundred to one

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hundred twenty-five pounds and frequently between forty and fifty-five pounds. On November 4, 2020, claimant was installing a hydraulic cylinder on a backhoe when he felt something in his back as he picked up the cylinder. Claimant said immediately after the incident that he was hurting so badly that he had to sit for about an hour and then he told his supervisor that he had hurt his back. Due to the injury in his back, claimant has had two surgeries, multiple injections, and two radiofrequency ablations (RFA). He continues to be treated by Dr. Brent Weilert for pain management.

Claimant testified that he continued working until June 14, 2022, but had to stop due to the pain and numbness he felt in his back and legs. Dr. Daniel Shephard performed a fusion on claimant's back on November 16, 2022, and claimant returned to work on light duty. In August 2023, claimant was offered a job as a clerical assistant, a type of work he had never done. Claimant said he worked in that clerical position for eight hours a day on four days of the first week and then two or three hours a day for three or four days the next week. Claimant testified that sitting in a chair over a period of time was painful and the way he could get relief at least at his home was to sit in his recliner and stretch out. Claimant said he could not concentrate because of the amount of pain he had. He tried different chairs which did not help alleviate the pain of sitting.

Claimant related many activities that he did around his house and for leisure that he could no longer do or could not do as he had before his injury. This included mechanical work, mowing the yard, feeding the chickens, cows, and goats, and deer hunting. Where before he could lift feed for the animals, work on vehicles without stopping, weed eating his yard, and other such activities, these were either now impossible for him to do or took him much longer and caused him great discomfort. Claimant described his normal day as getting up with his wife at six a.m., drinking coffee, sitting in his chair until about nine thirty when he gets up to do the dishes and then returning to his recliner. He testified that he does laundry; when he finishes folding it and putting it away, he is back in his recliner

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to get relief.

Claimant testified that he is now on Social Security disability, which was awarded for several conditions including the low back problem. Claimant worked with his high blood pressure and COPD as well as arthritis in his fingers and hearing loss. He stated that none of these conditions listed in his Social Security disability award prevented him from working at the time of the accident.

Claimant related a vocational history of working in a grocery store, working in construction and factories, as well as working in a feed store and serving as a mechanic and/or maintenance man. Most of these jobs involved some degree of lifting above his current restrictions. Claimant had never worked at any kind of desk job. He stated his education ended during the twelfth grade, but he did not finish it, and he does not have a GED.

Claimant was shown the list of duties and responsibilities for the clerical assistant job which included regular and reliable attendance, which he stated he was able to do for four days. Claimant had no typing skills and had not done data entry. He had no experience writing memorandums or writing communications from one department to another. He stated he was unable to remain alert and concentrate for long periods of time as the job description required. Claimant said when his pain is at its worst, he gets in his recliner to stretch out. He takes regular Tylenol daily and Tylenol p.m. to sleep. Claimant also uses a TENS unit.

Claimant related a back injury that he had in 2016 which was not work related. He had been pruning and started going numb; after sitting on the ground, he got up and the numbness went away. He was able to do the work required by the city from 2016 to November 2020.

Claimant said the pain in his back never goes away. He has a twenty-five-pound lifting restriction; he believes there are some days he could do that, but other days, lifting a jug of milk from the refrigerator causes pain. Claimant also testified that he had some issues of incontinence that he

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did not have prior to his first surgery.

On cross-examination, claimant stated that he was given permanent work restrictions in July 2023 and was offered the job as a water/sewer clerk, which he accepted. Claimant believed that he stopped coming to work around September 20, 2023. When asked about the duties as a city water clerk, claimant testified that he was sitting at a desk and putting information and addresses into the computer. He was not required to lift over twenty-five pounds, stoop, climb, crouch, and could get up and move around as he needed. Claimant was asked about changing chairs and that his supervisor and head of the department told him to find a chair he was comfortable in. As a water clerk, claimant looked at the screen and wrote down the information he found. Claimant agreed that he did not work from September 20, 2023, until November 20, 2023, nor did he return to work after he received a slip to go back to work on April 8, 2024. He provided the return-to-work slip to the city but did not return to work. Claimant also has not worked for any other employer since April 8, 2024. Claimant did speak with someone in November 2024, about a job at Home Depot but believed it was outside his permanent work restrictions. Claimant testified that he had worked on three occasions for someone back filling graves but had not yet been paid because he wanted to try to see if he could physically do it. He believed that job would pay \$125.00 per grave.

