

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H107721**

ANDREW VAN LENTE, EMPLOYEE

CLAIMANT

**CITY OF WARD,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARK. MUNICIPAL LEAGUE,
THIRD-PARTY ADM'R**

RESPONDENT

OPINION FILED NOVEMBER 12, 2025

Hearing before Administrative Law Judge O. Milton Fine II on August 14, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 14, 2025, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on June 2, 2025. 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. After amendments thereof at the hearing, they are the following, which I accept:

VAN LENTE – H107721

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer/third-party administrator relationship existed on September 17, 2021, when Claimant sustained multiple compensable injuries, both of a scheduled and an unscheduled nature, when he was struck by a motor vehicle.
3. Respondents have accepted this claim as compensable and paid medical and indemnity benefits pursuant thereto, including a combined values rating of nineteen percent (19%) to the body as a whole that was assigned by Functional Testing Centers, Inc. Thereafter, based on a March 12, 2025, report by Dr. Barry Baskin, Respondents accepted additional impairment ratings equivalent to nine percent (9%) to the body as whole.

Issues

The parties discussed the issues set forth in Commission Exhibit 1. After an amendment at the hearing, the following were litigated:

1. Whether Claimant is entitled to higher impairment rating(s), and additional permanent partial disability benefits pursuant thereto, in connection with his stipulated compensable injuries.
2. Whether Claimant is permanently and totally disabled or, in the alternative, entitled to wage loss disability benefits, in connection with his stipulated compensable injuries.
3. What was Claimant's average weekly wage?

4. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

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

Claimant:

1. Claimant contends that he sustained injuries to his head, neck,¹ left arm, left shoulder, back, bilateral pelvis, right leg, right ankle, and right foot in the course and scope of his employment on about September 17, 2021. He was a pedestrian and was struck by a fast-moving vehicle on highway 67/167, resulting in numerous injuries all over his body. Respondents have accepted the claim and paid temporary total disability benefits, plus some medical expenses.
2. Respondents miscalculated the claimant's average weekly wage and compensation rates, resulting in an underpayment of indemnity benefits. He was earning \$17.00 per hour at the time of his injury. The wage records furnished by Respondents show that he worked 2,264.50 hours over the 52 weeks preceding his injury, which equal to 184.5 hours of overtime. Also during that 52-week period, he received two bonuses

¹Claimant in his testimony denied that he suffered any head or neck injury. See *infra*.

totaling \$500.00. The calculation of $(\$17.00 \times 2080) + \$4,704.00 + \$500 \div 52 = \780.00 . This results in compensation rates of \$514.00/\$386.00.

3. Claimant further contends that he is entitled to the underpayment of indemnity benefits based on the foregoing, along with a controverted attorney's fee thereon. He was given a nineteen percent (19%) impairment rating to the body as a whole for the combination of his impairments for his upper body, shoulder, pelvis, and gait derangement, which Respondents accepted.
4. Claimant contends that he is entitled to additional impairment in accordance with the Fourth Edition of the AMA Guides, per the report of Dr. Barry Baskin.
5. Also, Claimant contends that he is permanently and totally disabled or, in the alternative, entitled to wage loss disability benefits. His attorney is entitled to a controverted attorney's fee thereon.
6. All other issues have been reserved.

Respondents:

1. Respondents contend that they have accepted this claim as compensable and have not controverted his right to any benefits. Claimant was found to be at maximum medical improvement on November 8, 2023. He was assessed a 19% impairment rating to the body as a whole on February 5, 2024. This rating has been accepted, and permanent partial disability benefits are currently being paid therefor. Claimant, through his attorney,

requested that Dr. Baskin evaluate him for a permanent impairment rating. The doctor issued a report on March 12, 2025, in which he opined that the original rating of nineteen percent (19%) included a fifteen percent (15%) rating for gait derangement. In his report, Dr. Baskin stated that a rating based on gait derangement is only to be used when there is no other means to assess an impairment rating. He reviewed the EMG/NCV studies done in 2022, and concluded that they provide other means to assess Claimant's impairment. According to him, Claimant has a twenty-four percent (24%) impairment rating to the body as a whole for his left lower extremity injury. The doctor specifically stated in his report, "using the nerve conduction studies and rating Mr. Van Lente on those as opposed to using a gait derangement abnormality which is a stand-alone rating does provide [him] with a 9% whole person impairment more than [the] rating on the gait derangement alone." Respondents previously accepted and paid the nineteen percent (19%) rating, which was for the fifteen percent (15%) gait derangement, one percent (1%) to the shoulder, and two percent (2%) for the pelvic injury. Respondents accepted and have paid this additional nine percent (9%) impairment as assessed by Dr. Baskin. Respondents contained that they relied upon the impairment rating as issued on February 5, 2024, and approved by Dr. Regis Renard on March 6, 2024, in good faith. Claimant made a formal request for a new or additional evaluation for an impairment rating. Upon being presented

with Dr. Baskin's additional rating, Respondents accepted and paid the additional nine percent (9%) as assessed by him.

2. Claimant has also requested permanent and total disability benefits, or in the alternative, wage loss disability benefits. While his physicians have opined that he may not be able to return to work as a police officer, no physician has opined that he is permanently and totally disabled. The functional capacity evaluation revealed that he is capable of working in a medium duty job classification. Respondents obtained a vocational assessment evaluation. This evaluation revealed that he has many transferable skills, and identified numerous sedentary and light-duty jobs for which he was qualified. Therefore, Respondents also contend that Claimant is not permanently and totally disabled, nor has he sustained substantial wage loss disability, if any.
3. With respect to the average weekly wage issue, the Form AR-W prepared by Respondents has one typographical error: Line 19 should read \$1,609.50 instead of \$1,509.50. The 52 weeks preceding Claimant's injury are otherwise accurately reflected on that form. Claimant received a raise during that period. Pursuant to *Lankford v. Crossland Constr. Co.*, 2011 Ark. App. 416, 2011 Ark. App. LEXIS 451, the proper method to account for this is to use all of the earnings and then divide by 52. As for Claimant's bonuses, they were excluded from the calculation because they were considered fringe benefits under *Taylor v. Lubritech*, 75 Ark.

App. 68, 54 S.W.3d 132 (2001). Finally, Claimant only worked about 10.5 to 12 hours of overtime in the year preceding his injury. Many of the hours that he is terming “overtime” were not considered as such and were not compensated as such. Taking all of this into account, his average weekly wage was actually \$701.48, yielding compensation rates of \$468/\$351.00.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the 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 failed to prove by a preponderance of the evidence that he is entitled to impairment ratings in addition to and/or higher than those set forth in Stipulation No. 3, *supra*.
4. Claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled.
5. Claimant has proven by a preponderance of the evidence that he has sustained wage loss disability of fifteen percent (15%).

6. The preponderance of the evidence establishes that Claimant's average weekly wage was \$699.57, entitling him to compensation rates of \$466.00/\$350.00.
7. Claimant has not proven by a preponderance of the evidence that he has been underpaid indemnity benefits based on a miscalculation of his average weekly wage.
8. Claimant has proven by a preponderance of the evidence that his attorney, the Hon. Andy L. Caldwell, is entitled to a controverted fee on the indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

Along with 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 three index pages and 421 numbered pages thereafter; Claimant's non-medical records, consisting of one index page and 32 numbered pages thereafter; Claimant's Exhibit 3, the previous Prehearing Order plus the prehearing questionnaire responses of the parties, consisting of 11 pages; Claimant's Exhibit 4, the August 12, 2025, email from Claimant's counsel to Respondents' counsel concerning the bases for the former's calculation of his client's average weekly wage, consisting of one page; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting

VAN LENTE – H107721

of two index pages and 101 numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of one index page and 50 numbered pages thereafter.

Adjudication

A. Permanent Partial Disability Benefits

Introduction. As reflected in Stipulation No. 3, Claimant was assigned impairment ratings equal to nineteen percent (19%) to the body as a whole by Functional Testing Centers, Inc. ("FTCI"), on February 5, 2024. Thereafter, on March 12, 2025, Dr. Barry Baskin authored a report in which he assigned permanent impairment ratings equivalent to an additional nine percent (9%) to the body as whole. Respondents have accepted the aforementioned ratings, which when combined amount to twenty-eight percent (28%) to the body as a whole; and have been paying Claimant permanent partial disability benefits pursuant to this.

In this proceeding, Claimant is seeking to be awarded permanent ratings higher than that accepted by Respondents, and permanent partial disability benefits thereto, in connection with his stipulated compensable injuries of September 17, 2021. Respondents dispute that Claimant is entitled to any ratings/benefits over and above that which they have already accepted.

