

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. G903306**

DALE BRYANT, EMPLOYEE	CLAIMANT
CITY OF NORTH LITTLE ROCK, SELF-INSURED EMPLOYER	RESPONDENT NO. 1
ARK. MUN. LEAGUE, THIRD-PARTY ADMR.	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JULY 11, 2023

Hearing before Administrative Law Judge O. Milton Fine II on May 11, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York and Mr. Tanner Thomas, Attorneys at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2, represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas, excused from participation.

STATEMENT OF THE CASE

On May 11, 2023, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on March 6, 2023. 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 were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

1. The previous decision is binding on this proceeding under the Law of the Case Doctrine.
2. Claimant reached maximum medical improvement and the end of his healing period on August 1, 2022.
3. Claimant was assigned an impairment rating of fifty percent (50%) to the lower extremity in connection with his stipulated compensable right knee injury. Respondents No. 1 accepted this rating and are paying permanent partial disability benefits pursuant thereto.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. The following were litigated:

1. Whether Claimant is permanently and totally disabled.
2. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. On April 3, 2019, Claimant fell in the scope and course of employment and injured his right knee. Respondents No. 1 accepted the claim as compensable and paid for medical benefits.

2. An MRI on May 1, 2019, revealed a medial meniscus tear. Claimant was sent to Dr. Kirk Reynolds, who performed surgery on May 28, 2019. Claimant was still in pain, but Dr. Reynolds released him at maximum medical improvement with no restrictions and a zero percent (0%) impairment rating on October 9, 2019. Thereafter, Claimant requested a change of physician to Dr. Joel Smith and underwent another MRI. Following the MRI and conservative treatment, Claimant underwent total knee replacement surgery on September 23, 2021. Still in pain, he was referred by Smith to Dr. Paul Edwards for additional treatment. Edwards opined that Claimant suffered a failed total knee replacement and recommended a revision surgery. Following this procedure, Claimant suffered a massive hematoma on his right knee that required irrigation and debridement.
3. On August 1, 2022, Dr. Edwards placed Claimant at maximum medical improvement and noted that he uses a cane, is in constant pain, and that his right leg gives way at times. Claimant underwent a functional capacity evaluation that reflected that he gave a reliable effort, with 50 of 52 measures within expected limits, and showed that he could work within the Sedentary classification. As a result, Edwards assigned Claimant a fifty percent (50%) lower-extremity rating and permanent sedentary restrictions. Respondents No. 1 accepted this rating and began paying benefits pursuant thereto.

4. Claimant is a 64-year-old man with a ninth-grade education. His entire work history consists of heavy manual labor. He does not have any appreciable computer skills. Following his release at maximum medical improvement, he was terminated by the respondent employer, who could not accommodate his restrictions. Claimant requested vocational rehabilitation on October 6, 2022. Respondents No. 1 accepted this on October 21, 2022, and sent him to Keondra Hampton with Systemetic. In a report dated November 17, 2022, Ms. Hampton related that she had met with Claimant. She opined that he would not be able successfully to return to the workforce based upon the records that she had reviewed. However, Respondents No. 1 have denied that he is permanently and totally disabled.
5. Claimant contends that he is permanently and totally disabled as a result of the work injury that occurred on April 3, 2019, and that his attorney is entitled to an attorney's fee.

Respondents No. 1:

1. Respondents No. 1 contend that Claimant cannot prove by a preponderance of the evidence that he is permanently and totally disabled.

Respondent No. 2:

1. The Trust Fund defers to the outcome of litigation on the issue of whether Claimant is permanently and totally disabled. Therefore, it does not owe a

fee on any indemnity benefits that may be awarded in this proceeding.
The Trust Fund waives its right to attend the hearing thereon.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, deposition testimony, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he is permanently and totally disabled.
4. Claimant has proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012) on the permanent and total disability benefits awarded herein. This is the responsibility of Respondents No. 1.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

In addition to the Prehearing Order discussed above, exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records,

consisting of six abstract/index pages and 143 numbered pages¹ thereafter; Claimant's Exhibit 2, his vocational evaluation report, consisting of one index page and seven numbered pages thereafter; Respondents No. 1 Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and 41 numbered pages thereafter; and Respondents No. 1 Exhibit 2, the medical and indemnity payout histories in this claim, consisting of one index page and eight numbered pages thereafter.

In addition, and without objection, the transcript of the March 31, 2021, hearing on this claim has been incorporated herein in its entirety by reference.