Claimant was asked about several jobs that had been suggested by a vocational rehabilitation specialist including a part-time faculty position at the vocational school, a light assembly worker at Good Sportsmen Marketing, a call center representative, a senior retail sales associate at Auto Zone, an assembler at Baxter/Vantive and an assembly job at Light Manufacturing, none of which he had applied for.

Claimant again testified about his daily activities and stated that he sometimes works on his vehicles in a workshop, including changing the oil in one of his vehicles and how he goes hunting a

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couple of times a week during hunting season. He explained that prior to his injury, he was able to sit in a tree stand for 12 hours, drag out a deer if he shot one and process the meat. Since the injury, claimant said he goes about a quarter of a mile from his house and sits in the blind for about two hours. He drives close enough to the blind and walks about 100 yards to get in position for the hunt.

On redirect-examination claimant was asked about a release from Kelsey Harper in April 2024, which stated that claimant had no restrictions. Claimant did not understand that he had ever been released with no restrictions, and he had undergone a functional capacity evaluation that placed restrictions on him.

Claimant said he has not applied for the teaching job as a vocational expert because he did not have the education to do so. He explained that he had worked a light-duty job with the city in February 2023, that involved painting benches, running a weed eater, and riding a lawn mower, but he was unable to do that work. Claimant said he would like to be working and had not been offered any job that he had not tried to do either by the city or otherwise. He stated that he required family assistance for the chores around his house.

After claimant rested, respondents called Wade Phillips who is the director of public works which included the maintenance department where claimant worked when he was injured, and the water department where claimant returned to work in the water/sewer clerk position. When Mr. Phillips received the permanent work restrictions for claimant after his November 2022 surgery, he tried to find what positions were open with the city and located an unfilled clerical position. This job paid an annual salary of \$32,843.00 and Mr. Phillips believed that the job description was within claimant's permanent work restrictions. Mr. Phillips said that he received the return-to-work release that was signed on April 4, 2024, and claimant did not return. Mr. Phillips confirmed what claimant had said about the physical demands of the clerk's position and that had the position required anything

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that was outside of his capabilities, there would have been an attempt to accommodate him.

On cross-examination, Mr. Phillips explained that the clerk's position was more of a field position, but the city did not have a good candidate to fill it and since it was available within the budget, claimant could be transitioned into that position. The job involved developing an inventory of their water service lines to be in compliance with EPA regulations. The city needed someone to look through the tax records in the county to identify when a home was built. Those built before 1987 triggered whether that particular water line needed to be looked into a bit further. This involved data research and working on the computer, taking notes and documenting what he found. Mr. Phillips believed Mr. Eldridge was qualified to do the job. He did not have to interview him because he already knew him. Mr. Phillips did not interact with claimant while he was doing the job because it was in a different location from his office. Between September 2023, and April 2024, claimant was an employee on paper but not participating in anything for the city. The clerk's position has remained open since claimant left.

Under questioning from the Court, Mr. Phillips stated that he did not know that a high school education or GED was a qualification for the job because it was not in claimant's previous position. As far as data entry, claimant said there was a fleet maintenance computer system they use for tracking inventory that claimant could have been used while he was working as a mechanic. The standard office equipment that claimant operated was a basic desktop computer. Claimant would have answered the phone while he was working doing maintenance only if it were a direct call to the shop.

Respondents then called Mr. Charles Jones, who was the operation manager for the water and sewer department. He was claimant's supervisor during the time he worked at the water and sewer department but not when he worked in maintenance. Mr. Jones confirmed that there were no physical demands for that job that were not within claimant's physical limitations. Claimant was shown

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photographs of the desk and chair that claimant used when he started working as a clerk. Mr. Jones was aware that claimant had difficulty sitting in one chair (R.NM.X. 69) and was shown photographs of other chairs he was offered but stated that claimant did not try those chairs. Mr. Jones did not recall claimant asking for any help in operating the computer or hearing any complaints from him about not being able to work the program.

