

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM № H303639

AFRIM RUSHANI, EMPLOYEE

CLAIMANT

NBMC, INC., EMPLOYER

RESPONDENT

**TRAVELERS INDEMNITY CO. OF CT, CARRIER/
THE TRAVELERS INDEMNITY CO., TPA**

RESPONDENT

OPINION & ORDER FILED 26 JUNE 2025

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 2 April 2025 in Little Rock, Arkansas.

The claimant was represented by the Gary Davis Law Firm, Mr. Gary Davis.

The respondents were represented by the Ryburn Law Firm, Mr. Michael E. Ryburn.

STATEMENT OF THE CASE

A Prehearing Order was filed on 28 January 2025 and admitted to the hearing record without objection as Commission's Exhibit № 1. Consistent with that Order, the parties agreed to the following:

STIPULATIONS

1. The Commission has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times, including on 24 March 2023, when the claimant suffered accepted compensable injuries to his back and lower extremity.
3. Temporary Total Disability (TTD) benefits and permanent partial disability (PPD) benefits have been paid by the respondents.
4. The claimant's average weekly wage was \$1,159.89, which would entitle him to weekly TTD benefits of \$773 and weekly PPD benefits of \$580.

ISSUES

1. Whether the claimant is entitled to wage-loss benefits.
2. Whether the claimant is entitled to an attorney's fee.

All other issues have been reserved.¹

CONTENTIONS

The Prehearing Order incorporated by reference the following contentions from the parties' respective prehearing information responses:

Claimant **CONTENDS** that he sustained admitted compensable injuries 24 April 2023. The claim was accepted as compensable. Temporary disability benefits and permanent impairment benefits have been paid. Claimant contends that he is entitled to a wage loss disability determination. These benefits have been controverted for purposes of attorney's fees. Claimant reserves all other issues.

Respondents **CONTEND** that the claimant has a compensable injury. All of the appropriate benefits have been paid. A PPD rating is being paid currently. The claimant has no wage loss.

FINDING OF FACTS AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The Commission has jurisdiction over this claim.
2. The stipulations as set forth above are accepted.
3. The claimant has proven by a preponderance of the evidence that he is entitled to a wage-loss benefit of ten percent (10%) over and above his eight percent (8%) whole-body impairment rating for his stipulated compensable back injury.
4. The claimant has proven by a preponderance of the evidence that he is entitled to an attorney's fee on the indemnity benefits awarded in this opinion.

¹ Whether the respondents are entitled to a credit under Ark. Code Ann. § 11-9-411 against certain long-term disability benefits purportedly owed or payable to the claimant is specifically reserved. See the Preliminary Rulings section below.

PRELIMINARY RULING

Offset / Credit for Long-term Disability Benefits

During the claimant's cross-examination, he testified that he was entitled to receive benefits from a long-term disability insurance policy. He was, however, unable to confidently testify as to any specifics about the policy.

Q: Do you have a long-term disability policy?

A: Not that I know of.

Q: In one of the reports, one of the medical reports it says—dated 7/8 of '24, "Patient did obtain his long-term disability."

A: That was something that we sent in to work and that was what they told us, what we would obtain it.

Q: Did you get it?

A: As of right now, it's still pending.

Q: What kind of disability policy is it when—you said you sent it in to work?

A: They had a disability policy. I don't know if it was through my work or how, they just asked for the documentation; so I sent it to them and I was supposed to hear back from somebody.

Q: And, okay—and back in July of '24 this happened?

A: I can't recall the date.

Q: All right. So you do have a long-term disability and you said you've been approved?

A: As of right now, yes, but nothing has come out of it.

Q: And it's an employer-based—through your employment, they paid for this policy?

A: I'm not sure if it was through my employment or through contribution of what I paid into it.

Q: How much is this long-term disability going to pay?

A: I'm not sure.

[TR at 33-34.]

At the close of the evidence, the discussion turned back to the long-term disability plan and whether the respondents were entitled to an offset.

Mr. Ryburn: Your Honor, I just found out about this long-term disability. That is something, by law, that we could get a credit for, if it's paid for by the employer and I'd like to get some kind of information for you and Gary to see if that's going to be a factor in this case.

...

Mr. Davis: I object to Mr. Ryburn trying to get information into this record, after today, considering that fact that he said he just found out about it, and he could have found about it any time before today, and now, he wants to raise that as an issue that he's entitled to some sort of credit. He doesn't have any evidence that he's entitled to a credit, because he didn't find out about it before today, get the information before today and all the things, which he could have done before today. So, I'm objecting to it.

Judge: So to be clear, what is being asked of me with regard to the potential credit that might be available under some sort of policy?

Mr. Ryburn: I would like to find out number one, did the employer pay for the policy. Number two, is the policy, is it something that has been awarded, but they're taking a credit for workers' comp or whatever, and number—and by the way, the claimant canceled his deposition; so that is a factor to be considered also, but—

...

Mr. Davis: Your Honor, by law, the evidence has to be presented at the hearing.

Judge: Okay.

Mr. Ryburn: We've got evidence. It's been awarded, so.

Mr. Davis: We don't have any evidence. We don't have any evidence.

Judge: Well, his testimony wasn't certain around it.

...

Mr. Ryburn: I think, the law says that the claimant is supposed to disclose that and it wasn't disclosed to me.

Mr. Davis: He didn't ask him.

. . .

Mr. Ryburn: This doesn't have anything to do with the wage-loss claim. This has to do with the statute. It says, "Respondents..."

Judge: I see, he's saying there's a statutory right to an offset.

Mr. Ryburn: Yes.

Judge: And that he wasn't aware of the potential offset, until it was elicited in his testimony, but—

Mr. Davis: Yeah, he—

Judge: I see what you're saying also.

Mr. Davis: He didn't make himself aware.

Judge: Well, I will address that in [the] opinion...

[TR at 55-58, 63.]

As noted in the discussions above, Arkansas law provides for respondents to receive a dollar-for-dollar credit against certain disability benefits paid to a claimant when the policy is paid for by or provided with a contribution from the claimant's employer. Ark. Code Ann. § 11-9-411. In *Brigman v. City of West Memphis*, 2013 Ark. App. 66, 2013 Ark. App. LEXIS 73, the Court of Appeals held that when a respondent-employer paid a portion of a policy premium, the respondent-employer is entitled to an offset against indemnity benefits owed by them to the extent that they contributed. The respondents have the burden to prove their entitlement to an offset by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3).

It is clear from the claimant's testimony that a long-term disability policy and accompanying benefits are at play in this matter. He testified that he has not yet received any of the benefits that he is owed. He could not explain the specifics of the policy structure beyond that his premium payments appeared to be withheld from his regular wages.

The issue of whether they are entitled to an offset was not an anticipated issue in this matter. The respondents' right to an offset is established in the statute. Due to the insufficiency of the evidence available in the record and at the time of the hearing, I am unable to fully address the matter. The issue of the respondents' entitlement to an offset is not yet ripe for adjudication. It is, therefore, reserved for further litigation.

ADJUDICATION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999). 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.*

SUMMARY OF THE EVIDENCE

The claimant was the only witness. The record consists of the hearing transcript and the following exhibits: Commission's Exhibit № 1 (the 28 January 2025 Prehearing Order) and Claimant's Exhibit № 1 (two index pages and 171 pages of medical records).

Hearing Testimony

The claimant is thirty-six years old. He left high school half-way through his sophomore year and has been working manual labor jobs since. The respondent-employer is

in the commercial construction business. At the time of his accepted compensable back and lower extremity injuries, the claimant was working as an assistant jobsite superintendent. His duties included supervising various work crews and performing work alongside them. He testified that the work included bending, stooping, lifting, pushing, pulling, and being on his feet all day. His typical work week averaged between 50 and 55 hours.

On the day he was injured, the claimant was finishing a project at a bank building. He was cleaning up and moving furniture when he felt a sudden pop in his lower back. “As I went to stand up with it, I felt as if something popped and shifted in my lower back and it, instantly, dropped me to my knees. I’ve never felt pain like that. I couldn’t move, couldn’t sit or I was in a squatting position until Jose [his supervisor] pretty much put me in the work truck.” [TR at 15.]

A report from an MRI scan on 4 May 2023 listed mild spondylosis at L5-S1 with disc desiccation and a bulging disc. [Cl. Ex. № 1 at 4.] The claimant experienced severe lower back pain and radicular pain down his left leg. He testified that his treatment included physical therapy, acupuncture, chiropractic sessions, injections, and surgery (a left-sided decompression at L5-S1). An aching pain developed in the claimant’s right leg at some point during the course of his treatments. A trial implantation of a spinal cord stimulator was performed in early 2024, but it was removed the same day due to increased reports of pain.

The claimant testified that he passed all consistency measures during a Functional Capacity Evaluation (FCE) that placed him in a Light Classification for work. Around the same time, he was advised that his job with the respondent-employer could not be held open any longer. He was not offered a light-duty position or vocational rehabilitation services.

According to the claimant, he takes three medications everyday: Pregabalin helps him with nerve pain, spasms, and cramps; Hydrocodone treats pain; and Tizanidine helps

him try to sleep. He can experience side effects from the medications that include forgetfulness, confusion, difficulty concentrating, and restlessness. He spends most days at home and is sometimes unable to get out of bed. Even on “good” days, the claimant is not able to be of much help around the house or with his children due to pain and difficulty getting around. His wife now takes care of most housework, while they shared those responsibilities before his injury. The claimant can drive; but he avoids taking Hydrocodone when he anticipates driving so that he can be more alert. He recently moved his family from the home they owned into a rental to ease the financial burden caused by his inability to earn an income. The family also recently re-homed their two dogs because of the difficulties they encountered in continuing to care for them.

On cross-examination, the claimant acknowledged that he had been assigned and paid an eight percent (8%) impairment to the whole body in connection with his stipulated compensable back injury. He denied looking for employment and said that he cannot think of any work that he can do. The claimant stated that he had applied for and been approved for some sort of long-term disability benefit. He denied, however, that any benefits had been paid on that policy yet; and he was unable to explain any details about the policy beyond thinking that the policy premiums were part the withholdings from his paychecks. He also denied asking any doctor to write a report saying that he could not or should not work.

Respondents’ counsel asked about whether the claimant could perform some different jobs that were listed as light-duty in publicly available postings. The claimant explained the difficulties that he believed he would experience if he were working in those roles. They discussed a letter from Dr. Charles Clifton that suggests that the claimant should not return to work because of his pain medications. [Cl. Ex. № 1 at 171.] That letter refers the reader to Dr. Eugene Becker for further clarification.

When asked whether “anything that has been done alleviated any of your pain,” the claimant answered, “No.” [TR at 44.] He is very limited in his ability to participate in activities in or around the home, to the detriment of his family’s overall wellbeing. He intends to move his family back to Illinois in the future so that they can be closer to the support of other family who live there. He explained that his family relocated to Arkansas after it was recommended that they move his then-one-year-old daughter closer to Arkansas Children's Hospital for treatment she was needing at the time.

Medical Evidence

An X-ray report from 4 April 2023 showed no significant findings for the claimant’s lumbar spine. [Cl. Ex. № 1 at 1.] He presented to Baptist’s Greenbrier Family Clinic on 20 April 2023, when Dr. Charles Clifton noted the claimant’s report of severe pain in his lumbar spine. Dr. Clifton suspected a disc herniation at L4-5, L5-S1 and ordered an MRI scan. [*Id.* at 2-3.] The MRI report included, “IMPRESSION: Mild spondylosis at L5-S1 with disc desiccation and disc bulging but no significant central canal or neural foraminal narrowing.” [*Id.* at 4.]

On 19 May 2023, the claimant was seen by Dr. Drew Beasley at Baptist Health Spine Center. According to that note:

... He states he was lifting a heavy object at work at an awkward angle and started to have pretty severe lower back pain with radiation down the LLE. Called into a[n] Urgent Care that Monday and was provided an anti-inflammatory and some prednisone without relief. No RLE symptoms. Numbness present in the LLE. He feels like he has some issues with dorsiflexion of the left foot. No issues in the past with his type of pain.

[*Id.* at 6-8.] Dr. Beasley referred the claimant to physical therapy and planned a transforaminal epidural injection. The procedure was performed a few days later, on 23 May 2023. [*Id.* at 9-10.]

At a Spine Center follow-up on 16 June 2023, he reported no improvements with physical therapy and only very short-term relief from the injection. [*Id.* at 34.] Dr. Beasley planned to discuss the case and potential surgical options with Dr. Pervie Simpson.

Imaging ordered by Dr. Simpson showed:

1. Small left paracentral protrusion at L5-S1 is again identified with mild contact on the descending left S1 nerve root sleeve.
2. Disc degeneration is seen with midline annular fissure and small central protrusion at L5-S1, as seen on previous.

[*Id.* at 36.]

On 11 July 2023, the claimant saw Dr. Simpson in clinic:

Assessment and Plan:

I do not think that he is a surgical candidate. I am waiting for his nerve conduction studies. I will see him back after that [has] been completed. This gentleman is worried that he is not going to be able to return to heavy manual labor. I explained to him that would be his decision. He knows what is required of him and his job. I agree with radiology[.] I think this is a small disc protrusion that really does not impinge on the S1 nerve root significantly.

Diagnosis:

Lumbar radiculopathy

[*Id.* at 42.]

After undergoing a nerve conduction study, the claimant returned to Dr. Simpson:

... His MRI does show a small disc fragment under the S1 nerve root and EMG/NCS correlates with these findings. He has completed 5 weeks of physical therapy and had a TFESI with Dr. Beasley with no lasting relief. After exhausting conservative measures I discussed with him the option of a left L5-S1 minimally invasive discectomy for decompression of this nerve root and he has elected to proceed.

[*Id.* at 45.]

Dr. Blake Phillips performed the discectomy procedure on 7 September 2023. The claimant followed-up with physical therapy until a 6 December 2023 session when it was

noted, in part, that, “Pt. pain levels have been too severe to make any progress with PT and at this point I do not think it is in his best interest to continue with PT.” [*Id.* at 96.]

The claimant began treating with Dr. Eugene Becker at Proper Pain Solutions on 18 January 2024. He reported his pain at a level of 7 out of 10 that day. The assessment from that visit included:

1. Low Back Pain
2. Intervertebral disc w/radiculopathy, lumbar
3. Postlaminectomy syndrome
4. Other long term (current) drug therapy
5. Long term (current) use of opiate analgesic

[*Id.* at 100.] At a follow-up visit on 23 February 2024, Dr. Becker suggested that the claimant consider a spinal cord stimulator to help control his pain. [*Id.* at 104.]

An MRI report from 22 February 2024 noted:

IMPRESSION:

1. Multilevel degenerative disease.
2. Mild foraminal stenoses bilaterally at L3-4, on the left at L4-5, and on the left at L5-S1.
3. No evidence of frank exiting or transiting nerve root impingement.
4. Normal alignment and no evidence of acute compression deformity.

[*Id.* at 106.]

On 22 March 2024, Dr. Becker performed a trial implantation of a spinal cord stimulator under fluoroscopic needle guidance. According to the notes, the claimant tolerated the procedure well. [*Id.* at 113-114.] But the claimant began experiencing severe pain shortly after the procedure and met Dr. Becker at the emergency department later that evening for removal of the stimulator leads. *Id.*

On 2 April 2024, Dr. Clifton authored a letter that stated:

Afrim Rushani has been followed up by us and Neurosurgery for the ongoing Workers’ Compensation injury that has kept him out of work for an extended time. The patient did have surgery that was unsuccessful and will not be able to return to work until he follows up with Neurosurgery as it may cause much more damage to his back until able to determine what the best course

of action on this is. This may be an extenuated timeframe, and we will update [t]he amount of time off he will need as we get updates from Neurosurgery.

[*Id.* at 118.] Just six days later, on 8 April 2024, Dr. Clifton authored another letter:

Afrim Rushani [has treated] for several months under my care for an injury to his lower back that was sustained while at work. Over the course of this treatment, he has had to have several referrals placed and recently had a surgery that did not improve his condition. At this time it is within my best medical opinion that the patient should be considered disabled due to this condition as he is on a gross amount of medication for pain management. I have attached this list of medications. Please note that these medications, while not prescribed by me, are not doing much to help this patient's symptoms and pain. The patient listed above will not be able to return to work in the foreseeable future until a new treatment plan can be found to improve his symptoms.

[*Id.* at 122.]

The claimant saw Dr. Becker again on 22 April 2024. The note from that visit stated, in part:

The patient had a previous injection. The patient has undergone the following treatments: physical therapy, acupuncture, chiropractor, brace, TENS unit, surgery, epidural steroid injections. The patient has had the following tests performed: MRI. Current medications DO help with his pain. There are no side effects from the medications. He ambulates without any assistive devices...

...

Overall, the patient has achieved maximum medical improvement at this time. So, we will schedule the patient for functional capacity evaluation to determine what his limitations are. Also in terms of logistics, the patient should undergo independent medical evaluation to see if there are any additional recommendations. For right now, we will manage patient's medications. He will follow up in 8 weeks.

[*Id.* at 119, 121]

The FCE was conducted on 29 April 2024. The claimant put forth very reliable effort, "with 49 of 49 consistency measures within expected limits." [*Id.* at 123.] The evaluator concluded that the claimant "demonstrated the ability to perform work in the LIGHT classification of work as defined by the US Dept of Labor's guidelines over the course of a normal 8 hour workday...." The table included in that report listed the following

“Demand Characteristics of Work” for the LIGHT category: Occasional (1-33% of the workday; up to 2 hours, 40 minutes) 11-20 pounds; Frequent (34-66% of the workday; up to 5 hours, 20 minutes) 1-20 pounds; Constant (67-100% of the workday; up to 8 hours) Negligible. [*Id.* at 125.]

In subsequent visit notes, Dr. Becker repeated that the claimant had reached maximum medical improvement. The notes also indicate that the claimant had obtained long-term disability benefits. Then, on 26 September 2024, Dr. Clifton provided another letter:

Afrim Rushani was seen in my clinic on 9/26/2024. He is under my care and also Dr. Becker. He has been put off work indefinitely due to his medical condition. He is under stick medication [sic] which causing him not to be able to drive or work any machinery. He is unable to focus or do any type of work. It is not recommended for him to work at all. Please refer to Dr. Becker for further information to prove this statement.

[*Id.* at 171.]

DISCUSSION

The parties stipulated that the claimant sustained accepted compensable injuries to his back and lower extremity. His back injury is unscheduled. *Cf.* Ark. Code Ann. § 11-9-521. The injury to the claimant’s lower extremity is a scheduled one under Ark. Code Ann. § 11-9-521(a)(3). Wage-loss benefits are only available in relation to unscheduled injuries, like the claimant’s stipulated back injury. *See Federal Compress & Whse. v. Risper*, 55 Ark. App. 300, 935 S.W.2d 279 (1996). His claim for wage-loss benefits must, therefore, be evaluated only in relation to his stipulated compensable back injury.

Wage Loss

The wage-loss factor is the extent to which an injured worker’s compensable injury negatively impacts that person’s ability to earn a livelihood. *Rice v. Ga.-Pacific Corp.*, 72 Ark. App. 148, 35 S.W.3d 328 (2000). “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.” Ark. Code Ann. § 11-9-522(b)(1). A claimant’s motivation to return to work may be considered also. *Rice, supra*. If a work-related injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong the disability or need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). Major cause means something that is more than fifty percent (50%) of the cause. Ark. Code Ann. § 11-9-102(14)(A).

There is no exact formula for determining a claimant’s wage loss. *Hixon v. Baptist Health*, 2010 Ark. App. 413, 375 S.W.3d 690. To be entitled to any wage-loss disability in excess of an impairment rating, the claimant must prove by a preponderance of the evidence that he sustained a permanent physical impairment as the result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 373, 326 S.W.3d 415.

The claimant is thirty-six years old, with a wife and two children. He does not have a college education or even a high school diploma. He has worked as a construction laborer since his teens. The claimant’s family relocated from Illinois to Central Arkansas to be close to treatment available at Arkansas Children’s Hospital that his daughter required in the past. While his most recent job with the respondent-employer included some supervisory responsibilities, the claimant still performed physical labor alongside the various crews he was responsible for overseeing. He has few skills that would translate outside of physical labor on a construction project site.

Multiple conservative therapies were not successful in moderating the claimant's pain. He experienced little relief from a discectomy procedure and believes that he feels constant aching in his leg as a result of the scar tissue that resulted from that surgery. A spinal cord stimulator trial failed within hours after implantation and had to be removed emergently. The records do not reflect any other surgical options that are likely to provide relief from the claimant's constant pain. Multiple letters from Dr. Clifton state that the claimant's ability to work is very limited because of his pain management medication and that he should be considered disabled due to his symptoms and/or side effects from his medication.

While the claimant's FCE put him in the Light Classification, he testified to his perceived difficulty in performing jobs that fall into that category. He acknowledged not seeking any work since he was let go from his job with the respondent-employer, and I do not find him to be very motivated to return to the workforce. I believe that this is likely because of his lack of experience and unfamiliarity with anything outside of the realm of physical labor and on-site construction work. Nonetheless, I believe his explanation about the difficulties he and his family have experienced because of his inability to work in the only trade he has ever known. The claimant testified that he did not take some of his pain medication on the day of the hearing (1) so he would be more alert driving between his home in Greenbrier and Little Rock and (2) so he was less likely to experience some of the fogginess and forgetfulness that he sometimes experiences on his medication. Having not taken some of his usual medication, he was clearly in pain and struggled to find any seated position that he could maintain for any length of time. His limitations on some or all of his medication will make his return to work difficult even in the Light Classification.

The record shows that an eight percent (8%) whole-body impairment rating was assigned to the claimant and paid by the respondents in connection with the claimant's

stipulated compensable back injury. The issue here is whether the claimant is entitled to any wage-loss benefits over and above his assigned and accepted rating. I find that the claimant proved by a preponderance of the evidence that he is entitled to a wage-loss benefit of ten percent (10%) in excess of his impairment rating. I also find that his stipulated compensable back injury is the major cause of the wage loss.

Attorney's Fee

The claimant has proven by a preponderance of the evidence that he is entitled to wage-loss benefits. He has consequently proven by a preponderance of the evidence that he is entitled to an attorney's fee on the benefits awarded in this opinion.

CONCLUSION & AWARD

The claimant has proven his entitlement to the indemnity benefits outlined above. The respondents are directed to provide benefits accordingly. All accrued amounts shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid. Ark. Code Ann. 11-9-809. *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

The claimant's attorney is entitled to a twenty-five percent (25%) fee on the benefits awarded herein. One-half (1/2) of the fee is to be paid by the claimant, and one-half (1/2) of the fee is to be paid by the respondents, consistent with A.C.A. §11-9-715. *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2012).

IT IS SO ORDERED.

JayO. Howe
Administrative Law Judge