Standards. Permanent impairment, generally a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Pursuant to Ark. Code Ann. § 11-9-522(g) (Repl. 2012), the Commission adopted the AMERICAN MEDICAL ASSOCIATION, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (4th

ed. 1993) (hereinafter “AMA Guides”) as an impairment rating guide. See AWCC R. 099.34. A determination of the existence or extent of physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2012). “Objective findings” are “those findings which cannot come under the voluntary control of the patient.” *Id.* § 11-9-102(16)(A)(i). Permanent benefits are to be awarded only following a determination that the compensable injury is the major cause of the disability or impairment. *Id.* § 11-9-102(4)(F)(ii)(a). “Major cause” is defined as “more than fifty percent (50%) of the cause,” and a finding of major cause must be established by a preponderance of the evidence. *Id.* § 11-9-102(14). This standard 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).

Any medical opinion concerning impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B) (Repl. 2012). It should be noted, however, that in interpreting this provision, the Arkansas Supreme Court in *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001) stated: “This court has never required . . . that the magic words ‘within a reasonable degree of medical certainty’ even be used by the doctor.”

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).

VAN LENTE – H107721

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.*

Evidence². Claimant testified that at the time of his September 17, 2021, accident that is the subject of this litigation, he had been employed as a police officer for Respondent City of Ward for approximately six years. Asked how he got hurt, he related:

I was coming back from Cabot on 67/167 North . . . around 6:00 o'clock, 7:00 o'clock [p.m.], I believe I was just coming back from lunch. I had just spoken with the night shift officer. He said he was going to go grab lunch. I was like, "Yeah, go ahead. I'm on my way back now." I drove up on a State Police vehicle on the left side of the road along with—I don't recall if it was two or three other vehicles around Mile Marker 21, and I stopped to assist him if he needed assistance, try to manage traffic a little bit. I stopped on the right side, and I remember backing up quite a ways to try to slow traffic—slow traffic down before they got there. The last thing I remember was exiting the car, and the next thing I remember was feeling uncomfortable and couldn't really see or hear, and I knew something happened, something was wrong, but I didn't know what. I had no idea what had happened.

Later, Claimant learned that he had been struck by an automobile.

He was taken by air ambulance to the University of Arkansas for Medical Sciences ("UAMS"), where he stayed for five or six days. Asked to list the parts of his body that were injured, Claimant related that his pelvis, right leg and ankle, left arm, left

²The evidence discussed in the context of this issue also has bearing on the issue of whether Claimant is permanently and totally disabled, or entitled to wage loss disability benefits. See *infra*.

VAN LENTE – H107721

shoulder, and left hip had been hurt. Following his hospitalization, Claimant went to a rehabilitation center for a month.

It was Claimant's testimony that he was non-weight-bearing for five to six months. He developed a pressure sore on the back of his right heel because his cast was too tight. Due to disuse, his right foot turned inward.

On cross-examination, Claimant stated that his most recent surgery, to correct his foot inversion, did not help. He is still suffering from pain in that extremity. His foot drop is due to nerve damage that he suffered when he sustained a fracture just below the knee when he was struck by the vehicle.

Claimant in his testimony recounted that the multiple injuries that he sustained in the accident at bar included a fracture of the left humeral head, a fracture of the posterior iliac of the sacroiliac joint, a fracture of the right pubic bone, three fractures of the right lower extremity, multiple fractures of his right foot. While initially hospitalized, Claimant underwent three separate surgeries to stabilize his hip/pelvis, to stabilize and fix his right lower extremity and foot, and to place a pin in his arm. Claimant acknowledged that he was "very fortunate" that the above were his only injuries, considering that he was struck by a vehicle moving at high speed. His neck, back, and internal organs were not harmed, nor did he suffer any amputations or paralysis. When he left the hospital, it was on a stretcher because he had to be non-weight-bearing due to his pelvic injuries. Later, he remained non-weight-bearing on his right leg. While his medical records reflect that his foot drop condition has improved slightly, Claimant took issue with this.

The medical records in evidence show that Claimant presented on September 17, 2021, to UAMS as a Level 1 Trauma patient after being struck by a motor vehicle at highway speed. Examination showed him to have, inter alia, compression of the iliac crests and symphysis pubis, along with “significant deformity” of the right lower extremity. A tourniquet had been applied to the right leg prior to Claimant’s arrival at the hospital. After being given Ketamine for pain, he became disoriented and combative. As a result, he had to be intubated so that his scans could be completed. He was assessed as having the following:

- Comminuted left humeral head fracture
- Left posterior iliac fracture extending into the sacroiliac joint with possible subtle buckle fracture of the left sacral ala [sic]
- Right ischia ramus buckle fracture
- Right pubic body fracture without pubic diastasis
- Comminuted and distracted right tibia and fibular fractures
- Comminuted smashed right midfoot and forefoot fractures
- Minimal asymmetric facet widening [sic] right C5-6 likely degenerative given facet and uncal [sic] hypertrophy resulting in severe right NF stenosis
- Possible injury of right popliteal artery vs. basal spasm³

The CT scan of Claimant’s left upper extremity showed a “[c]omminuted mildly displaced and impacted humeral neck fracture with comminution involving the lesser and greater tuberosities.” The more extensive findings of the scan of his right lower extremity were the following:

Findings consistent with Lisfranc injury with multiple displaced comminuted fractures of the tarsals and metatarsals along the

³Another record from UAMS references Claimant having a fracture of the right femur. However, the balance of the records is silent about this, and Claimant did not reference this in his hearing testimony.

VAN LENTE – H107721

tarsometatarsal articulations. Associated subluxation and dislocation involving all tarsometatarsal articulations as described above.

Additional fractures of distal 3rd and 5th metatarsals.

Distal tibial fracture with stabilizing intramedullary nail partly visualized.

An x-ray of that lower extremity revealed:

Again noted is mildly comminuted and displaced fracture of the head and neck region of the right fibula. There is comminuted fracture of the distal shaft of the tibia with butterfly fragment posteriorly. There is also impacted and displaced fracture of the junction of the proximal and mid shaft of the tibia.

X-ray of the pelvis reflected a fracture of the pubic bone on the right side of the junction with the superior pubic ramus. A CT scan of Claimant's cervical spine showed degenerative changes at multiple levels, including moderate severe left neural foraminal narrowing at C4-5, severe right neural foraminal narrowing at C5-6, and moderate left C6-7 neural foraminal narrowing.

Claimant was given units of blood. An intramedullary rod with proximal and distal interlocking screws were surgically installed in Claimant's right fibula on September 19, 2021. As part of that surgery, a wound on his calf was irrigated and debrided. Claimant also underwent an open reduction/internal fixation of his proximal humerus fracture, and a pelvic percutaneous fixation, on September 20, 2021. Later, on September 23, 2021, Claimant underwent a right mid-foot fusion.⁴ Dr. Renard performed all of these surgeries.

⁴One of the pre-and post-operation diagnoses listed in the report on the mid-foot fusion is "acute kidney injury." There are references to it elsewhere in Claimant's records that are in evidence. But he did not mention it in his testimony; to the contrary,

VAN LENTE – H107721

A note by LMSW Carmen Coody at UAMS reflects that Claimant “state[d] he struggles with anxiety, depression and PTSD since childhood and is receive[n]g medication management and therapy.” His patient history includes the following reference: “PSH of lumbar fusion.”

On September 27, 2021, Claimant was discharged from UAMS and transported by ambulance to Lonoke Heath and Rehabilitation, a skilled nursing facility. Dr. Carlos Roman evaluated him on October 4, 2021. His report reads in pertinent part:

The patient is a 46-year-old gentleman. He is a police officer. He was working the scene of an accident when a truck hit him directly. He was the pedestrian in a motor vehicle accident. He had multi-orthopedic trauma to include severe right humerus fracture, closed crush injury to his right foot, closed pelvic fracture, and right proximal severe open tibia fracture. He was taken to UAMS Orthopedic Trauma. He was seen by Dr. Renard. He initially underwent surgery on the pelvis with placement of a pin. He underwent iliac sacral screw placement and reduction and internal fixation of the left humerus by way of a Delta pectoral incision. They used to [sic] fibular straight autograft.

On September 19, 2021, his right tibia fracture was treated with intramedullary rod placement. He also underwent I&D [irrigation and debridement] of a wound from a posterior calf soft tissue trauma.

He also had Lisfranc fracture of the mid foot on the right with crush injury of the first through third metatarsal. He underwent reduction and internal fixation of the foot on September 23, 2021.

He suffered an acute kidney injury and kidney contusion. There was no other visceral trauma.

He is currently in a rehab facility. He remains non-weight-bearing. He is on a stretcher. He can sit up for just a few minutes at a time due to the pain in his pelvis. He is completely non-weight-bearing on the right leg.

he stated that he suffered no damage to any of his internal organs as a result of being struck by the automobile. Regardless, he was not assigned a permanent impairment rating in connection with it, and has not requested that the Commission do so.

VAN LENTE – H107721

The left leg had an ankle sprain, but was spared any major trauma. His left arm is in a sling.

Prior to the injury, he had previous lumbar fusion and decompressive surgery. He was a legacy opiate patient. He was on oxycodone, 10 mg tablets, four times a day prior to the injury. He was also on antidepressants prior to the injury. He had some pre-existing opiate tolerance that obviously poses some challenges as far as making sure he gets appropriate pain control, and making sure he gets a great rehab and gets the best possible outcome from this injury.

Dr. Roman adjusted Claimant's medications and assessed him as having:

1. Multi-orthopedic trauma
2. Pelvic fracture
3. Right tibia fracture
4. Crush injury to right foot
5. Left humerus fracture
6. Legacy opiate patient
7. Opiate dependency

On September 28, 2021, Claimant returned to UAMS for evaluation by Dr.

Renard's office. The report reads in pertinent part:

1) Closed segmental right tibia and fibula fractures complicated from foot drop likely from proximal fibular neck fracture with displacement at time of injury. He has healed his road rash and surgical wounds. His sutures can be removed. It is too soon to begin weight bearing on the right lower extremity for about 8 weeks. We will monitor his foot drop, however, it is possible that he will require perm[anent] foot bracing with ambulation. Followup in 4 weeks with repeat radiographs of the right tibia and fibula.

2) Crush injury about the right foot s/p Lisfranc arthrodesis and pinning of the lateral TMT joints. Sutures can be removed. He will be placed into a short leg cast for the next few weeks. It is too soon to begin weight bearing on the right lower extremity. Likely about 8 weeks until advancing weight bearing. Follow up in 4 weeks with radiographs of the right foot out of the cast and likely removal of the right foot pin. I anticipate that the patient will have some perm[anent] degree of dysfunction about the right foot given the amount of crush injury and fractures about his foot once he obtains maximal medical improvement.

VAN LENTE – H107721

3) Pelvic ring injury s/p percutaneous fixation. I will allow the patient to post and pivot with full weight on the left lower extremity at this time. He is not allowed to try to formally ambulate on the left lower extremity as he cannot bear any weight on the right lower extremity at this time and I do not want him to accidentally hop on the LLE. Follow up in 4 weeks with radiographs AP, Inlet, Outlet views of the pelvis, and probably advancement to full weight bearing on the left lower extremity.

4) Left proximal humerus fracture: encourage ROM of the left shoulder. Active motion for ADL's of the left elbow, wrist and hand. Followup in 4 weeks with repeat radiographs of the left shoulder and likely advancement to 5 pounds weight bearing on the left upper extremity and increase in active shoulder motion and strengthening with therapy. I anticipate that he will have a certain degree of left shoulder stiffness after the injury and surgery, however with aggressive therapy I hope we can minimize his future shoulder dysfunction.

- Overall he is unable to resume any work at this time secondary to his multiple injuries. Until he has better function of his LUE would I consider allowing desk duty.

- Pain as per pain provider is recommended. I can provide temporary pain medication if needed.

On October 13, 2021, Renard wrote that he was keeping Claimant off work until his November 10, 2021, reevaluation. Dr. Roman saw Claimant again on November 1, 2021, and noted that because Claimant was already a patient at his clinic and had been taking opiates before the accident, he would have drug tolerance and a need for more opiates than a typical patient. Per his visit to Dr. Renard's office on November 2, 2021, Claimant developed a decubitus ulcer on his injured foot and discoloration of the toes on that same foot. He developed MRSA (methicillin-resistant staph aureus) in that lower extremity and was treated with antibiotics. On November 10, 2021, Renard increased Claimant's weight restrictions to 10 pounds on his left upper extremity, but kept him non-weight-bearing on his right lower extremity. His left shoulder was injected.

VAN LENTE – H107721

The doctor kept him off work an additional four weeks. Dr. Roman on November 23, 2021, noted that Claimant has fibular nerve palsy along with numbness and tingling in his feet. Per wound care notes on November 24, 2021, his ulcer and toe discoloration improved.

On December 8, 2021, Dr. Renard wrote that Claimant could return to light duty immediately with the following restrictions: “desk duty only, no lifting over 25 lbs., left upper extremity, non-weight bearing right lower extremity. Please allow for assistive devices, i.e., wheelchair.” He saw Renard for a 14-week follow-up on January 5, 2022. The doctor noted that he had removed the percutaneous pins from Claimant’s foot during his last visit. Claimant requested another shoulder injection. Renard allowed him to be full weight-bearing with his left upper extremity. However, Claimant was to remain non-weight-bearing on his right lower extremity. He was prescribed a PRAFO (pressure relieving ankle foot orthosis) to address his foot drop. The doctor stated that Claimant could perform desk duty if available and perform “[e]ssentially computer work only and answering phones/emails, etc.” Dr. Roman saw Claimant again on January 19, 2022, and noted that his right lower extremity showed “significant edema” along with “some calf atrophy.”

Dr. Renard revisited Claimant’s restrictions on February 9, 2022, giving him a 25-pound lifting restriction for his left upper extremity and “desk duty only.” During Claimant’s five-month follow-up appointment on February 23, 2022, Renard found him to be doing “fairly well,” and stated that “[h]e can advance his weight-bearing continue with therapy. The report continues in pertinent part:

VAN LENTE – H107721

5 months s/p right Midfoot arthrodesis and pinning. Debridement and intramedullary fixation of complex segmental right tibia fracture. This point does appear this is associated with a posterolateral corner injury. Additionally he has a decubitus ulcer on his heel with some backup. We will get a[n] order for a KAFO with an open [sic] he will see if this helps. He can weightbear in this brace. So [sic] get a bone stimulator to see with the most distal aspect of his tibial fracture to heal without surgical intervention.

...

The patient will likely be a maximal medical improvement (MMI) in about 4 months['] time (assuming he heals his tibia fracture, however if he requires surgical revision of his right tibia for nonunion MMI will be about 9-12 months from surgical revision) ultimately MMI is going to depend on how his healing of his right foot drop proceeds.

Dr. Baskin conducted a second opinion evaluation of Claimant on March 16, 2022. His report reads in pertinent part:

IMPRESSION:

Mr. Van Lente is a nice gentleman referred for evaluation of polytrauma dating back to September 17, 2021, from a pedestrian versus motor vehicle accident. He has had neuropsychological evaluation, and I do not have that report. He has had previous head trauma as a child. He has had previous poly trauma otherwise. From the accident September 17, 2021, he has had a fracture of the left proximal humerus that is status post ORIF. He has had pelvic fractures status post pinning, and an SI joint screw, it appears. He has had segmental fractures of the right tibia and fibula status post repair. He has had a peroneal nerve palsy. He has a previous history of back pain, neck, pain, and some headaches. Neuropsychological test results are not available.

PLAN: I am hopeful he will get some return of his peroneal palsy, although this was a fracture dislocation of the proximal fibula, and the nerve could have been stretched significantly. Reportedly, the surgeon said it was not severed. We will eventually get nerve conduction studies done. He is going to get a KAFO to help with his ambulation on the right lower extremity. This will be a double metal upright that will spare pressure to his heel. He does have a pressure sore that was nearly healed, but now has come back. He sees Wound Care, and his wife is helping manage the wound.

. . .

We will get him set up for EMG and nerve conduction studies down the road a ways. For now, I think just clinical observation will be most appropriate. He will continue his counseling with Mr. Knott in Conway. I would like to look at his neuropsychological evaluation. Cognitively he seems to be pretty much intact at this point. CT of his head and neck were negative for acute findings. He did have some moderate severe neural foraminal narrowing in the cervical spine. I will see him back and follow up in about a month or so. I will follow him along. At some point, he will need an impairment rating. I do not think he is ready to go back to work just yet. Dr. Renard has released him to 50 percent weightbearing to the right lower extremity. He is complaining of feeling unstable in the right knee. I did not do a detailed knee evaluation today. He is still under follow up with Dr. Renard and the orthopedic group. The knee will have to be addressed. He had a lot of bone trauma and soft tissue injury that are certainly still in the works. I will look forward to seeing him back and follow-up in about a month or so.

Dr. Renard on April 20, 2022, again wrote that Claimant could return to desk duty. Twelve days later, on May 2, 2022, he again operated on Claimant, performing the following procedures:

1. Removal of deep hardware from the right tibia for the purpose for dynamization of the nonunion
2. Right fibula osteotomy
3. Bone marrow aspiration with injection to the right tibia nonunion
4. Partial excision of right hallux toenail for treatment of infected ingrown toenail

Claimant underwent a nerve conduction study on May 18, 2022. The report by Dr. Michael Chesser reads:

Severe combined right common peroneal and posterior tibial traumatic neuropathies. There was no residual innervation detected in the right peroneus longus, and < 25% estimated residual innervation in the tibialis anterior. There was - 25 to 50% residual innervation in the gastrocnemius. The emg needle exam of the right vastus lateralis and biceps femora was normal.

Dr. Renard saw Claimant on May 18, 2022, and again wrote that he could return to desk duty. The next day, May 19, 2022, Claimant again saw Dr. Baskin and reported that his ankle dorsiflexion was improving. The doctor wrote that Claimant “is making progress but is still not ready to go back to work yet.” He recommended that Claimant undergo an MRI of his right knee. That MRI, which took place on June 2, 2022, showed no evidence of a meniscal tear or ligament injury, but did reveal degenerative findings. Baskin’s June 23, 2022, report includes the following statement: “He is interested in going back to work, and I think we are about there.” Claimant continued in pain management and in physical therapy. Dr. Roman wrote on July 27, 2022:

He is a legacy opiate patient. He was on Percocet, 10mg tablets four times a day prior to the injury and we have brought that back down to his baseline. I would prefer to challenge that ever lower but that was pre-existing. Whether that continues to be covered by Workers’ Compensation or not, we will see. Opiate counseling was done. I would love to see him at a lower dose for just general health reasons and to maintain effectiveness of the opiate.

Dr. Baskin on August 8, 2022, wrote: “Mr. Van Lente has completed his driving evaluation and passed. It is okay for him to return to work at his recommended restrictions, and it is okay for him to drive.” Renard concurred on August 24, 2022, stating that Claimant “should continue work with current restrictions.” In a contemporaneous document, the doctor clarified that Claimant should be working no more than four hours a day, and added: “He is ambulating better with the AFO [ankle foot orthosis] and modified shoe wear. His main issue is residual swelling. He may benefit from lymphedema clinic evaluation and treatment so I will order the

VAN LENTE – H107721

consultation.” Dr. Baskin followed up on this on October 13, 2022, ordering Lympha Press garments for Claimant.

Claimant returned to Renard’s office on November 23, 2022. The note of that visit reads in pertinent part: “Will give patient updated PT order to transition to work hard therapy program. Will update work note to light duty with 6 hour limit.” Baskin reported on December 21, 2022, that Claimant was “doing some work hardening with Functional Testing Centers” and was “making steady progress.” After seeing him on January 9, 2023, Dr. Roman wrote:

He has returned to work. He has a six-hour work limit. He is on a more of a light-duty with his foot and ankle, mostly doing paperwork there. I think for him it has been improvement for him mentally. He has a strong desire to get back in the work force. He is still struggling with the footdrop.

On March 1, 2023, Claimant returned to Dr. Renard and reported that he had not only been driving but had been working desk duty for four hours a day. The report continues in pertinent part:

IMAGING AND DIAGNOSTIC RESULTS My interpretation of outside and our radiographs today demonstrate some interval healing of the distal segment of the right tibia fracture with stable hardware, no gap about this site after dynamization with some evidence of healing of the fibular osteotomy and potential bony changes where the tibia is now loading at previous gap site. Healed right midfoot fusion. Healed left proximal humerus fracture with area of some impaction about the greater tuberosity. Healed pelvic ring.

ASSESSMENT Mr. Van Lente is here today for routine re-evaluation 10 months after most recent surgery for his left [sic] tibia nonunion with dynamization, bone marrow aspiration and injection to the nonunion site and right fibular osteotomy and months after index surgery. He has some impingement/rotator cuff symptoms about the left shoulder and I offered an injection to the left shoulder. He can work some more with therapy for rotator cuff strengthening in the future if he has issues and is to be

VAN LENTE – H107721

considered for arthroscopy or other procedures about the left shoulder I would recommend Dr. Justin Rabinowitz, our shoulder specialist as this is a more complex issue than I think a sports surgeon could completely treat.

He continues to ambulate reasonably with the AFO and modified shoe wear. His residual swelling seems to be controlled with compression sock and therapy. I think the dynamization is healing with smoothening of the fracture lines and healing of fibula osteotomy site. He can continue desk duty work if available working no more than 4 hour shifts with accommodations for his crutches/walker.

As he had done previously, Renard upon request administered an injection into Claimant's injured shoulder to address pain issues that the doctor ascribed to "post-traumatic arthritis."

When Claimant saw Dr. Baskin on April 4, 2023, he reported that he was now working at desk duty for up to six hours a day. He noted that Claimant's use of the Lympa Press could impact the number of hours he could be at work, and added: "Dr. Renard has released him to full weightbearing and has allowed him to walk some out of the AFO, but he has not done much of that yet. I am pleased with his progress and he is as well." Renard on May 3, 2023, officially increased Claimant's work restrictions to up to six hours per day. The doctor added that Claimant "[m]ay stand, and walk as tolerated for tasks."

Dr. Baskin as part of a follow-up visit with Claimant on July 25, 2023, wrote:

PLAN:

I recommend that Mr. Van Lente increase his work to 7 hours a day, up to 35 hours a week. I do not believe he is ready to go on patrol at this point due to potential risk to himself and others if he does. He is a veteran police officer. I believe he should continue to go to the gym and work on his lower extremity strengthening. I think his AFO currently is appropriate for him. I am not sure he will ever be able to return to patrol duty at this point.

On August 9, 2023, Dr. Renard stated that Claimant “is essentially at MMI at this time,” but added that he could nonetheless require additional bracing, injections and other procedures in the future. The report contains an addendum that reads: “The patient requests Bridle tendon transfer surgery after he tried AFO modifications and it failed to produce the results that he had hoped it would achieve. Will find a date to schedule.” The doctor also authored a note that states:

It is my medical opinion that Mr. Andrew Van Lente is cleared to work 7 hours per shift. He may increase his hours by one hour per shift as tolerated up to 12 hours per shift. He may revert his work hours to the 7 hour minimum if working more than 7 hours per shift is not well-tolerated. The length of his shifts may vary day-to-day as determined by Mr. Van Lente’s perception of his ability to tolerate work that day, but each shift should be a minimum of 7 hours.

On October 2, 2023, Dr. Renard again operated on Claimant, performing the following procedures:

1. Right posterior tibial tendon transfer to dorsal midfoot
2. Tenodesis of the right peroneus longus to brevis
3. Transfer of the right peroneus longus to the dorsal midfoot
4. Removal of deep hardware from the right midfoot cuneiforms

Seeing him on October 11, 2023, Renard wrote that Claimant had been taken off work from the date of surgery until the date of the appointment; and that he was restricted to desk duty “until cleared.” On November 8, 2023, this restriction was continued, along with the notation that Claimant was not allowed to drive until he could be tested for driver safety. He was sent back to physical therapy.

VAN LENTE – H107721

Casey Garretson, Occupational Therapist, evaluated Claimant on February 5, 2024, for the purpose of assigning him a permanent impairment rating. His report summarizes:

[Claimant] has sustained 2% UEI [upper extremity impairment], 1% WPI [whole-person impairment] for his left shoulder injury, a 15% WPI for his right lower leg injuries and a 2% WPI for his pelvic injury.

According to the [American Medical Association] Guides [to the Evaluation of Permanent Impairment, Fourth Edition] these are combined using the combined values chart on page 322, resulting in a 19% Whole Person Impairment as a result of his work injury that occurred on 09-17-2021.

On March 8, 2024, Dr. Renard opined that Claimant reached maximum medical improvement as of November 8, 2023. Claimant told Renard on July 24, 2024, that “he may work as an instructor for EMS.” That record continues: “He can perform as much duties with his right lower extremity as possible with AFO.” Renard warned that Claimant

may require additional procedures, injections or simply therapy for exacerbations. He may require new braces in the future or even additional fusion procedures about there [sic] right foot/ankle over time. He ultimately may need to consider changing occupation based on the final limitations.

Dr. Renard on September 18, 2024, wrote that Claimant was directed to use the Lympha Press on a “PRN basis as need during non work hours.”

In the most recent report by Dr. Roman that is in evidence, dated December 11, 2024, he wrote in pertinent part:

HISTORY OF PRESENT ILLNESS:

...

He developed a chronic foot drop. They did a tendon transfer by Dr. Renard last year, which did help with the dorsiflexion. He has got some better use of the foot, but it is still unstable with lateral motion, so a lot of pain in the joint, itself. At this point, he is at maximum medical improvement. He does not need any further surgeries and none are scheduled. He does use an AFO device on the right foot at times, but the tendon transfer I think was of benefit. It did not help the pain as much as I think he wanted, but the function is definitively there. He does not have to use an AFO device as much. The pain level right now, is about a 5/10. Overall, I think he is doing well. No skin breakdown issues. He had a heel ulcer there for a while and that has healed up. He has got a lot of scarring areas, and we make sure he does hygiene checks.

MEDICATIONS: He gets Percocet 10 mg tablets, dispense 90 per month, clonazepam 1 mg tablets, dispense 60 per month, and lidocaine patches 5%. I will increase that to 60. He puts them on that ankle inside of his hip and does get good relief with them. He does have a lymphedema machine at home to help keep the lymphedema in the right lower extremity down. I do recommend that he could use that three times a day versus twice a day. He does one hour sessions with that, but it does keep the posttraumatic lymphedema down. So, we discussed that as well.

REVIEW OF SYSTEMS: There is no major change in his medical health systems. He does struggle with depression. He has got some posttraumatic stress disorder from the injury as well. He did apply for Social Security Disability, which he was definitely a legitimate applicant and did get approved, which I think is definitely the right thing. He had a life-changing injury.

PHYSICAL EXAM: He is alert, oriented, well developed, well nourished, gentleman. Height 6 feet 2 inches, weight 260 pounds, O2 saturation 97%, heart rate 82, respiratory rate 14. Cranial nerves II through XII grossly intact. Ambulating today without an assistive device. The right foot, he deals with some chronic lymphedema there, decreased range of motion of the ankle on extension and flexion. But he does have better dorsiflexion of the foot since the tendon transfer. The bone alignment looks fairly well. He has got significant scarring areas over the foot. He has got a slight varus deformity with ambulation. No skin breakdown issues. The pain in the left hip and pelvic area. Incision over the

VAN LENTE – H107721

deltopectoral groove from the humerus fracture over the right shoulder. No skin breakdown issues. Peripheral pulses are palpable.

DIAGNOSIS:

1. Multi-orthopedic trauma
2. Long-term opiate use
3. Opiate use by way of oxycodone
4. Footdrop, right side
5. Chronic pelvic pain
6. Left-sided pelvic fracture
7. Chronic posttraumatic lymphedema, right lower extremity
8. Crush injury, right foot

Likewise, Dr. Baskin's most recent report, dated March 12, 2025, bears quoting at length (with emphasis added):

SUBJECTIVE: Mr. Van Lente is back in for follow up. He has had a right ankle tendon surgery by Dr. Renard in October of 2023 to help him better stabilize the ankle and also to help him try to evert the ankle a bit better. He was rolling his ankle over laterally due to weakness in his ankle everters. He had a right great toenail removal at the same time and the nail has grown back. He did not go back to work after his surgery. He states that the employer said that they had him on a temporary job and the job was essentially eliminated per his he [sic] and his wife's description today. He said they had nothing for him to do and he is not able to go out on patrol. He has had Functional Capacity Evaluation with Functional Testing Centers on 2/5/2024 with Casey Garretson, Occupational Therapist. I noted that he was referred for an impairment rating. The injuries included right open proximal tibia fracture with comminuted tibial shaft fracture with residual foot drop with peroneal nerve palsy from proximal neck fracture/displacement.

Injury #1 was intermedullary fixation of right tibial fracture, sharp excision debridement of skin and subcutaneous tissues of the right posterior calf wound by Dr. Renard 9/19/2021.

Injury #2 was a closed crush injury with several metatarsal and tarsal fractures on the right foot. Procedure was open treatment of right 1st through 3rd tarsometatarsal joint injuries with a Lisfranc arthrodesis procedure and also percutaneous treatment of the right 4th and 5th tarsometatarsal joint fracture/dislocations. Nonoperative treatment of the

VAN LENTE – H107721

right lesser metatarsal neck fractures 2nd, 3rd, 4th and 5th toes with Dr. Renard 9/23/2023.

Injury #3 he had removal of deep hardware from the right tibia for the purpose of dynamization of the nonunion. He had right fibular osteotomy, bone marrow aspiration with injection of the right tibia nonunion, partial excision of the right hallux toenail for treatment of infected ingrown toenail by Dr. Renard on 5/2/2022. He had wide posterior tendon tibial tendon transfer to the mid foot with tendonesis of the right peroneus longus and brevis tendon, transfer of the right peroneus longus to the dorsal midfoot, removal of deep hardware of the right midfoot. This was the most recent procedure done on 10/2/2023 with Dr. Renard. The other injury was a closed pelvic disruption. He had percutaneous fixation of posterior pelvic fracture, open treatment with plate and screw fixation of left proximal humerus fracture 9/20/2021 with Dr. Renard.

Injury #4 was a closed left commuted proximal humerus fracture and he underwent reduction internal fixation of left proximal humerus by Dr. Renard. He was noted on the Impairment Evaluation with Casey Garretson to have continued functional difficulty with walking and reaching overhead with his left upper extremity.

Andy continues to complain of swelling in the right lower extremity and foot. This is primarily from the knee down. He still wears Lymphapress garments. **He states he is using the Lymphapress garment three times a day. We discussed whether three times a day was absolutely an indication or not and I do not really see a huge advantage to using the Lymphapress three times a day. That would potentially knock Andy out of going back to work unless he was able to use the Lymphapress on the job.** Again, he has not worked since his most recent surgery. His Impairment Rating from Casey Garretson was 2% upper extremity impairment equal to a 1% whole person impairment for the left shoulder injury, 15% whole person impairment for his right lower leg injuries, and a 2% whole person impairment for his pelvic injury.

Mr. Garretson used gait derangement noted in his report that Mr. Van Lente had a 15% whole person impairment writing due to his antalgic gait and the fact that he has to wear an ankle foot orthosis. He noted in his report that Mr. Van Lente did have objective physical findings that are consistent with his AFO use requirement. He noted that Mr. Van Lente did have a documented peroneal nerve injury stemming from his tib/fib dislocation and fracture, but he noted that in his opinion, this was not

rateable using the guides in an objective manner as manual muscle testing is subjective.

I went back and looked at the EMG and nerve conduction studies that I ordered and had done with Dr. Mike Chesser, Little Rock Neurologist, on May 16, 2022. Andy did not have any recordable latency of the right peroneal nerve at the ankle, fibular head or popliteal fossa and no recordable right tibial motor nerve at the ankle or popliteal fossa. He had no recordable sural nerve potentials at the right ankle. He had 3+ denervation potential positive sharp waves in the right tibialis anterior, 4+ in the right peroneus longus. This was felt to be confirming of a peroneal nerve palsy and a posterior tibial nerve palsy. Dr. Chesser's impression was severe combined right common peroneal and posterior tibial dramatic neuropathies. There was no residual innervation detected in the right peroneus longus and less than 25% estimated residual innervation in the tibialis anterior. There was approximately 25-50% residual innervation in the gastrocnemius. EMG of the right vastus lateralis and biceps femoris above the knee were normal. This indicates that the injury was related to the tib/fib fractures and not higher up than the sciatic nerve. The findings on Dr. Chesser's EMG Nerve Conduction Studies are objective. Mr. Van Lente may have gotten a little bit more return of the posterior tibial nerve with plantar flexion but his dorsiflexion is still minimal. He had to have tendon transfers to help him with eversion due to no significant peroneal muscle function.

We went over his findings on the Impairment Rating, and the fact that he has never gone back to work. He will be 50 next month. He is a fairly large man, tall statured, and I do not see him going back to work as a police officer on patrol with the nerve injuries that he sustained. He has continued to have weakness in the dorsiflexion of the right ankle and some weakness in the plantar flexion and eversion of the right ankle. **He has sensory deficits in the peroneal and posterior tibial distribution including the medial and lateral planter branches by my exam today. This is consistent with the recordings done by Dr. Chesser on my referral. He does have objective findings that can be rated using Table 68 impairments from nerve deficits on page 89 of the Fourth Edition Guides. Based on his common peroneal nerve injury, he would have a 15% whole person impairment equal to 42% impairment for the lower extremity based on peroneal nerve deficits for motor loss. He would have an additional 8% whole person impairment equal to 5% lower extremity impairment for his persistent sensory loss. He has had trouble with getting blisters on his foot and has had persistent edema likely related to the nerve injury and**

resultant venous stasis disease. He would also have 4% impairment due to his tibial motor nerve in the form of 2% to the medial plantar branch and 2% to the lateral plantar branch both the terminal nerves for the tibial motor nerve in the leg. He would have sensory loss from both of those nerve[s] as well [as] 2% to the whole person, 5% to the lower extremity, total[ing] 4% for sensory loss. If he is rated on objective findings and the results of his EMG nerve conduction studies by a Board Certified Neurologist Dr. Chesser, he would have 17% whole person impairment based on his common peroneal nerve injury that is combined with 8% of the tibial motor nerve including the medial and lateral plantar nerves, which are the terminal nerves in the foot. 17% combined with 8% using the combined values chart on page 322 would yield a 24% impairment to the whole person based on Mr. Van Lente's right lower extremity fractures and resultant nerve injury. Using the nerve conduction studies and rating Mr. Van Lente on those as opposed to using a gait derangement abnormality, which is a stand alon[e] rating does provide Mr. Van Lente with a 9% whole person impairment more than rating on the gait derangement alone. In my opinion, this is a more accurate rating. The gait derangement is again only used when there are no other means to objectively rate these injuries.

Mr. Valente and I discussed him returning to work as a police officer and I think that is unlikely unless he has some sort of modified duties such as criminal investigation or administrative-type role. I do not believe he is ever going to be able to go back on patrol. He is still requiring Lymphapress for post traumatic venous stasis issues in the right leg. This diagnosis has not been confirmed with Doppler exam or objective findings but clearly he has had swelling as his injury has not rated him on that. I think the neurologic rating on the posterior tibial nerve and its terminal branches as well as the common peroneal nerve injury are accurate and reliable. **The gait derangement rating is not needed or valid given the previous nerve conduction studies by Dr. Chesser.** I did not see any other changes that would be recommended in the impairment rating that was given by Functional Testing Centers. I think it is unlikely that Functional Testing Centers had the EMG nerve conduction studies that were ordered by me in May of 2022.

With regards to the Lymphapress, schedule two times a day versus three times a day, I do not feel it is absolutely indicated that he use the Lymphapress three times a day. That might free him up to take a job that otherwise would not be available to him just for the Lymphapress application one more time daily.

Discussion. The Commission may determine its own impairment rating under the AMA Guides, rather than simply assessing the validity of the ratings that have been assigned. *Avaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003). However, after closely reviewing the evidentiary record in light of the AMA Guides, I am unable to pinpoint a single instance where Claimant's compensable injuries were unrated or underrated. 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). I credit the opinion of Garretson regarding his rating of Claimant's shoulder and hip/pelvic injuries; and I credit Dr. Baskin regarding his rating of Claimant's right lower extremity injuries.

In sum, Claimant has failed to prove by a preponderance of the evidence that he is entitled to impairment ratings in addition to and/or higher than those set forth in Stipulation No. 3, *supra*.

B. Permanent and Total Disability/Wage Loss Disability

Introduction. Claimant has contended that as a result of his compensable injuries, he is permanently and totally disabled. In the alternative, he has asserted that he is entitled to wage loss disability benefits over and above his impairment ratings discussed above. Respondents have argued otherwise.

Standards. As the parties have stipulated, the September 17, 2021, accident caused Claimant to suffer multiple compensable injuries. Some of these injuries—

VAN LENTE – H107721

namely, the ones to his right lower extremity and foot—were scheduled. See Ark. Code Ann. § 11-9-521(a)(4), (11) (Repl. 2012). The others—specifically, those involving his left shoulder and his hip/pelvis, were unscheduled. Cf. *id.* § 11-9-521. The term “permanent total disability” is defined in the statute as “inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.” *Id.* § 11-9-519(e)(1) (Repl. 2012).

Claimant’s entitlement to wage loss disability benefits is controlled by Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2012), 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.

See *Curry v. Franklin Elec.*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). Such “other matters” include motivation, post-injury income, credibility, demeanor, and a multitude of other factors. *Id.*; *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961). As the Arkansas Court of Appeals noted in *Hixon v. Baptist Health*, 2010 Ark. App. 413, 375 S.W.3d 690, “there is no exact formula for determining wage loss” Under § 11-9-522(b)(1), when a claimant has been assigned an impairment rating to the body as a whole, the Commission possesses the authority to increase the rating, and it can find a claimant totally and permanently disabled based upon wage-loss factors. *Cross v. Crawford County Memorial Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996).

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 permanent physical impairment as a result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). In considering factors that may impact a claimant's future earning capacity, the Commission considers his motivation to return to work, because a lack of interest or a negative attitude impedes the assessment of his loss of earning capacity. *Id.* The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). Finally, Ark. Code Ann. § 11-9-102(4)(F)(ii) (Repl. 2012) provides:

- (a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.
- (b) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a 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.

"Major cause" is more than fifty percent (50%) of the cause, and has to be established by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(14) (Repl. 2012). "Disability" is the "incapacity because of compensable injury to earn, in the same or any

VAN LENTE – H107721

other employment, the wages which the employee was receiving at the time of the compensable injury.” *Id.* § 11-9-102(8).

Evidence. The testimony of Claimant was that prior to his going to work for the City of Ward, he was employed for 11 years as a part-time police officer for the City of Austin. Prior to this, he worked as an auxiliary policeman for another municipality. He also held a full-time and a part-time job as a paramedic for a number of years. Claimant has taken and completed courses to be a paramedic/EMT, as well as in the areas of law enforcement and respiratory therapy. He is certified as a paramedic as well as a respiratory therapist.

Because of the condition of his right ankle, he has to wear a brace. It, in turn, hooks into a special shoe that he must wear because of ever-present swelling in his right foot and his difficulty in controlling the toes of that foot. Claimant elevates his right lower extremity because failure to do so causes swelling and discoloration in that foot. The swelling presses on the joints and nerves in that extremity.

In dealing with the swelling of his right leg due to the accident, he treats with a Lympha Press. This device is a sleeve that goes over his leg and alternates creating and releasing pressure on that extremity for an hour. He uses the press three times a day—once each in the morning, afternoon, and evening. In an effort to help him obtain a job by minimizing the time conflict, he has attempted to reduce his use of the device to twice a day. However, this has been unsuccessful; when he has tried this, his swelling and pain have increased. He has daily pain in his right ankle and foot. Despite use of

VAN LENTE – H107721

the special shoe and brace, his gait is unsteady and has been altered. Climbing stairs is difficult, as is squatting and kneeling.

Currently, Claimant also uses a TENS unit. It helps him to flex his right foot upward by aiding with muscle stimulation. The purpose of this is to treat his foot drop.

Claimant now returns to his orthopedist, Dr. Renard, once a year. He sees Dr. Roman every three months for pain management. His medications include Zoloft, Wellbutrin, Mirtazapine, Tizanidine, Percocet, Clonazepam and Lidocaine patches.

According to Claimant, he returned to work at light duty in August or September of 2022. His hours were gradually increased by Dr. Baskin. The City of Ward accommodated his restrictions and allowed him to go home to use the Lympha Press. Including the drive time to and from his home and changing clothing to use the device, this treatment would take 105 minutes. The light-duty work that Claimant was assigned consisted of scanning old case files—which he completed in approximately one year, and then conducting background checks and scanning in contact cards, which took about a month. Thereafter, Claimant underwent corrective surgery on his right foot. But once he was ready to return to work after this procedure, the city had no more light duty available to him. Thus, he has not gone back to work.

Asked if he agrees with the opinion of the vocational expert, Dr. Melissa Jones Wilkins, that he cannot do his past work, Claimant responded:

Yes . . . I'm not able to—I'm not able to run, I'm not able to do what they call explosive movement as far as go from a run to a walk, to a dead stop, move side to side. I guess it's called a juke. I'm not able to do any of that. Lifting would be an issue because of—you know, a lot of lifting you do with your legs.

It is his belief that he would need accommodations at any place of employment. He would need to be able to elevate his right foot and use the Lympha Press. His employer would have to allow him to use Percocet—a narcotic pain medication that he takes three times a day.

Claimant related that he tries to perform at least one task per day around the house—be that dusting, loading the dishwasher, or performing laundry. Because of the condition of his right leg, he can only be on his feet doing chores for 10 minutes at a time before the pain necessitates that he sit down. After 30 to 40 minutes of recuperation, he is ready to resume activities. As a result, the length of time it takes him to perform a given task has increased significantly.

On cross-examination, Claimant acknowledged that he was already on Percocet for chronic pain and on anti-depression medication, including Zoloft, prior to the accident. He was also being medicated for post-traumatic stress disorder and underwent a microdiscectomy before sustaining his compensable injuries. Claimant uses the Lympha Press three times per day: once in the morning, once mid-day, and once in the evening. He explained that he is able to tolerate the 12-hour stretch between his evening treatment and his first one the next day because he elevates his leg at night. He was prescribed a Lympha Press because his physicians decided that it was more efficient for him to undergo treatment of his lymphedema at home. The Lympha Press motor is 12 by 14 inches. The device is portable.

VAN LENTE – H107721

Claimant agreed that before his most recent surgery interrupted it, he was being trained by the City of Ward to be a dispatcher. While he described the process as “difficult,” he agreed that he was able to perform as a Level 1 dispatcher. Had he finished his training, however, he would not have been able to do this job for the city because dispatching services were going to be reassigned to a statewide call center.

At present, Claimant is still employed with the City of Ward. The police chief informed him that while he is not working, he is being “kept on the books” until the current litigation is at an end. Claimant agreed that Respondents do not have a job that fits his accommodations because the city is limited by its budget and the number of employees it can have. The testimony of Claimant is that he has been approved to receive Social Security Disability benefits. He has informed the city of that, and of his intention to continue on disability and not come back to work.

However, Claimant acknowledged that he has “never passed up an opportunity” to attend school. While he is not currently certified to be a respiratory therapist, this could be rectified with additional schooling. But he expressed doubts about his ability to be in this line of work because it would require a lot of walking. Apart from the walking issue, which he conceded that an employer could conceivably accommodate with alternate transportation, Claimant was asked if he could physically perform the job of a respiratory therapist in a patient’s room. He responded:

I’d say most of it. Some of it would require me standing for a long period of time, like if the patient’s been ventilated or if I’m doing a—an assessment on them. Some patients need a little bit more time than others. Some it’s educational, so there would be a lot of standing and a lot of walking.

Later in his cross-examination, the following exchange occurred:

Q. But you would agree with me that if the walking were accommodated, you can do certain jobs, right?

A. Correct.

He confirmed that when Dr. Baskin first released him to return to work, he was restricted to working four hours a day. But this was increased to the point that he was working eight hours a day, and being accommodated with his need to travel home during the middle of the day to have a Lympha Press treatment. While the ankle foot orthosis device that he wears helps some with this, he is still limited somewhat in his ability to walk.

Claimant does not think that he will have to undergo any additional surgical procedures; nor does he think that he will need any more MRIs, despite the fact that his MSA report in evidence envisions both of these possibilities. While he still sees Dr. Roman every three months, he has not returned to Dr. Baskin since March 2025.

Claimant performs household chores “[i]n small intervals.” These tasks include laundry, vacuuming, and carrying in groceries. He conceded that while he has no problems sitting for extended periods of time, he has not applied for any jobs. His explanation was, “I haven’t really known of anything that’s come open.” According to Claimant, he was not provided a copy of his vocational evaluation. He was unaware of the jobs that the evaluator identified in the report as ones that he potentially would be qualified to have. Shown that there were jobs on the report that paid from \$16.00 to \$20.00 per hour, Claimant confirmed that that range included what he had been making

VAN LENTE – H107721

for the City of Ward. He agreed that with respect to those jobs that required that he talk on the telephone and review reports, he is capable of doing these things. While Claimant testified that he would love to teach paramedics, he added that such positions are very rare.

It was Claimant's testimony that he has not seen the report of his functional capacity evaluation. He was not aware that he demonstrated the ability to perform work in the Medium category. Claimant is still being paid permanent partial disability benefits in accordance with the ratings he was assigned out of that evaluation.

Under redirect-examination, Claimant stated that while he took medication for chronic pain prior to suffering his compensable injuries, the dosages have increased as a result. Now, they cause him to have dizziness and difficulty concentrating. With respect to the potential jobs for him listed in Wilkins's report, Claimant insisted that he could not possibly take any of them without two accommodations: that he could elevate his right leg and be able to use the Lympha Press in the middle of the day. He added that, regardless, he had not been offered any of those jobs. However, Claimant agreed with the vocational evaluator's opinion that his need for use of the Lympha Press in the middle of the day is a "complicating factor" and a "barrier" to his resuming work outside the home. Claimant offered that his use of narcotic pain medication would also be a "complicating factor."

The following exchange took place during the recross-examination of Claimant:

Q. You have multiple certifications proving your ability to learn new job tasks, requirements, correct?

VAN LENTE – H107721

A. Correct. I rarely passed on an opportunity.

In addition to the medical records discussed above, the other documents in evidence that bear on this issue include the functional capacity evaluation of Claimant that was conducted on February 5, 2024. As a result, Claimant gave a reliable effort, with 51/51 consistency measures within expected limits, and demonstrated the ability to perform work in the Medium category.

Melissa Jones Wilkins, Ph.D., conducted a vocational evaluation of Claimant. In her report thereon, dated May 30, 2024, she wrote the following summary of her findings:

Mr. Van Lente's previous positions have consisted of MEDIUM and VERY HEAVY labor. At this time, Mr. Van Lente has demonstrated capacities after his 2021 injury. As a result, he is limited to primarily medium level work with limited use of his left shoulder and right ankle. With these restrictions, he will be unable to return to previously held occupations. Based only on the work-related capacities, as measured solely by the FCE, if he is able to perform work outside of his home, at the sedentary to light level his annual earnings capacity is estimated in the range of \$16.37-\$20.70 (median \$18.57) per hour per OES data and \$13.14-\$23.00 (median \$16.90) per hour per labor market research.

In vocational rehabilitation, counselors need to rehabilitate the "whole person," which involves looking at the physical, psychological, and social effects of the disability (Browden et al., 2002; Hartley & Tarvydas, 2022). One important need for Mr. Van Lente is the ability to return to his home in the middle of the day to do his lymphedema treatment. This need is not factored in if one relies solely on the FCE for limitations for Mr. Van Lente. This is a complicating factor in barrier to Mr. Van Lente working outside of the home. In this vocational scenario, Mr. Van Lente would need the accommodation of leaving work in the middle of the day to complete his lymphedema treatment in a timeframe that would go beyond the typical lunch hour. This treatment, according to Eric Jones, RN, CCM, was ordered by Dr. Baskin on October 13, 2022. Remote work, or work from home, maybe his best option in this scenario. Through a labor market survey, jobs were located that paid \$16-\$27.27 per hour (median \$23 per

VAN LENTE – H107721

hour). If Mr. Van Lente is able to work full-time, his earnings capacity would be \$47,840 annually and if he is able to work part time due to lymphedema treatment, his earnings capacity is estimated at \$23,920 per year.

Discussion. The evidence reflects that Claimant is a high school graduate. He worked for a number of years as a police officer. In addition, he has been employed as a paramedic. Claimant has taken and completed courses to be a paramedic/EMT, as well as in the areas of law enforcement and respiratory therapy. He has held certifications to be a paramedic and a respiratory therapist.

On September 17, 2021, he was struck by a vehicle traveling at highway speed. This resulted in his being airlifted to UAMS, where he underwent surgeries on his left shoulder, pelvis, and right lower extremity as detailed above. Thereafter, he underwent physical therapy.

With respect to his aforementioned unscheduled injuries, Claimant reached the end of his healing period and was assigned permanent impairment ratings on this by Garretson: one percent (1%) to the body as a whole for his left shoulder injury, and two percent (2%) to the body as a whole regarding his pelvic injury. Following his shoulder surgery, Claimant was treated with injections to address his pain on more than one occasion.

To put it mildly, Claimant's right lower extremity condition has been addressed less successfully. The specifics of that treatment, which has included three surgeries, have been explained. Despite multiple operations conducted by Dr. Renard, Claimant has been left with a right leg beset by, inter alia, nerve damage and lymphedema. The

VAN LENTE – H107721

resulting pain is addressed with opiates, while the lymphedema is treated with applications of the Lympha Press three times a day. He wears an orthotic device. Despite this, he is still able to engage in household activities such as laundry and vacuuming—albeit it at a slower pace.

Claimant's medical history reveals that he was already using Percocet (Roman in his notes refers to him as a "legacy opiate patient") for chronic pain before the accident in question. Moreover, he already had anxiety, depression, and PTSD. Despite these things, until he was struck by the vehicle, he had been able to function in the workforce, including as a law enforcement officer and as an EMT.

Eventually, while Claimant was still undergoing treatment of his compensable injuries, he was released to light duty. His restrictions were gradually lessened. While still working for the City of Ward, he was able to function successfully in a desk job, doing such tasks as digitizing records. His success in this endeavor resulted in his running out of tasks that comported with his restrictions. He was also training to be a dispatcher before a change in programs kept this from proceeding further.

An issue cited by both Claimant in his testimony and Dr. Wilkins in her vocational evaluation as a barrier to his obtaining full-time employment is his use of the Lympha Press during the middle of the day. While Claimant was still working for the City of Ward, he would travel home at mid-day to use the device. In so doing, he would change his clothing and use the device before heading back to the office. I am aware that Claimant testified that he needs this third treatment to help with pain and swelling. Dr. Roman echoed this, writing: "I do recommend that he could use that [the Lympha

VAN LENTE – H107721

Press] three times a day versus twice a day.” However, Dr. Baskin was of a different opinion:

With regards to the Lymphapress, schedule two times a day versus three times a day, I do not feel it is absolutely indicated that he use the Lymphapress three times a day. That might free him up to take a job that otherwise would not be available to him just for the Lymphapress application one more time daily.

After due consideration, I credit Dr. Baskin’s opinion on this. I also note that the device in question is portable; although a large amount of the time spent on his use of it during the middle of the day is travel to and from his home, the evidence does not support the finding that he must undergo this treatment at home as opposed to suitable site in the workplace.

With respect to Claimant’s vocational evaluation, I note that he testified that he was never informed of the substance of Wilkins’s report. She noted that his “previous positions have consisted of MEDIUM and VERY HEAVY labor.” His functional capacity evaluation, as detailed above, showed that he demonstrated the ability to perform work in the Medium category. Dr. Wilkins agreed with Baskin that Claimant could never return to being an officer on patrol. But she did identify work that he could perform within the results of his FCE, and concluded: “If [Claimant] is able to work full-time, his earnings capacity would be \$47,840 annually and if he is able to work part time due to lymphedema treatment, his earnings capacity is estimated at \$23,920 per year.”

As Claimant readily conceded in his testimony, he has “never passed on an opportunity” to further his education. While he felt that he could obtain the training to be gainfully employed as a respiratory therapist, his difficulties walking and standing would

pose formidable obstacles to his being able to navigate a healthcare center and attend to patients properly. Despite this, he acknowledged that any walking requirements were accommodated, he could do certain jobs.

Claimant has been approved to receive Social Security Disability benefits. After consideration of the evidence, particularly his testimony, I do not find that he is motivated to return to the workforce. The evidence at bar compels a finding that he has not proven that he is permanently and totally disabled.

The question remains, however, whether he is entitled to wage loss disability benefits. In analyzing this sub-issue, I cannot take into consideration any scheduled injuries. For that reason, I must confine my analysis to his unscheduled injuries. Taking them into account in light of the above legal standards and evidence, the preponderance of the evidence establishes that he has sustained wage loss in the amount of fifteen percent (15%). Moreover, his compensable unscheduled shoulder and hip/pelvic injuries are the major cause of this disability.

C. Average Weekly Wage

In determining the average weekly wage of a claimant, Ark. Code Ann. § 11-9-518 (Repl. 2012) gives the following guidance:

- (a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of accident and in no case shall be computed on less than a full-time workweek in the employment.
- (2) Where the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period not to exceed fifty-two (52) weeks preceding the

VAN LENTE – H107721

week in which the accident occurred and by multiplying this hourly wage by the number of hours in a full-time workweek in the employment.

- (b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.
- (c) If, because of exceptional circumstances, the average weekly wage cannot be fairly and justly determined by the above formulas, the commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

The term “wages” is defined in Ark. Code Ann. § 11-9-102(19) (Repl. 2012) in pertinent part as follows:

“Wages” means the money rate at which the services rendered is recompensed under the contract of hiring in force at the time of the accident including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer

Evidence. Claimant testified that at the time he was injured, his job title with the City of Ward was Senior Patrolman. He was a shift supervisor with patrol duties. He worked 12-hour shifts there. This consisted of three 12-hour shifts and four 12-hour shifts every two weeks, or 84 hours during that period. His testimony was that he worked overtime:

There would be times I'd have to work late. I'd usually turn my radio on about an hour before I'd go in while I was getting ready. That dictated how quick I needed to get ready. Depending on what was going on, I may have to go in early.

On April 21, 2021, he received a pay raise; his hourly rate was raised from \$14.99 to \$17.00. Overtime was paid at 1.5 times the hourly rate.

VAN LENTE – H107721

However, on cross-examination, Claimant acknowledged that the payroll records in evidence reflect that in the year prior to his injury, his hourly rate actually was \$14.38 until it became \$14.99 in January 2021. The following exchange took place:

Q. And because you worked less than 40 [hours] one week and more than 40 the next week, that was considered regular time if you worked 36/48, correct?

A. I'm under the impression that we—the eight hours was built-in overtime since it was on a different week.

When shown his payroll records, however, he agreed that his compensation was as outlined in the above question; because he was paid every two weeks, with one week under 40 hours and the second above 40, he was not paid overtime for an excess the second week provided that the total for the two-week period did not exceed 80 hours. He conceded that he never took issue with the amount that he was paid.

Under further examination by his attorney, Claimant acknowledged that while he worked overtime, he was not paid accordingly.

The records in evidence show that in the year preceding the injury, in addition to his straight pay and overtime, he was paid \$250.00 in “Longevity Pay” and \$250.00 as a “Year-End Bonus.”

Discussion. Claimant's Form AR-W that is in evidence is not broken down into 52 weeks. Instead, as discussed at the hearing, it is broken down into the 26 2-week pay periods that comprised the year preceding his injury. Even a casual glance at the data presented on the form shows two anomalies. First, in contrast to his testimony on cross-examination, his hourly rate was not as stable as presented. Per the Form AR-W,

VAN LENTE – H107721

his rate for the first seven pay periods was \$14.38 before it dropped to \$13.88 for the eighth and then rose to \$15.17 for the ninth. Thereafter, it held at \$14.99 for the next three pay periods before returning to the \$15.17 figure for—again—just one period. Thereafter, it held steady at \$17.00 per hour for nine pay periods before increasing to \$18.59 for the final one. Second—and more troubling—is the fact that the payment of overtime to him was not at all consistent. Claimant worked in excess of 80 hours in each of the 26 2-week periods in question. Per Claimant’s testimony elicited on cross-examination, he should have been paid overtime during each of these periods because he would have worked in excess of 40 hours a week. But per the Form AR-W, in only five periods was he paid overtime. The most amazing instance comes at Line 19 of the form. This line reflects that during the two-week period in question, he worked 108.75 hours—and yet was paid no overtime. Based on the evidence adduced at the hearing, I credit the Form AR-W as correctly reflecting what Claimant was paid during the period at issue.

That said, the issue of whether Respondent City of Ward may have broken state and/or federal law by not paying Claimant overtime when it perhaps should have is not before the Commission. The instant analysis is undertaken strictly to determine what Claimant was paid during the year before he was hurt—not what he perhaps should have been paid. Only the former question is relevant in determining the amount of his average weekly wage under the Arkansas Workers' Compensation Act.

VAN LENTE – H107721

As for Claimant's two bonuses, they have been held to be fringe benefits that are not to be included in the average weekly wage calculation. See *Taylor v. Lubritech*, 75 Ark. App. 68, 54 S.W.3d 132 (2001).

Employing the analysis set out in § 11-9-518 (see *Lankford v. Crossland Constr. Co.*, 2011 Ark. App. 416, 2011 Ark. App. LEXIS 451) shows that during the one-year period in question, Claimant earned regular pay totaling \$35,729.84. This amount, divided by 52, equals \$687.11. This amount in turn—when added to the amount of overtime he earned over the same period, \$647.90, divided by 52 to equal \$12.46—results in a sum of \$35,729.84. The evidence preponderates that this is Claimant's average weekly wage, yielding compensation rates of \$466.00/\$350.00.

The payout history that is in evidence reflects that Respondents have been paying Claimant indemnity benefits at the rates set out above. For that reason, Claimant has not proven by a preponderance of the evidence that he has been underpaid benefits of this type.

D. Controversion

Introduction. Claimant has asserted that he is entitled to a controverted attorney's fee in this matter.

Standard. 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

VAN LENTE – H107721

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).

Discussion. The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to the additional indemnity benefits awarded herein. Thus, the evidence preponderates that his counsel, the Hon. Andy L. Caldwell, 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