Adjudication

A. Procedural History

An assessment of the issues at bar first requires a recounting of the procedural history of this matter. On March 31, 2021, the first hearing was held on this claim. The April 20, 2021, opinion thereon contains the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth [below] are reasonable and are hereby accepted:
 - A. The employee/self-insured employer relationship existed at all relevant times, including April 3, 2019, when Claimant sustained a compensable right knee injury.
 - B. Claimant's average weekly wage was \$240.06.

¹Placed at the end of this exhibit, at pages 127-45, are Claimant's treatment records from Concentra Clinic from April 9, 2019, through May 3, 2019. Claimant's

3. Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment in the form of a partial right knee replacement and related treatment.

This decision was not appealed. The earlier opinion is thus binding on this proceeding under the Law of the Case Doctrine; and it is *res judicata*. See *Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994).

B. Permanent and Total Disability

Introduction. Claimant has now contended that he is permanently and totally disabled. Respondents No. 1 have argued otherwise.

Standards. The parties have stipulated that Claimant sustained a compensable injury to his right knee. This is a scheduled injury. See Ark. Code Ann. § 11-9-521(a)(3) (Repl. 2012). Section 11-9-519(e)(1) defines “permanent total disability” as follows: “inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.” A claimant who has sustained a scheduled injury is limited to the applicable allowances in § 11-9-521, and such benefits cannot be increased by considering wage-loss factors. *Federal Compress & Whse. v. Risper*, 55 Ark. App. 300, 935 S.W.2d 279 (1996).

Arkansas Code Annotated § 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

counsel is respectfully requested in the future to adhere to the Prehearing Order, which states that medical records “must be arranged in chronological order.”

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. *Id.* § 11-9-102(14). “Disability” is the “incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury.” *Id.* § 11-9-102(8).

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.*

Evidence. Claimant is 64 years old. He was unsure of when he left school; but he was certain that he completed the ninth grade. His testimony was that he dropped out “because I had a family that I had to take care of.” Despite his lack of an extensive formal education, Claimant is able to read and write. He joined the United States Army in the 1970s and completed basic training. But because of an issue that arose involving his two minor children, to whom he was a single parent, he received a Less-Than-Honorable Discharge in order to rejoin them. Eventually, the status of his discharge was changed to Honorable. Claimant eventually married. His children are grown and gainfully employed.

The work history of Claimant shows that he has been employed in the construction industry. Moreover, he has been a dishwasher, a security guard, and a janitor. His construction job involved “walking the beams, hanging jacks, help[ing] build the deck, [and] help[ing] them with the concrete.” In this capacity, he had to walk on an elevated surface while wearing a safety harness. His custodial positions have involved vacuuming, mopping, and emptying trash, among other tasks.

The following exchange took place during Claimant’s testimony in the 2021 hearing:

Q. Describe what happened on April 3, 2019.

A. I was wearing a back—you have to have a back-vac. It’s a vacuum cleaner that you strap around your back. And I was doing stairs and I got entangled in the cord and lost my balance.

Q. Did you fall all the way to the ground?

A. No. I just did the next step and it twisted and popped.

Q. Okay.

A. And after that, I was having a lot of pain, and so I reported it to my supervisor and we filled out an accident report.

Q. What body part did you injure?

A. My right knee.

Thereafter, he underwent an MRI of his right knee, which showed that he had a meniscal tear and bone fragments in the joint. He began treating with Dr. Kirk Reynolds. On May 28, 2019, Reynolds performed arthroscopic surgery. Following this, Claimant went to physical therapy. However, the surgery did not alleviate his knee problems. As Claimant testified, “[i]t [his knee] never got right.” Eventually, Dr. Reynolds released Claimant to light duty and then full duty. Claimant’s testimony during

his first hearing was that he had problems performing his duties at the library: “I was having difficulty with the stairs and moving at a real fast pace and a lot of walking and standing.” He disagreed with the decision of Reynolds to return him to regular duty. Claimant elaborated at that time: “I’m still hurting, I’m still having a lot of pain, you know, doing my job. But I have to do it because I’m raising my grandkids, so I’ve got to do it.” Later, he stated:

It's pain, and after I do it, then it might be the next day I'm having a difficult time getting out of the bed or I'm putting Icy Hot or Ben Gay or something and then wrapping it up to keep the heat in, just anything to try to make it feel better. And taking Advil, Tylenol, you know, and elevating it. And I just go ahead on and go back to work.

Following a change-of-physician order that Claimant sought and received from the Commission, he began treating with Dr. Joel Smith. The first treatment Smith administered was an injection of the knee. Claimant’s testimony during the 2021 hearing was that he obtained relief from this; in fact, he felt like he no longer needed his knee brace, which he began using following the accident. But the effects of the injection did not last. Claimant had to resume use of the brace. He wanted to undergo a second injection. But other than additional physical therapy, which Claimant stated that he received, the treatment that Dr. Smith recommended consisted of a partial right knee replacement. Respondents No. 1 refused to approve this surgery; but as alluded to above, the undersigned in the previous opinion directed that they do so.

The medical records in evidence show that the surgery that Smith ended up performing, on June 17, 2021, was a total—not partial—knee replacement. Nonetheless, Respondents No. 1 covered this treatment. Because Claimant developed arthrofibrosis, Dr. Smith had to operate again on September 23, 2021. In that instance,

he performed a right knee manipulation under anesthesia. However, this did not ameliorate his symptoms.

Dr. Paul Edwards on December 20, 2021, diagnosed Claimant as having a “[f]ailed right total knee replacement.” He recommended that a revision total knee replacement take place, adding: “I think he really has 2 issues here: Progression of an osteolytic lesion in the lateral femoral condyle with likely aseptic loosening of implants and flexion instability.” Edwards also suggested that Claimant wear a hinged knee brace. The doctor placed Claimant at light duty, pointing out that he could ambulate with aid of a cane. The revision knee replacement occurred on February 3, 2022. Asked at the hearing how he fared after this operation, Claimant responded: “It didn’t do good at all.” Unfortunately, Claimant developed a hematoma that grew to the point that, per Dr. Edwards on March 4, 2022, “[h]e ha[d] significant excruciating pain.” As a consequence, Claimant had to undergo a fifth surgical procedure: an irrigation and debridement of the right knee. This occurred on March 7, 2022. Edwards’s operative notes show that the hematoma was “[v]ery large”: comprised of 150 ml of congealed blood. Thereafter, in visits to Dr. Edwards, Claimant presented with steadily improving pain. On May 2, 2022, he was restricted to light, sit-down duty. He was continued in physical therapy. Dr. Edwards found Claimant to be at maximum medical improvement (“MMI”) as of August 1, 2022. In his report on that date, he noted that Claimant presents with “persistent constant pain all the time . . . [and] numbness[/]tingling in the distal extremity.” The restrictions assigned as of that date (which were never revised) included (1) seated work only/mainly, (2) no squatting/kneeling/twisting, (3) No climbing stairs/ladders, (4) no prolonged standing/walking, (5) elevation of right lower extremity

whenever possible, (5) use of crutches/cane/walker, and (6) no twisting/pushing/pulling. The doctor added: "If no job is available with the stated modified duties, consider Dale Bryant to be off work." On August 24, 2022, Edwards revised the MMI date to August 8, 2022, and assigned Claimant an impairment rating of fifty percent (50%) to the lower extremity.

Claimant underwent a functional capacity evaluation ("FCE") on August 8, 2022. He gave a reliable effort, with 50/52 consistency measures within expected limits, and demonstrated the ability to work in the Sedentary classification. The FCE report includes the following language:

When comparing his demonstrated physical abilities with that of a written job description for the position of Maintenance Assistant with the City of North Little Rock, he DID NOT meet the following demands: Frequently lift 40-50 lbs. and occasionally lift 140 lbs.

(Emphasis in original)

The testimony of Claimant was that before he was given permanent restrictions, he was given sit-down duty at his job site, Laman Library. There, he was assigned the task of tracing shapes onto pieces of paper and then cutting them out. He was not given any of his normal custodial duties—which stands to reason, since they were clearly beyond the restrictions assigned by Edwards. Per Claimant, once it was determined that he could only work at the Sedentary level, he was terminated by Crystal Gay, the manager of Laman Library. She explained to him that there was no longer anything that he could do there, in light of his restrictions. He never returned to his normal duties there.

Claimant agreed to participate in vocational rehabilitation. On November 11, 2022, he met with Keondra Hampton, MS, CRC, who is a vocational rehabilitation

consultant. Her report, which details his educational, vocational, and medical histories, reads in pertinent part:

Employment History

...

According to the DOT [United States Department of Labor, Dictionary of Occupational Titles], Mr. Bryant's work history is classified as unskilled to semi-skilled and he has no transferrable skills. Mr. Bryant has the vocational profile of an individual with one year of high school education and functional limitations with the inability to perform posture tasks according to the FCE. The ability to perform work within similar fields with specific vocational preparation (SVP) of unskilled to semiskilled is not probable.

Statements Regarding Returning to Work and/or Retraining

Mr. Bryant stated he has a desire to work, however, he is unable to return to any job that will require him to perform outside of his functional limitations. He said, "I would not want to get a job, just to turn around and get fired due to my right knee." Mr. Bryant reported he is open to receiving any vocational rehabilitation services if he is capable of finding a job within his functional limitations.

Analysis, Goals, and Recommendations

Based on the FCE, Mr. Bryant is capable of performing work in the sedentary category. Due to his limited education and work history profile of unskilled to semi-skilled occupations, Mr. Bryant does not have any transferrable skills that would transfer to sedentary jobs. I recommend basic computer skills training for Mr. Bryant to be successful in a sedentary category of employment. In my opinion, further assessment of the Wide Range Achievement (Wrat4) and/or [an] intelligence assessment is recommended to determine Mr. Bryant's training ability. Considering Mr. Bryant has a ninth-grade education, adult education services are also recommended with the possibility of obtaining his GED.

It is my opinion Mr. Bryant would not be able to successfully return to the workforce based on the records reviewed without the recommendation of training and assessments.

On November 28, 2022, Claimant began undergoing pain management at Pain Treatment Centers of America. On that day, he rated his pain as ranging from 2/10 to 10/10, and averaging 6/10. Dr. Noemi Ramsay prescribed Hydrocodone and

recommended a genicular nerve block. Respondents, however, would not approve this. Although Claimant, per the report, “denied use of any illicit drug,” the report contains the following notation: “Advised he will need to get a medical marijuana card if he continues to use marijuana.” When Claimant returned to the clinic on January 4, 2023, he informed Jordan Hardin, P.A., that while his pain had not changed significantly since their previous encounter, it was now a constant 10/10. In his testimony, Claimant related that he tries not to take Hydrocodone unless he has to. He related that he used his primary care physician to get his pain management referral.

Asked at the hearing about the present condition of his knee, he responded:

I wear a sleeve that’s supposed to stop the swelling. I don’t get around too good, I’m hurting all the time. I ice it, use heat, elevate it. That’s all I can do and try to do what Marshall at physical therapy, he showed me some exercises, and I do my best to do those.

Use of the sleeve causes the knee to swell. Once he removed it, he applies ice to the knee and takes medication. He uses a cane now because he becomes “off balance” at times. Claimant’s knee condition has “gone out” and caused him to fall at times. He can only stand for 10 to 15 minutes at a time, and can only walk for a limited distance. According to Claimant, he avoids driving if possible because his right knee problems make it difficult to operate the accelerator and brake.

In describing his daily activities, he related:

Mostly, I just try and do something to relieve the pain on my knee. I try to do exercises. I welcome company if I ever get it, even if it’s the mailman. But I lost all that social life, so I don’t do anything.

Asked if the work-related accident in question changed his life, Claimant became emotional, stating: “No fishing, no social life, no bowling, no intimacy with my wife, none of that. Everything changed.” Claimant has been approved to receive Social Security

Disability benefits. He does not believe that he could return to his former job in the construction industry. While he admitted that he has had pre-existing health problems—including hypertension and the need for a CPAP machine at night—these did not prevent him from performing his custodial duties. Claimant does not think that he could go back to any line of work that he was in previously. Under questioning from Respondents, he agreed that previously, while receiving Social Security disability benefits, he was able to return to the working world—in his capacity as a security guard.

The following exchange took place:

Q. So have you tried to work with Social Security to get you back into the workforce now?

A. Ma'am, they let me go at the library because it was nothing I could do. Who's gonna hire me now?

...

Q. So is it fair to say that mobility is a concern for you with getting a job, like being able to move around, is that a concern for you about getting a job?

A. Moving around, bending, lifting, standing, walking, doing the things that I used to do on a job. If I lied to them, how long would I last, what, a day?

Claimant also acknowledged that he applied for unemployment benefits. But he was turned down.

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

Q. You testified earlier that you don't feel like you could do any work at the library, is that a fair statement?

A. Yes.

Q. Do you think you could check out books at the library?

- A. Ma'am, I don't know how to check out any books. In fact, how could I help somebody check out a book when I could barely get around myself? And then on that, if you check out a book, you're gonna have to go up there, from what I was seeing, it's keyed [into] those computers, and I don't know anything about that. They probably wouldn't get the book.

He returned to this subject later, summarizing: "I don't have any computer skills. My education is not that good." Claimant did not think he could hold down a job answering a phone because, inter alia, his spelling is poor. In a related vein, the following exchange took place on redirect examination:

- Q. Did you work every day with the people at the Laman Library together with them? Did you see them every day at work?

A. Yes.

- Q. They were fairly able to assess your abilities, correct?

A. Yes.

- Q. Did they ever offer you the opportunity to check out books?

A. No.

- Q. Were you allowed to play around on computers at Laman Library?

A. No. I tried to get them to show me how to use the computer. It was one guy up there, and he said he would try, but nothing ever happened.

Respondents have never offered Claimant computer skills training, despite the fact that Hampton recommended that very thing in her vocational evaluation. Moreover, they have not offered additional training or testing of any type.

With respect to his motivation to return to the workforce, Claimant gave the following testimony:

How could I look for a job when I'm taking medications and I have the ice, heat? I would love to work because working, it wasn't something that I

really enjoyed my job, it was something that was needed to pay my bills, to support my family, I mean, you know. That's why I never missed a day and I never was late. And whatever they asked me to do, whether I thought it was my duty or not, I did it. I performed it to the best of my ability I did it. I didn't care what it was. If it was picking up poop, I did it.

When questioned by the Commission, Claimant stated that he would be open to receiving vocational rehabilitation retraining, but “[t]oday I just can't see it. I mean, I'm just not able to—I know I would love to, but I'm just not able to hold down a job right now.” In his testimony, he again became emotional when he stated, “I don't think I'm retrainable,” and related that in the course of his unsuccessful attempt to get his GED, he discovered that the amount of education he actually had was markedly less than what one would expect, based on the number of grades he had completed.

Discussion. Claimant is a credible witness. This is the same finding I made in his previous hearing. His testimony, and the balance of the credible evidence in this matter, reflect that he is 64 years old and completed the ninth grade. His work history has consisted of stints as a construction worker, dishwasher, security guard, and janitor. On April 3, 2019, he suffered a compensable right knee injury. As a result, he has had to undergo five separate surgical procedures on that knee—including both a total knee replacement and a revision total knee replacement. Ultimately, on August 1, 2022, he reached the end of his healing period. Thereafter, he began pain management—which he still receives.

He was assigned an impairment rating of fifty percent (50%) to the lower extremity. His restrictions include: (1) seated work only/mainly, (2) no squatting/kneeling/twisting, (3) No climbing stairs/ladders, (4) no prolonged standing/walking, (5) elevation of right lower extremity whenever possible, (5) use of

crutches/cane/walker, and (6) no twisting/pushing/pulling. These comport with the findings of his FCE, which reflect that he gave a reliable effort and demonstrated the ability to work only in the Sedentary classification. Up until then, the light-duty work Claimant had been given at his place of employment consisted of cutting out figures that had been traced onto paper. When the above findings made it clear that he could not return to his custodial work at the library, he was terminated. Claimant underwent a vocational rehabilitation evaluation. I credit the opinion given by Hampton, the evaluator, that he “does not have any transferrable skills that would transfer to sedentary jobs.” While she recommended further assessments to determine his training ability, and basic computer skills training, these have not been offered to him. Regardless, it was Claimant’s sad, frank belief that his poor educational history would likely not make any re-training efforts successful.

While Claimant is motivated to return to the workforce—as his credible testimony and vocational history reflects—the possibility of such a return does not look at all promising, in light of the above evidence. To the contrary, evidence shows that he is clearly unable to go back to the working world. In sum, I find that he has proven by a preponderance of the evidence that he is permanently and totally disabled. In so doing, I find that Claimant’s compensable April 3, 2019, compensable right knee injury is the major cause of his disability.

C. Attorney’s Fee

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). Since Claimant has proven herein his entitlement to

permanent and total disability benefits, and because Respondents No. 1 have controverted this, he has shown that his attorney should be awarded a controverted fee at their expense under Ark. Code Ann. § 11-9-715 (Repl. 2012) on those indemnity benefits awarded herein.

CONCLUSION AND AWARD

Respondents No. 1 are directed to pay/furnish benefits in accordance with the findings of fact 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. 2002). *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 25 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 No. 1 in accordance with 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 (2012).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge