

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H101077

RODNEY R. CHEWEY, EMPLOYEE	CLAIMANT
APPLE CREEK CONSTRUCTION, LLC, UNINSURED EMPLOYER	RESPONDENT

OPINION FILED NOVEMBER 10, 2021

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

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeals an opinion and order of the Administrative Law Judge filed June 24, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on March 31, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left chest in the form of rib fractures and to his pelvic area in the form of a fracture of his left acetabulum. Claimant has failed to prove by a preponderance of the evidence that he suffered a

compensable injury to his cervical or thoracic spine, or to his left knee.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injuries.
4. Claimant is entitled to payment of temporary total disability benefits beginning December 30, 2020 and continuing through March 9, 2021.
5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

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

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

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative

Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. § 11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer concurs.

CONCURRING OPINION

Respondents appeal the Administrative Law Judge's Opinion filed June 24, 2021, in which the ALJ found among other things that Claimant sustained compensable injuries during a workplace incident. The crux of

Respondent's argument rests on the undisputed fact that Claimant drank two beers at lunch two hours before he sustained the injuries at issue in this case.

The ALJ applied the appropriate standard (that the presence of alcohol creates the rebuttable presumption that the injury was substantially occasioned by the use of alcohol). Two hours passed between the time Claimant drank alcohol and the workplace incident occurred. During those two hours, Claimant drove a vehicle from the restaurant to the jobsite (approximately 30 minutes) and climbed up and down a ladder 12-15 times – all without incident. Likewise, it is undisputed that the ground upon which the ladder stood was unlevel and that it had to be shimmed with blocks to be more level. Lastly, when Claimant was treated at the emergency room, he was alert and oriented and showed no signs of intoxication.

Although it is tempting to speculate about whether Claimant really only drank two beers or what Claimant's motivation was in having his coworker drive him home before going to the emergency room (particularly given the misgivings in Claimant's credibility), speculation is not appropriate. I believe the ALJ applied the applicable law to the undisputed facts and, therefore, am constrained to concur with the majority.

CHRISTOPHER L. PALMER, Commissioner