

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G703512

GARY D. JAYNES, EMPLOYEE

CLAIMANT

TEMPWORKS MANAGEMENT SERVICES, INC.,
EMPLOYER

RESPONDENT

WESCO INSURANCE COMPANY/
AMTRUST NORTH AMERICA,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 11, 2026

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal and the claimant cross-appeals an opinion and order of the Administrative Law Judge filed December 22, 2025. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

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 his entitlement to a 10 % anatomical impairment rating for his compensable back injury of March 8, 2017.
4. The Claimant sustained a 9% wage-loss disability due to his compensable back injury.
5. The parties stipulated that the Respondents have controverted this claim in its entirety. Therefore, the Claimant's attorney is entitled to a controverted attorney's fee.
6. All issues not litigated herein or addressed in this Opinion are reserved under the Act.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of

five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant has met his burden of proving by the preponderance of the evidence that he is entitled to nine percent (9%) wage loss disability over and above his impairment rating.

When a claimant sustains an injury not scheduled in Ark. Code Ann. § 11-9-521, permanent disability benefits are controlled by Ark. Code Ann. § 11-9-522(b)(1), which 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.

Other factors may include but are not limited to motivation to return to work, post-injury earnings, credibility, and demeanor. *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990).

When a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission may increase the disability rating and find a claimant permanently disabled based upon wage-loss factors. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005).

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Enterprise Products Company v. Leach*, 2009 Ark. App. 148, 316 S.W.3d 253 (2009).

Our courts also consider the claimant's motivation to return to work since lack of interest in pursuing employment impedes the assessment of the claimant's loss of earning capacity. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005).

The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to

determine wage-loss disability. *Taggart v. Mid America Packaging*, 2009 Ark. App. 335, 308 S.W.3d 643 (2009).

In the present matter, the claimant litigated the issue of permanency in 2018, at which point it was determined that the claimant was not permanently and totally disabled and not entitled to wage loss benefits. Here, he attempts a second bite at the disability apple alleging entitlement to a permanent impairment rating and wage loss disability benefits using the same facts and circumstances he alleged in 2018.

At the March 27, 2018 hearing, the claimant testified his symptoms included burning in the left leg, numbness in the left leg from the knee to the groin, and numbness and burning in his back. The claimant testified this pain caused him to stumble, and he had constant sharp pain in his back and thigh area which rendered him unable to sleep. The claimant further testified he had trouble getting in and out of chairs, concentrating, lifting over fifteen pounds, and stooping or bending. He also testified he could not sit without moving around. At the time of the 2018 hearing, the claimant used a TENS unit and ice packs to treat his pain, and his only activity was playing cards.

However, at the 2018 hearing, the claimant admitted he was under no work restrictions and had been released to regular duty. The claimant's functional capacity evaluation (FCE) revealed a lack of reliable effort and at the

time, the claimant had never attempted to return to work. He was, however, playing cards three to four times per week.

The claimant's testimony regarding his symptoms was the same at the September 24, 2025 hearing. First, the claimant alleged burning pain from the knee to the groin as he did in 2018. He also claimed to have sharp pain in his back. He went on to testify he had constant back pain and was unable to sleep, bend, or stoop. At the time of the hearing, the claimant had gone five years without medical treatment for these concerns and was taking no medication for his pain beyond medical marijuana gummies. The claimant admitted on cross-examination his symptoms and activity levels had not changed since the first hearing, and he continued to play cards multiple times a week.

At the time of the hearing on September 24, 2025, the claimant provided no new evidence or medical reports restricting his work activities. Likewise, he provided no proof his condition had changed or worsened since the hearing in 2018.

The Commission previously determined the claimant was not entitled to wage loss based on his age, work experience, education, and lack of motivation. The claimant is not motivated to return to work. The claimant has not had any new or worsening symptoms since 2018 that would prevent him from returning to the work force. There are no medical opinions advising he is unable to work. We are simply left with the claimant's own self-serving testimony. Even

reviewing the evidence in a light favorable to the claimant, he has not presented any additional evidence that would entitle him to further wage loss benefits. He has failed to prove by a preponderance of the evidence he has suffered any further harm or deterioration to his condition, nor has he indicated he is now interested in returning to the work force. For these reasons, the ALJ's findings should be reversed.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner