**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**
**WCC NO. H307207**

**RANDY D. MUNNS, EMPLOYEE** **CLAIMANT**

**CITY OF NORTH LITTLE ROCK,**
**SELF-INSURED EMPLOYER** **RESPONDENT**

**ARK. MUN. LEAGUE,**
**THIRD-PARTY ADM'R** **RESPONDENT**

**OPINION FILED MARCH 14, 2025**

Hearing before Chief Administrative Law Judge O. Milton Fine II on January 23, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Neal L. Hart, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

## STATEMENT OF THE CASE

On January 23, 2025, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on November 4, 2024. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With an amendment of Stipulation No. 3, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer/third-party administrator relationship existed among the parties on April 5, 2023, when Claimant sustained a compensable injury to his lumbar spine. Respondents also paid for medical treatment in the form of a peroneal nerve release related to the work injury.
3. Respondents accepted this claim and have paid medical and indemnity benefits thereon, including permanent partial disability benefits pursuant to an impairment rating of twelve percent (12%) to the body as a whole that was assigned by Dr. Justin Seale.
4. Claimant's average weekly wage of $1,006.20 entitles him to compensation rates of $671.00/$503.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. The following were litigated:

1. Whether Claimant is entitled to additional medical treatment of his stipulated compensable injury in the form of implantation of a spinal cord stimulator and related treatment of Dr. Jarna Shah.
2. Whether Claimant is entitled to additional temporary total disability benefits from the date last paid to a date yet to be determined.
3. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments at the hearing, read as follows:

Claimant:

1. Claimant contends that he suffered a compensable injury to his lumbar spine and left lower extremity while working for Respondents on April 5, 2023. Surgeries were subsequently performed by Dr. Justin Seale (lumbar fusion) and by Dr. Eric Gordon (peroneal nerve release).

2. By Commission order dated July 3, 2024, Claimant was granted a statutory change of physician to Dr. Jarna Shah. She believes that Claimant suffers from, among other things, post-laminectomy syndrome, and has recommended implantation of a spinal cord stimulator. This constitutes reasonable, necessary, and related medical care under the Act; and Respondents should be required to provide it.

3. Additional medical care designed to improve Claimant's physical condition has been recommended; and Claimant's healing period has, therefore, not ended. As a consequence, he is entitled to receive additional temporary total disability benefits from the date last paid, in February 2024, through a date yet to be determined. Throughout that period, Claimant remained incapable of working. After Claimant last received temporary total disability benefits, he was returned to modified-duty employment. He was

fired on May 15, 2024, because Respondent employer could no longer accommodate his work restrictions.

Respondents:

1. Respondents contend that Claimant is not entitled to additional temporary total disability benefits. He was placed at maximum medical improvement on April 24, 2024, by Dr. Seale. In addition, Dr. Seale assigned Claimant a twelve percent (12%) impairment rating. Respondents have accepted and are currently paying this rating. Claimant has not re-entered his healing period for his back; therefore, he is not entitled to any temporary total disability benefits past the date of April 24, 2024.
2. Respondents further contend that the additional medical treatment recommended by Dr. Shah is not reasonable, necessary, or related to his compensable back injury.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, deposition transcripts, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to 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 stipulations set forth above are reasonable and are hereby accepted.

3. Claimant has proven by a preponderance of the evidence that he is entitled to additional treatment of his stipulated compensable lumbar spine injury in the form of a spinal cord stimulator and related treatment that has been recommended by Dr. Jarna Shah.

4. Claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for February 7, 2024.

5. Claimant has proven his entitlement to a controverted attorney's fee on the indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).

## ADJUDICATION

Summary of Evidence

Claimant was the sole hearing witness.

In addition to the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of two index pages and 119 pages thereafter; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of two index pages and 19 numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of 37 numbered pages.

A. Additional Treatment

Claimant has asked that the Commission to find that he is entitled to additional medical treatment of his stipulated compensable lumbar spine injury—with that

treatment consisting of the proposed procedure outlined by Dr. Shah of the University of Arkansas for Medical Sciences ("UAMS") that is contained in Claimant's Exhibit 1. The July 24, 2024, report of Claimant's visit to her reads in pertinent part:

> Imaging:
> 3/2024 MRI L Spine:
> Postoperative change L5-S1. No evidence for neural impingement. Soft tissue left L5-S1 neural foramen without displacement of neural structures, this is likely granulation tissue.
>
> 5/2023 MRI L Spine
> L5-S1 severe ligamentum flavum thickening, narrowing the left greater than right lateral recess. Potential exists for symptomatic impingement upon the left greater than right descending S1 nerve roots.
>
> 12/2023: EMG consistent with left peroneal nerve entrapment causing neuropraxia.
>
> A/P:
> Briefly, Randall D. Munns is a 61 y.o. male with a past medical history of back pain radiating to left lower extremity. Pain first started 4/4/23 when patient was on duty at work and a wrench snapped, causing him to fall backwards onto other tools. S/p L5-S1 TLIF/PSIF 9/2023, and 2024 peroneal nerve release with continued neuropathic pain of LLE. Consistent with post laminectomy syndrome of the lumbar spine with left lower extremity pain. Has taken gabapentin 30mg TID, ibuprofen, OTC medications, neuropathics, muscle relaxants, tramadol. Rated 10/10 pain. Pain is severely limiting quality of life. Patient does not smoke, does not take anticoagulants.
>
> **I believe that the patient has failed all other conservative management including the following: injections, physical therapy, and medications. Because he has failed these past therapies, patient could benefit from neuromodulation for postlaminectomy pain of the lumbar spine and is a candidate for spinal cord stimulation due to post laminectomy and chronic pain syndrome.** The following research trials have demonstrated the benefit of SCS in this condition: Deer et al[.], Neuromodulation, 2018; North et al. 2011 Neuromodulation; Kapural et al[.] 2015. We will move forward with a trial. We discussed the risks and benefits of this therapy including the probabilities of successful treatment of h[is] pain with current data available in the literature.

(Emphasis added)

Respondents denied the recommended treatment, which led to the following letter being sent to them:

> 8/8/2024
>
> Re: RANDALL D. MUNNS
> DOB: 6/26/1963
>
> Dear Arkansas Municipal League Worker[']s Comp.
>
> I am writing on behalf of Dr. Jarna Shah and her patient, Randall Munns DOB 6/26/1963 in response to your denial of a Thoracic MRI, Neuropsychological evaluation, and a Spinal Cord Stimulator Trial CPT 63650 for the diagnosis of Post laminectomy Syndrome of lumbar region, ICD 10: M 96.1, Causalgia of left lower extremity, ICD G57.72, and Low back pain ICD M54.50. Your denial states that the request cannot be approved because Mr. Munn's work injury is to his lumbar spine and not his thoracic spine.
>
> Please consider this an urgent reconsideration request. This letter provides information about the patient's medical history and diagnosis and a statement summarizing the treatment rational[e].
>
> Patient's History and Diagnosis
> RANDALL D. MUNNS is a 61-year-old male with past medical history of back pain radiating to the left lower extremity due to an injury sustained while on duty at work. He had an L5-S1 TLIF and PSIF on 9/22/2023 followed by a peroneal nerve release in 2024. He has continued neuropathic pain of his left lower extremity. The pain is described as burning with radiation, rated as 7/10. Symptoms have been present since 2023 and the initial inciting event was a fall. Symptoms are worse at night. Alleviating factors identifiable by the patient are none. Aggravating factors identifiable by the patient are recumbency, sitting, and walking. Patient reports recent physical therapy and/or home exercise program, with no improvement.
>
> The pain that Mr. Munns experiences is consistent with post laminectomy syndrome of the lumbar spine with left lower extremity pain. **As shown in the research articles cited below, spinal cord stimulation is a well-**

**established treatment for post-laminectomy syndrome that is refractory to conservative measures.**

Furthermore, your denial letter states that the thoracic MRI and Neuropsychological evaluation are denied as well. Current published guidelines recommend advanced imaging, specifically, thoracic MRI, prior to the stimulator lead to placement as the leads are placed above the lumbar laminectomy levels. Preoperative imaging may affect the approach and minimize the risk of complications. Without advanced imaging to inform surgical planning, unnecessary risk may be placed on the patient.

Neuropsychological evaluations are necessary as part of the standards for identifying appropriate patients for this therapy. To improve treatment outcomes of SCS, the evaluations help determine patient expectations as well as emotional and behavioral factors that may be affecting the patient's perception of pain. There are specific emotional issues, ways of thinking, and behaviors that can specifically impede pain therapy. These include depression, unrealistic pain expectations, the severity and location of the pain, and how long the patient has suffered from the condition. Other elements, such as a history of substance abuse, trauma, or a lack of a social support system can also have an impact. As confirmed in the research article cited, the higher the anxiety or distress, the lower the chance of improvement from spinal cord stimulation therapy.

Interventions
Mr. Munns has had multiple lumbar epidural steroid injections which helped mild to moderately for a few weeks. Repeat lumbar epidural steroid injections provided zero relief.

Conservative Treatment
Mr. Munns has tried and failed physical therapy, medications in the form of Gabapentin, Tramadol, Ibuprofen, Naprosyn, Cyclobenzaprine, Tizandidine, Hydrocodone, Acetaminiphen, heat, ice, and rest.

Imaging
Imaging reports are attached for your review.

In summary:
3/2024 MRI L Spine
Postoperative change L5-S1. No evidence for neural impingement. Soft tissue left L5-S1 neural foramen without displacement of neural structures, this is likely granulation tissue.

> 5/2023 MRI L Spine
> L5-S1 severe ligamentum flavum thickening, narrowing the left greater than right lateral recess. Potential exists for symptomatic impingement upon the left greater than the right descending S1 nerve roots.
>
> 12/2023: EMG consistent with left peroneal nerve entrapment causing neuropraxia.
>
> The following articles support Spinal Cord Stimulation as an effective therapy for post laminectomy syndrome as well as the necessity of a neuropsychological screening and a pre-procedural thoracic MRI.
>
> . . .
>
> **Therefore, it is the provider's medical opinion that a neuropsychological screening, thoracic MRI, and spinal cord stimulator trial is medically necessary as it could lead to a significant improvement in his functionality and quality of life.** Please do not hesitate to contact me if additional information is needed to approve CPT 63650, Spinal Cord Stimulator Trial preceded by a neuropsychological screening and Thoracic MRI.
>
> Sincerely,
>
> Vickie Carlton, RN
> Interventional Pain Prior Authorizations
> University of Arkansas for Medical Sciences

(Emphasis added)

Claimant's counsel wrote Dr. Shah on December 6, 2024, asking her the following three questions:

> (1) Is the additional medical treatment you've recommended, including the spinal cord stimulator, designed to improve Munns' current physical condition?
>
> (2) Would it be reasonable to place Munns in an "off work" capacity, at least until such time as the spinal cord stimulator you've recommended is authorized and implanted?

(3) Have your answers to the above questions been stated within a reasonable degree of medical certainty?

Shah answered "Yes" to all three questions.

In his hearing testimony, Claimant stated that he is 61 years old and has a graduate equivalency degree. He went to work for Respondent City of North Little Rock on July 15, 2019. When asked to recount how his injury occurred on April 25, 2023, Claimant stated:

> I was working on a backhoe that had—he had run over a tree and busted the fuel lines going to the fuel injector, and I was replacing it. And I needed a short wrench and I didn't have one, and I was trying to bend a wrench. So I went in the shop, and the shop's not much bigger than this down here at the soccer [sic], and they had all the equipment for it. They had reel mowers, John Deere gators and everything that they use for it in the shop, and I was trying to bend a—a wrench, like I said, to tighten up the line, the fuel line. And I jumped up on it and I was pushing down on it and it snapped and, when it did, I spun around and landed on top of a reel mower, landed on my back and my leg on top of a reel mower, and I knocked the breath out of me and then hurt bad.

Afterward, Claimant felt pain in his lower back and left leg. Respondents sent him to Concentra Clinic the next day. Initially, he underwent x-rays and was prescribed physical therapy and medication. After continuing to treat a Concentra, he eventually underwent a lumbar MRI. Thereafter, he was referred to OrthoArkansas. At that time, he was still experiencing back and leg pain. At first, he was given more physical therapy along with two epidural steroid injections—on August 4 and 16, 2023, respectively. Per Claimant, the first helped "somewhat," while the second provided no relief.

Thereafter, on September 22, 2023, Dr. Jared Seale operated on Claimant, performing the following procedures:

(1) Minimally invasive decompression facetectomy and laminotomy with thorough foraminotomy, left, L5-S1

(2) Minimally invasive transforaminal lumbar interbody fusion, left, with right facet/posterior fusion, L5-S1

(3) Minimally invasive instrumentation, segmental, L5-S1 posterior

(4) Insertion of machined PEEK interbody spacer, left, L5-S1

(5) Aspiration of bone marrow, left iliac wing

(6) Placement of morselized autograft from decompression

(7) Use of computer navigation, application of percutaneous instrumentation

The pre and post-operative diagnoses that Seale assigned Claimant were:

1. Foraminal disc protrusion right sustained from work injury;

2. Degenerative spondylolisthesis spinal instability L5-S1; and

3. Degenerative disc disease and foraminal stenosis L5-S1.

At the hearing, Claimant was asked if the surgery had helped. He responded, "[n]ot a whole lot," explaining:

> Well, I was—before I had the surgery, I couldn't take a deep breath. My back hurt so bad I couldn't take a deep breath. After my surgery, I could take a deep breath, but, I mean, that's about all the good it did for me.

Per the medical records, Claimant reported to Seale on October 25, 2023, that the surgery did not result in any improvement in his left lower extremity pain. Thereafter, on December 18, 2023, Claimant underwent an electrodiagnostic study that was abnormal, "suggestive of a left deep peroneal neuropathy with active denervation seen in the left tibialis anterior and EHL muscles." Dr. Rodrigo Cayme, the reading

radiologist, added in his report: "An acute on chronic left L5 radiculopathy cannot be completely ruled out." While Dr. Eric Gordon had Claimant evaluated for a peroneal nerve release, Dr. Seale warned Claimant that the procedure "may not help him." In his December 27, 2023, report, Seale added:

> I also had a long discussion with [Claimant] over causation. He reports that he has never had the symptoms prior to his work injury. Most likely he took a direct traumatic hit to the knee during his fall causing this peroneal entrapment. The patient has an objective finding consistent with peroneal nerve entrapment causing a neuropraxia. The patient reports having a direct insult or trauma to the left knee during his work-related fall. The patient's symptoms began on and after the work injury. Patient reports no previous leg symptoms prior to the work injury. Therefore it is within a certain degree of medical certainty that at least 51% of the patient's current symptoms in the left foot resulting from peroneal entrapment are directly related to their work injury.

Dr. Gordon performed the peroneal nerve release on Claimant's left knee on January 29, 2024. Unfortunately, Claimant reported to Gordon on February 7, 2024, that his left lower extremity pain had not changed. In his testimony, Claimant related that this is still true today; he is still suffering from numbness and burning in his leg. Asked if the release did any good at all, Claimant replied: "Well, it took care of the problem in my heel, it seems like, but now it's—it goes plumb to my toes."

On July 3, 2024, Commission granted Claimant a one-time change of physician from Dr. Gary Frankowski to Dr. Shah and scheduled an appointment for him with Shah on July 24, 2024. The report of that visit is quoted extensively above. Asked how he was feeling the day of his appointment, Claimant replied: "I was hurting." He added that he was having the same type of problem that he is suffering from at present: "I doesn't go away." It was Claimant's testimony that he desires the spinal cord stimulator

that Dr. Shah has recommended. He wants it "to get rid of the pain and to get on with [his] life." The initial visit Claimant had with Shah has also been the only one; Respondents have refused to cover any treatment or follow-up with her.

The following exchange took place:

> Q. I want you to tell the judge, Randy, exactly how your back feels right now, your back.
>
> A. Man, it feels like a toothache. It's a[n] aching, burning, throbbing sensation, and it—it—it don't get better. I mean, I'm in—my—my leg hurts from—from—from my belt to my boot. I mean, you know, that's about the easiest way to put it, you know, and it just burns. I mean, man, my—my leg's burning and throbbing right now.

Asked to rate his pain on a scale of one (1) to ten (10), with a ten constituting the worst pain that one could imagine, Claimant initially responded that the pain in his left leg rated twelve (12) and his back, ten (10). Later in the hearing, he revised the leg pain rating to ten (10). He stated that he experiences "bad days" ninety-nine percent (99%) of the time. Claimant states that he walks to help his back, when the weather is fair. His back condition makes it hard for him to sleep.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is

reasonable and necessary for the treatment of a compensable injury. *Brown*, *supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). In order to prove his entitlement to the requested treatment, Claimant must also prove that it is causally related to his compensable injuries of July 6, 2007. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601.

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment, even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; **reducing or alleviating symptoms resulting from the compensable injury**; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex*, *supra*. A claimant is not required to furnish objective medical evidence of his continued need for

medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id*. In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id*.

Claimant's testimony is that the treatment he is seeking—and which he understands that Dr. Shah is recommending—consists of a spinal cord stimulator. The treatment of his stipulated compensable lumbar spine injury that he has undergone includes the surgery that Dr. Seale performed on September 22, 2023. This operation consisted of, inter alia, a fusion and laminotomy at L5-S1. I credit Claimant's testimony that the surgery only partially alleviated his symptoms, and that the pain in his back and into his lower extremity is extremely severe.

Dr. Shah, who is now Claimant's authorized treating physician, has recommended that he undergo a spinal cord stimulator trial, with a neuropsychological screening and a thoracic MRI as precursors thereto. She has opined that the purpose of the course of treatment is "neuromodulation" of the pain that he is suffering as a result of "post laminectomy and chronic pain syndrome." As discussed above, Claimant

did not undergo a laminectomy, which is the "excision of the posterior arch of a vertebra." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 996 (30th ed. 2003). Instead, his procedure was a laminotomy, which involves removal of only a portion of the lamina, or arch. *Id*. This is a difference only as to degree, and thus is not substantive; Shah has rendered the opinion that Claimant is suffering from pain not only related to his work related injury, but as a consequence of the treatment thereof; and she is recommending the stimulator trial and related treatment to address it. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based on the foregoing, I credit her opinion.

Claimant has also proven under *Tenner*, *supra*, that this treatment is causally related to his stipulated compensable injury. Therefore, he has met his burden of establishing that it is reasonable and necessary.

B. Temporary Total Disability

As part of this claim, Claimant has asked that he be awarded additional temporary total disability benefits from the date last paid to a date yet to be determined. Respondents, on the other hand, have asserted that Claimant is not entitled to any more benefits of this type.

The compensable injury to Claimant's lumbar spine is unscheduled. S*ee* Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period

within the healing period in which he has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id*. § 11-9-501(a)(1).

According to Claimant, his entire career has been spent as a mechanic. He never went to college. Claimant has never had a desk job. To the contrary, all of the positions that he has held have required that he be able to lift at least 50 pounds. His position as a "heavy duty mechanic" with Respondent City of North Little Rock was no exception. In fact, in some instances he has had to lift more than 100 pounds while working there. His job was physically demanding in other ways. He had to stoop and crouch at times.

Claimant's testimony was that he was off work for four weeks after his fusion procedure. Thereafter, he returned to work at modified duty. He continued to treat with Dr. Seale while he was seeing Dr. Gordon.

The February 7, 2024, report of Claimant's return visit to Gordon reflects that the doctor released him to return to work on February 8, 2024, with restrictions of no bending or lifting, and no lifting of more than 20 pounds. On April 24, 2024, Seale found that he was at maximum medical improvement and assigned him an impairment rating of twelve percent (12%) to the body as a whole. Respondents accepted this rating and have been paying Claimant permanent partial disability benefits pursuant thereto.

On May 2, 2024, Claimant underwent a functional capacity evaluation. He gave a reliable effort, with 51/51 consistency measures within expected limits. Claimant was

found to have demonstrated the ability to work in the Medium classification, with occasional bi-manual lifting/carrying of up to 50 pounds, lifting/carrying of up to 25 pounds on a frequent basis, and an occasional lifting/carrying of up to 25 pounds by each upper extremity separately. Moreover, he was assessed as being able to engage in the following activities constantly: walking, reaching (immediate and with a five-pound weight), handling, fingering, standing and sitting. Claimant was also found to kneel frequently, and to perform the following occasionally: stooping, crouching, climbing stairs, pushing/pulling cart, and reaching overhead. Based on these findings, Respondents determined that Claimant could no longer do his job for the City of North Little Rock and terminated him. He has not filed for unemployment benefits. Asked why, he replied: "I ain't going to lie to nobody, tell them that I can work when I can't." Notwithstanding this, it was also his testimony that he has not applied for Social Security disability benefits. He explained: "I don't believe in getting disability. I want to have a job. I want to work. I've worked all my life."

The following exchange took place:

Q. Can you work currently?

A. No, sir.

Q. Why not?

A. I can't do the physical part of it. My job demands that you pick things up, that you bend over, you lay down, you crawl under stuff, you crawl in stuff, so it's—it's no longer—I'm no longer physically able to do it.

Q. Okay. Is your physical condition now better, the same, or worse than when they terminated you?

A. Worse.

Q. And how is it worse, Randy?

A. I'm getting fat 'cause I can't work. I don't have—I'm not doing the things that I'm supposed to be doing . . . as far as physically taking care of myself because I can't—my back hurts, my leg hurts, so I'm not able to do it.

The evidence shows that Claimant last received temporary total disability benefits for the period ending February 6, 2024. Thus, he is asking to be awarded additional benefits of this type on and after February 7, 2024. But as of February 8, 2024, he was placed back on modified duty by Dr. Gordon—which are the same restrictions that Seale had assigned him (and Respondents had accommodated)—on October 25, 2023.

Respondents terminated Claimant because they could not meet his permanent restrictions as documented in the functional capacity evaluation. But his termination came after Dr. Seale had released him for being at maximum medical improvement on April 24, 2024, when the doctor also assigned him the permanent impairment rating of twelve percent (12%) to the body as a whole. I credit these findings under *Poulan*, *supra*.

The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Claimant has argued that Claimant did not reach the end of his healing period on April 24, 2024, by soliciting from Dr. Shah an answer of "yes" to the question of whether the trial spinal

cord stimulator—which I awarded above—is "designed to improve [Claimant's] current physical condition." But I cannot and do not credit this. The evidence is clear that the stimulator's purpose is purely palliative in nature. As Carlton explained in her letter, quoted above: "it is the provider's medical opinion that a neuropsychological screening, thoracic MRI, and spinal cord stimulator trial is medically necessary as it could lead to a significant improvement in [Claimant's] functionality and quality of life." Thus, this treatment strictly geared to management of his condition after the end of the healing period, per *Patchell*, *supra*. The preponderance of the evidence establishes that he reached the end of his healing period on April 24, 2024.

That said, based on the foregoing, I find that Claimant has met his burden of proof concerning his entitlement to additional temporary total disability benefits for an additional one-day period: February 7, 2024.

C. Attorneys' Fee

Claimant has asserted that he is entitled to a controverted attorney's fee in this matter. One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). In this case, the fee would be twenty-five percent (25%) of any indemnity benefits awarded herein, one-half of which would be paid by Claimant and one-half to be paid by Respondents in accordance with *See* Ark. Code Ann. § 11-9-715 (Repl. 2012). *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to additional indemnity benefits—including the temporary total disability benefit awarded above. Thus, the evidence preponderates that his counsel, the Hon. Neal Hart, is entitled to the fee as set out above.

## CONCLUSION AND AWARD

Respondents are directed to furnish/pay benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2012).

**IT IS SO ORDERED.**

_____
Hon. O. Milton Fine II
Chief Administrative Law Judge