On cross-examination, Mr. Jones described how he supervised twenty-five people and made plans for what each of them is to do on a daily basis. He stated that his office was where claimant was working and he was in the office the majority of the time. At the end of each day, claimant turned in the addresses he had verified and the dates on the houses when they were built. Mr. Jones was satisfied at the progress he was making. They had over seven thousand service connections that need to be verified. Each day, Mr. Jones made notes about the work claimant did on a particular day (R.NM.X.66). Regarding claimant's complaints about his chair, Mr. Jones said that claimant was offered a different chair, but he did not want it. There were two other chairs other than the ones he had and those were the best chairs available. Mr. Jones did not know if the chair was giving claimant problems, but did state that it did not have arms on it as it was one of the older chairs. He confirmed there was no place for an employee to lay on a bed or a couch or get into a recliner.

Claimant was recalled and testified that he had started in a metal chair, then moved to a plastic chair and then to a blue chair. The blue chair was the one without arms. (R.NM.68) He had seen the other chairs (R. NM.X 71 and 72) but had not been offered those. However, he did not believe that those chairs would have made it possible for him to sit for eight hours and work.

REVIEW OF THE EXHIBITS

Claimant submitted sixty-eight pages of medical records; it appears that all but two pages of claimant's records were included in those submitted by respondents. An exhaustive review of the

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records regarding claimant's treatment is unnecessary for the determination of the issues in this case. Dr. Konstantin Berestnev adequately summarized claimant's medical history as part of his impairment rating on July 12, 2023. Dr. Berestnev noted that conservative treatment, steroid injections, and pain medicine had failed, resulting in claimant having two surgeries on his lower back. The first surgery was on August 2, 2021, which involved a bilateral L4-L5 hemilaminectomy and microdiscectomy, after which claimant continued to be symptomatic with L-5 dermatome numbness. On November 16, 2022, claimant had an L4-L5 lumbar fusion, after which he continued to be symptomatic with pain radiating down both legs and a decreased range of motion in his lower back. After reviewing the functional capacity evaluation, which was performed on June 19, 2023, Dr. Berestnev concluded that claimant was at maximum medical improvement (MMI) and assessed a 12% whole person impairment rating. Claimant's permanent restrictions were no lifting above twenty-five pounds, no repetitive bending, stooping, climbing, or crouching.

Respondents' medical exhibits totaled one hundred fifty-four pages, which contained all of what claimant submitted (except for a visit to Ozark Urology on February 23, 2023). These additional records provided a more complete picture of claimant's course of treatment through November 7, 2024, but changed nothing about claimant's impairment rating and current physical restrictions. There was one record that I disregarded completely. On March 26, 2024, a physician's assistant filled in a work release that stated claimant had no restrictions as of April 8, 2024. I believe the assistant made a mistake in completing the form, because it was such an aberration in light of all the other evidence that it was not credible.

NON-MEDICAL EXHIBITS

Claimant submitted forty-seven pages of non-medical evidence which included correspondence to claimant regarding the clerical assistant position at the water and sewer department

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which included the job description with the essential duties and responsibilities along with the minimum qualifications. (CL.NM.X.2 pages 1-7) These records also included the first page of claimant's Social Security disability award on January 20, 2024 (CL.NM.X.2 page 8) which provided that claimant was disabled pursuant to the rules of the Social Security Administration as of August 2, 2021. Claimant's exhibit concluded with the vocational analysis of Dr. Tanya Rutherford-Owens and correspondence with Dr. Owens that included the June 19, 2023, functional capacity evaluation. (CL.NM.X.2 pages 9-47) Claimant then supplemented his non-medical records with the disability determination explanation dated January 11, 2024, which was prepared as part of his Social Security disability application (CL.NM.X.3, pages 1-8)

Respondents' non-medical exhibits totaled ninety-three pages and included wage records, employee timesheets, indemnity payment log, and medical payment log as well as photographs of the workspace where claimant was assigned in the water and sewer department and the chairs that were in the office when claimant worked there.

ADJUDICATION

As set forth above, claimant has a 12% permanent impairment rating to his lower back as assessed by Dr. Berestnev. The indemnity payment log submitted by respondent shows this rating was accepted and has already been paid. Respondents conceded claimant had a wage-loss disability in the amount of 25% and had begun paying this as of the time of the hearing. The 25% wage-loss disability represents the difference between what claimant was earning as a heavy equipment mechanic and what he was paid to work at a clerical assistant in the water and sewer department.

Claimant pled that he is entitled to permanent total disability benefits (PTD) as per Ark. Code Ann. § 11-9-519, or in the alternative, an award of wage-loss disability under Ark. Code Ann. § 11-9-522 above the 25% conceded by respondents. An award of permanent total disability would end the

discussion of this matter and therefore will be addressed first.

Is claimant permanently and totally disabled?

Permanent total disability is defined as the "inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment." Ark. Code Ann. § 11-9-519(e)(1)(Repl. 2012). A claimant has the burden of proving inability to earn any meaningful wage in the same or other employment. Ark. Code Ann. § 11-9-519(e)(2).

Looking at the clerk's position, it is clear from reviewing the minimum qualifications for the job (Cl. 2 NMX 5-7), claimant did not qualify for the position. He did not have a high school diploma or equivalent, he had no experience using the software programs that were part of that position, and he had no experience answering the phones or dealing with the public. That said, I disagree with claimant's assertion in closing argument that this was not a *bona fide* job offer (T. 54), because I am convinced those that were responsible for hiring him as a clerk wanted him to be able to perform that sedentary job and believed he was capable of doing so. Claimant was well known to the city administrators and department heads, and it appears there was a desire to accommodate him; as such, the requirements in the job description were not enforced before giving the position to claimant. I also note that when he was given the position in September 2023, the information that respondents had was limited to that provided by the FCE of June 19, 2023, which said he was able to physically perform at the light classification of work (Cl.#2 NMX, page 26), and the clerk's position was within that restriction.

There were two determinations of claimant's ability to engage in gainful employment after he left the clerk's job in September 2023. Claimant provided the disability determination from the Social Security Administration (Cl.X.3, pages 1-8) which was completed on January 11, 2024.¹ The disability

¹ That determination by Social Security is evidence that can be considered by the Commission, but permanent and

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examiner, Ms. Rainey Leathers, found that there were insufficient numbers of jobs to which claimant could return based on his residual functional capacity. Ms. Leathers believed the maximum sustained work capacity claimant could reasonably be expected to perform was at the sedentary level. Claimant listed his back injury among several conditions he suffered from, including high blood pressure, chronic obstructive pulmonary disease, low cholesterol, joint pain in fingers, vertigo, right foot nerve pain and hearing loss. Ms. Leathers found claimant's lumbar stenosis was his primary issue and listed it as severe, but she also listed as severe issues his chronic pulmonary insufficiency, osteoarthritis and allied disorders.

Claimant also submitted a vocational analysis performed by Dr. Tanya Rutherford Owen, which she submitted on July 28, 2024 (R.2 NMX.75-87). In it, she determined claimant could not return to his past work, and based on claimant's transferable skills, he had a loss of 80-83.92% of transferable skills occupations. She noted claimant had no transferable skills for sedentary work. Dr. Owen conducted a labor-market survey in which she listed seven occupations in the light category of work that were available in claimant's area at the time she completed her report. In an email exchange with claimant's attorney, Dr. Owen determined that five of those seven jobs would be eliminated if claimant needed to sit and stand at will.

While I respect Dr. Owen's expertise, I found myself disagreeing with her opinion on two points. First, the two jobs she said were not eliminated were a part-time faculty member at North Arkansas Community College and a Call Center Representative. The former was a position teaching vocational skills such as welding, construction equipment operations, automotive service, and the like. The pay was \$550-\$3500 depending on "course credits and lecture/lab assignments." The required

total disability for the purposes of social security is different than permanent and total disability under Arkansas workers' compensation law. *Kirkendolph v. Dep't of Fin. & Admin.*, 2010 Ark. App. 786

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qualification stated that completion of an associate's degree was preferred. Claimant had not finished high school, and I do not believe he could adequately prepare and deliver lectures; further, the pay for those courses was far from a "meaningful wage." The latter position required intensive computer work, such as updating billing, processing credit card payments, completing workflow for patient's self-pay accounts, posting payments, and dealing with the public on such issues. This is not in the category of light work, but rather in the nature of sedentary labor, which Dr. Owen had ruled out.

However, claimant had a sedentary job that I find he was able to perform with the water and sewer department. This position did not involve data entry, but rather looking at existing tax records and making handwritten notes as to when a house was constructed. Mr. Jones testified while working in the clerk's position, claimant wrote down what he had verified on each day. There was no testimony that this task was beyond claimant's limited knowledge of use of a computer. Claimant's complaint was not that he was unable to do the minimal computer operations required for that position, but rather that the chairs in the office were uncomfortable on his back. Mr. Phillips was unaware that anyone told claimant he could not stand or sit if he needed to do so during the workday. Mr. Jones and claimant had a different recollection as to whether claimant was offered the other available chairs; Mr. Jones believed he was offered a different chair; claimant said no such offer was made, but then stated that he did not think the other chairs would have been adequate. Rather than seeking accommodation of a more comfortable chair from an employer that had shown its willingness to be accommodating to claimant, he simply quit the position after two weeks.

In viewing all the evidence, I am not satisfied that claimant is motivated to seek full-time employment within his capabilities. Dr. Owen pointed out that claimant could apply for retraining through the Arkansas Rehabilitation Services, but there was no testimony that he did so. The preponderance of credible evidence shows that the claimant has the ability to perform work, at least

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in the light category. Moreover, no doctor has opined that the claimant is incapable of returning to other employment in the sedentary category; that was the opinion of Dr. Owen in her vocational analysis, which as stated above, I reject as far as some forms of employment is concerned. After considering claimant's age, education, work experience, the nature and extent of his injury, his permanent restriction, and all other relevant factors, I find he has not met his burden of proving that he is permanently and totally disabled.

Is claimant entitled to wage-loss disability above the 25% conceded by respondent?

Even with the desire to return claimant back to work, respondent could not do so at the wages he was making before his injury, and therefore claimant is not barred by §11-9-522(b)(2) from making a claim for wage-loss disability above his 12% permanent physical impairment rating which was established by medical evidence and accepted by the parties. Respondents' position is that it established the amount of wage-loss by offering claimant a position within what it believed to be his physical restrictions, and as claimant left that position voluntarily, he is not entitled additional wage-loss disability. I disagree.

Ark. Code Ann. § 11-9-522(b)(1) states:

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" include motivation, postinjury income, credibility, demeanor, and a multitude of other factors to be considered in claims for wage-loss-disability benefits in excess of permanent-physical impairment. *Ark. Highway & Transp. Dep't v. Work*, 2018 Ark. App. 600, 565 S.W.3d 138. There is no exact formula for determining wage loss *Hixon v. Baptist Health*, 2010 Ark. App. 414.

In light of all the evidence, I do not believe claimant is motivated to return to the workforce as witnessed by how quickly he left the job he accepted with the water and sewer department. His failure to actively seek other employment since he was released with those restrictions also demonstrates a lack of motivation to return to the workforce. I also believe his award of disability by the Social Security Administration is a factor in his failure to seek meaningful employment; it is also a source of postinjury income that I am taking into consideration. However, "although a lack of interest in pursuing employment impedes the assessment of the claimant's loss of earning capacity, it is not a complete bar." *Ark. DOT v. Abercrombie*, 2019 Ark. App. 372., that alone does not bar claimant from receiving some degree of wage loss benefits. According to Dr. Owen, claimant's physical condition severely limits the number of jobs claimant could reasonably be expected to perform. After considering all the factors set forth in this opinion, I am satisfied that claimant has proven he has a wage loss disability of 50% above his physical impairment ratings.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent total disability benefits pursuant to A.C.A. § 11-9-519.

Claimant has proven by a preponderance of the evidence that he has suffered a loss in wage earning capacity in an amount equal to 50% to the body as a whole. Accordingly, claimant is entitled to payment of permanent partial disability benefits in an amount equal to 50% to the body as a whole.

Respondent has controverted claimant's entitlement to all unpaid indemnity benefits above the 25% wage loss disability that it conceded.

Pursuant to A.C.A. § 11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant above the indemnity benefits conceded by respondents. Thus, claimant's attorney is entitled to a 25% attorney

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fee based upon the 15% wage-loss benefits awarded. This fee is to be paid one half by the carrier and one-half by the claimant.

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE