BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G203180

KRISTY N. ADAMS, EMPLOYEE **CLAIMANT**

VS.

STONE COUNTY NURSING AND REHAB, EMPLOYER **RESPONDENT #1**

WHITE RIVER HEALTH SYSTEN, RISK MANAGEMENT RESOURCES, INSURANCE CARRIER **RESPONDENT #1**

DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND **RESPONDENT #2**

OPINION FILED JULY 26, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 15th day of June, 2022, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Frederick S. "Rick" Spencer, Attorney-at-Law, Mountain Home, Arkansas.

Respondents #1 are represented by Casey Castleberry, Attorney-at-Law, Batesville, Arkansas.

Respondent #2 is represented by David L. Pake, Attorney-at-Law, of Little Rock, Arkansas

STATEMENT OF THE CASE

A hearing was conducted on the 15th day of June, 2022, to determine the issue of additional reasonable and necessary medical treatment, permanent and total disability or, in the alternative, an award of wage-loss, entitlement to an increase in the impairment rating based upon the Guides to the Evaluation of Permanent Impairment, Fourth Edition, and attorney fees. A copy of the Prehearing Order dated April 5, 2022, was marked

"Commission Exhibit 1" and made part of the record without objection. The Order provided the parties stipulated as follows:

> 1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
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> 2. An employer-employee relationship existed on November 21, 2011, when the claimant sustained a compensable injury to her lower back, and the respondent accepted the claim as medical only.
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> 3. The claimant earned an average weekly wage of $627.16 with a TTD/PPD rate of $418.00/$314.00.
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> 4. Respondents #1 have paid the sum of $30,066.71 in medical expenses and $12,717.00 in PPD.
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> 5. The claimant was assigned a five percent (5%) rating by Dr. Ricca.
>
> 6. The claimant was assigned an additional disability rating by another physician.

The claimant's and respondents' #1 contentions are set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The claimant contends that she is entitled to additional reasonable and necessary medical treatment related to her compensable back injury. In addition, she is entitled to permanent and total disability treatment or, in the alternative, an award of wage-loss, plus attorney fees. At the time of the hearing, the claimant contended that she was entitled to a higher impairment rating than the five percent (5%) rating of Dr. Ricca or the nine percent (9%) of Dr. Mason. She also contended she could possibly be suffering PTSD from the injury. Respondents' #1 position is that they accepted the claim as a compensable lower back injury and contend that the claim was temporary and transitory, with the claimant being released to work on November 24, 2011. The claim was accepted as a compensable medical only claim and no further benefits have been

paid. Respondent #2, the Fund, deferred to the outcome of litigation and waived its right to appear.

The sole witness to testify was the claimant, Kristy Adams. The parties stipulated at the time of the hearing that the testimony of the claimant's husband would corroborate her testimony. The claimant's exhibit one consisted of fifty-one (51) pages of medical reports that were admitted into the record without objection. Respondent's exhibit one consisted of sixth-two (62) pages of medical reports that were admitted into the record without objection. Respondent's exhibit two consisted of the deposition of the claimant taken on April 29, 2013, and was admitted into the record without objection. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. That an employer/employee relationship existed on November 21, 2011, when the claimant sustained a compensable injury to her lower back, and respondent #1 accepted the claim as medical only.

3. The claimant earned an average weekly wage of $627.16 with a TTD/PPD rate of $418.00/$314.00.

4. The respondents #1 have paid the sum of $30,066.71 in additional medical expenses and $12,717.00 in PPD.

5. That the claimant was assigned a five percent (5%) rating by Dr. Ricca.

6. That the claimant was assigned a nine percent (9%) disability rating to the body as a whole by Dr. Mason.

7. That there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove, by a preponderance of the evidence, that she is entitled to additional medical treatment.

8. That the claimant has satisfied the burden of proof, by a preponderance of the evidence, that she is entitled to a nine percent (9%) impairment rating to the body as a whole.

9. That the claimant has failed to satisfy the burden of proof, by a preponderance of the evidence, that her claim for PTSD is compensable.

10. That the claimant has failed to satisfy the required burden of proof that she is entitled to permanent and total disability, but in the alternative, has satisfied the burden of proof, by a preponderance of the evidence, that she is entitled to an Award of wage-loss in the amount of fourteen percent (14%).

11. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. §11-9-715. This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809.

12. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, Kristy N. Adams, was the sole witness to testify, and stated that on November 21, 2011, at around 11:00 at night, while at work, she was assisting a resident from a recliner to a bed side commode, when the resident fell and the claimant caught her and hurt her back in the process, and this eventually resulted in a surgery. (Tr. 7) She was given and paid the disability rating by Dr. Mason. The claimant went on to state that she has had "a lot of trouble still trying to get doctors to agree on what the problem is and what the resolution is. I believe I still need more surgeries, but I can't convince a doctor; they all think something different." The claimant stated she had just one surgery. Dr. Schlesinger recommended injections prior to him performing surgery, and an IME by Dr. Rica prior to surgery gave a five percent (5%) impairment rating. She testified that there was a plan for the surgery but Dr. Schlesinger retired and that she later had surgery on

July 19, 2017, by Dr. Zachary Mason, at two (2) levels she thought, after the birth of her second child. She also stated she attempted to return to work at her parent's restaurant but was unable to do it. (Tr. 8, 9)

Prior to the above-described injury, the claimant testified that she did not have issues with her back, but admitted that sometimes if she over did it, she would suffer minor back aches. The claimant also admitted that she was now receiving social security disability. She could not be on her feet for an extended period of time, because it would cause pain, spasms, and muscle cramping in her extremities and back. She could not lay down long, and consequently could not sleep well. She could be very active one day, and then would have to pay for it the next day, spending the day in bed. She used to be an avid motorcycle rider but cannot do it anymore due to the vibrations and pains. "It's hard to work when you have to stand for five minutes and then walk for 30 minutes and then maybe sit for 10 minutes." (Tr. 10, 11) The claimant denied that she drove to the hearing and stated that she had moderate to moderately severe pain just from sitting in the care for an hour. (Tr. 12) She was asked about if she were in a sedentary job where she could sit six (6) hours out of an eight (8) hour day, and responded that her pain would at least be a 10. She also stated she could not do yard work with her husband because the bending increased her pain significantly, and that it was hard for her to pick up her one year old, who weighed thirty (30) pounds, for an extended period of time. (Tr. 13) She went on to state that it was difficult for her to do housework because it was hard for her to sweep floors or fold laundry. Doing dishes for more than five (5) or ten (10) minutes was difficult because it caused so much pain in her back radiating down her legs. (Tr. 14) In regard to her sleeping on a typical night, she stated that she would get two (2) hours.

"I'm constantly sad. My life has changed so much since my injury. I can't do so many fun things or just anything, really, that I used to do." "The pain is constantly in the back of my mind, and I'm aware of it, so sometimes it's hard to focus on other things because I get interrupted ever so often to do stuff." (Tr. 15, 16) She admitted to the use of medical marijuana and stated that it had an effect on her memory, but that it was a good trade for the relief that she received. (Tr. 17) She now used sticky notes and lists everywhere, and her older eight year old had to remind her of things. (Tr. 18) In regard to sleep, on a good night, she would take eight (8) Benadryl, and sleep for about four (4) hours if nothing woke her up. A bad night was when she could not sleep at all and would occur about ten (10) nights a month. (Tr. 19, 20)

She admitted that she currently took hydrocodone, because it was the best thing for her pain. The medical cannabis wouldn't alleviate the pain but would help her tolerate it. "It helps the anxiety, helps her to calm things down a little bit. It helps that I don't care so much." (Tr. 21) In regard to her employment being terminated at respondent #1, the claimant testified that she was still iffy on the exact cause. "I resigned. I gave them my two weeks notice, but they told me that they didn't require that of me, so that might be firing me." She also admitted to obtaining an office job for maybe six months, but could not continue to perform the job due to the pain. She also admitted to going on short hikes around her property with her daughter, for about a quarter of a mile, but worried about getting back. She also admitted that she had obtained her LPN, a licensed practical nurse, from Ozarka College. (Tr. 22, 23)

The claimant stated her back injury affected the way she walked and her other joints, so her knees and shoulders are messed up. "It hasn't gotten any better. Even

after the surgery, while that did alleviate some of the nerve pain that I had running down my legs, it didn't get rid of the back pain. It didn't treat that at all." On a bad day, she would take four 10 milligram oxycodone and she had to do that "pretty much every day." (Tr. 24, 25) The claimant also contended there was a great chance she suffered from post-traumatic stress disorder. (Tr. 26)

Under cross-examination, the claimant testified that her married name was Touchton and not Adams. She admitted that she had worked at City Hall in the town of Fifty-Six, and believed that she had worked there for six (6) months. She later worked at her parent's restaurant sporadically for about a month. She also admitted that she had worked odd jobs and worked at a friend's gas station where she watched the counter and ran the cash register. She stated she had worked there about a week ago on a Sunday and made a pot of gravy. She used to try to work there on Sunday mornings for a couple of hours to make the gravy, but her husband took over the job for her. She admitted that she left her job at Fifty-Six because of back pain and due to disagreements that she had. She admitted that if she had stated in her deposition that the reason for her leaving her job was not because of the injuries that were the subject of the compensation that "I will trust that." She also admitted she had resigned about a week prior to the deposition, partially because she wanted a pay raise. (Tr. 29 – 31) She also admitted that at that time, she wanted to concentrate on school, and she attempted to go to RN school. That did not work out, but she did end up getting an Associate's Degree in Health Information Technology but had been unable to obtain any employment with that degree. She also admitted Dr. Tilley in Mountain View was her pain management doctor and was aware of her medical marijuana card.

She was initially treated by Dr. Schlesinger, and in May of 2013, obtained a Change of Physician Order that allowed her to change to Dr. Ricca. The claimant also admitted that from reading the deposition, in June of 2014, Doctor Rica's records reflected that she had reached maximum medical improvement and assigned a five percent (5%) impairment rating. She did not specifically remember being released for medium duty work. (Tr. 32, 33) The following questioning then occurred:

> Q. And in March of 2015, which was a month after that, his records reflect that you would not benefit from surgery, do you recall that?
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> A. I do recall that Dr. Ricca, he wanted to do an extensive surgery, and I got pregnant. After the pregnancy I did have some improvement in my pain levels, and I believe that's when he put me at the maximum improvement, and then I think I went back to him again because the pain was getting worse again, and he again wanted to do surgery, but he retired.
>
> Q. Well, it look like you saw him again - - There was kind of a gap from 2015 to 2017. Do you recall seeing Dr. Rica in April of 2017.
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> A. I believe so, yes.
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> Q. And at that time he found that you could resume normal activity, and stated in his record that there were no objective findings that indicate you could not work, are you aware of that?
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> A. I was not aware of that, or I do not remember that.

The claimant was then questioned about seeing Dr. Zach Mason after Dr. Rica's retirement. She thought that she had seen other neurosurgeons in between but agreed that he was the one that agreed to treat her. (Tr. 34) She also agreed Dr. Mason performed a bilateral decompression of the L4-L5/L5-S1 in July of 2017. She admitted the surgery helped with some of the nerve pain radiating down her legs and the sciatica, but it did not relieve her back pain. She also stated that she trusted the record and received four payments totaling $3,105.14 from July of 2017 through September of 2017 for temporary total disability. (Tr. 35) She returned to Dr. Mason in October of 2017, and he found she had reached maximum medical improvement and assigned her a nine

percent (9%) impairment rating to the body as a whole, and released her from her care. She also agreed she trusted the record in regard to the question that Dr. Mason provided that she could return to regular duty. (Tr. 36)

Under redirect testimony, the claimant testified she felt that she was unable to return to work. (Tr. 37) She also agreed she had surgery after Dr. Rica provided a five percent (5%) disability rating. (Tr. 38) In regard to PTSD, the claimant admitted to feeling anxious. (Tr. 39)

At this time, the parties stipulated that the claimant's husband would corroborate her testimony. (Tr. 40)

The claimant's medical records were admitted without objection. Claimant presented to the emergency room with problems from her lower back to her feet, on November 21, 2011. (Cl. Ex. 1, P. 1 - 9) The MRI report of February 12, 2011, provided that a moderate disc bulge was noted at L 4-5, with mild thickening of the ligamentum flavum and mild facet arthropathy. Moderate to a large disc bulge was noted at L5-S1, with a superimposed broad-based central protrusion. Mild facet arthropathy and moderate bilateral neural foraminal narrowing was also noted. Degenerative disc disease was noted at L 4-5 and L5-S1, with spinal cord narrowing. (Cl. Ex. 1, P. 10, 11) A report by Dr. Andy Subramanium dated February 27, 2012, provided that he would like to go ahead and try some lumbar epidural injections and if that failed, he would consider surgery of the L4 through S1 on the left. (Cl. Ex. 1, P. 12 – 16)

The claimant was assessed by Dr. Scott Schlesinger on March 7, 2012. The report provided that moderate tenderness was noted with palpitation throughout the thoracolumbar spine, with a moderate decrease in lumbar lordosis. Trunk range of motion

was limited 25% in forward flexion and extension with pain at the end ranges. Left rotation was limited 25%, also with pain at the end ranges. The plan of care provided for an extensive HEP and for the claimant to return to the clinic as needed, with continued PT treatments every two (2) weeks for approximately twelve (12) weeks. (Cl. Ex. 1, P. 17)

A second MRI of the lumbar spine occurred on October 3, 2012. It provided for a mild disc bulge at L4-L5 and also at L5-S1 with moderate bilateral facet and ligamentum hypertrophy and mild bilateral foraminal narrowing seen, causing mild central canal stenosis. (Cl. Ex. 1, P. 18, 19) The claimant received a third MRI, this time of the thoracic spine, on May 8, 2013. This report provided the claimant had tiny left central disc protrusions at T5-6 and T6-7, without associated spinal canal or neural foraminal narrowing. (Cl. Ex. 1, P. 20, 21)

The claimant initially presented to Doctor Ricca on July 18, 2013, for an independent medical evaluation due to a referral by Dr. Lawrence Ault. The report provided the claimant injured her low back on November 20, 2011, while assisting a patient. It went on to state that on January 16, she stood up and felt "lightening pain down her leg." The claimant had low back pain that radiated into her left buttock, posterolateral left thigh, and her lateral left leg. There was a broad based HNP at L3-4 and at L4-S1, which was not as severe. The claimant also suffered from depression, anxiety, Hypermobility Syndrome with a lot of joint pain, OCD, and borderline personality disorder. An addendum dated July 23, 2013, provided that after reviewing additional previous medical which included the MRI's, the claimant had a clear neural compression on the left at L3-4 and L4-S1 and the objective findings were consistent with her history. The report went on to provide that the claimant would benefit from decompression with

possible discectomies on the left at L3-4 and L4-S1. (Cl. Ex. 1, 22 – 30) The claimant returned to Dr. Ricca on June 1, 2013, and the report provided the claimant had reached MMI with a five percent (5%) partial impairment rating of the body as a whole and could safely engage in medium duty work. (Cl. Ex. 1, P. 31, 35) The medical records provided that the claimant returned to Dr. Ricca on May 16, 2017, approximately two (2) years after the last visit. She returned for the surgical treatment of the pain in her lower back and both of her legs. She wanted surgery and stated "No more waffling." (Cl. Ex. 1, P. 36 – 46) Another MRI report was provided, dated August 2, 2016, and it provided for desiccation of the disc spaces at L4-5 and L5-S1. (Cl. Ex. 1, P. 47 – 49)

A report from Dr. Mason on October 5, 2017, and requested by Dr. Rica, following the claimant's lumbar surgery, provided she was doing well and not having any problems postoperatively. He opined the claimant had reached maximum medical improvement, and assigned an impairment rating of nine percent (9%) to the body as a whole as determined by Table 75, Fourth Edition of the AMA Guides to Rating of Permanent Impairment. (Cl. Ex. 1, P. 50)

Respondent submitted sixty-two (62) pages of medical records which were admitted without objection. The reports provided the claimant received epidural steroid injections on March 7, 2012, and April 4, 2012, at the L5-S1, that were performed by Dr. Erdem. (Resp. 1, P. 1, 2) A letter from Dr. Tilley dated May 30, 2013, provided he would no longer be able to provide pain management to the claimant because she violated her pain management agreement and had obtained prescription drugs from the VA within seven (7) days of filling her prescriptions. (Resp. 1, P. 6)

The respondents also provided medical reports from Dr. Rica that have been reviewed supra. They also provided a report from Dr. Zachary Mason, with the first progress note dated October 5, 2017, which was also discussed supra. In addition, the respondents provided a return to work note of the same date that provided the claimant could return to work regular duty on October 5, 2017. (Resp. 1, P. 56, 57) The claimant returned to Dr. Mason on August 8, 2017, and the report provided that the claimant appeared to be doing well post op with no reports of problems but with reports of radiculopathy symptoms. (Resp. Ex. 1, P. 58) The procedure reports in regard to the surgery performed by Dr. Mason provided the procedure on the back was performed on July 19, 2017. (Resp. Ex. 1, P. 59, 60) A letter from Dr. Mason dated July 6, 2017, provided that the claimant could return to regular duty. (Resp. Ex. 1, P. 61)

The respondents also submitted the deposition of the claimant dated April 29, 2013, into the record, which was admitted without objection. The claimant testified in her deposition that she was born on January 28, 1983. (Resp. Ex. 2, P. 6) She was currently unemployed and her last employment was with the city of Fifty-Six. She had resigned a week prior to the deposition because she wanted a pay raise. She was a full-time student before going to work for the city of Fifty-Six. (Resp. Ex. 2, P. 8, 9) She also stated she had given her two-week notice of resignation to the respondents on November 30, 2011, and the director of nursing told her she did not require a two-week notice, so November 30, 2011, would have been the effective date of her resignation. (Resp. 2, P. 25)

The claimant also stated she saw a chiropractor six (6) times. (Resp. Ex. 2, P. 29) Additionally, she saw Dr. Tate, a neurosurgeon at the VA, who did nothing for her except prescribe meloxicam. Dr. Tate had also stated she did not agree with the findings of the

bulging disc. (Resp. Ex. 2, P. 34 - 36) The claimant also underwent physical therapy at the VA in North Little Rock. (Resp. Ex. 2, P. 38) She had also seen a Dr. Doyle to discuss biofeedback therapy, but at the time of the deposition had not received an appointment for it. (Resp. Ex. 2, P. 42, 43) The claimant stated that she had previously worked at Kinfolks Barbeque and at a hotel, both in Mountain View. (Resp. Ex. 2, P. 48) She worked as a munitions system journeyman in the military where she maintained and stored munitions which included guns, bullets, and bombs. (Resp. Ex. 2, P. 59)

The claimant also admitted to seeking treatment for depression shortly after she joined the military in 2001 or 2002 and was prescribed Paxil at the time. She also admitted to taking medication for depression during the 12-month period prior to the work-related incident. (Resp. Ex. 2, P. 63, 64) She went on to state the work-related incident had turned her life upside down. "I'm not even the same person that I was due to the chronic pain, the pain in my back." (Resp. Ex. 2, P. 65) She also mentioned her pseudotumor cerebri which she thought was related to the epidural steroid injections by Dr. Schlesinger. (Resp. Ex. 2, P. 68, 69)

DISCUSSION AND ADJUDICATION OF ISSUES

In the present matter, the parties stipulated the claimant sustained a compensable injury on November 21, 2011. The claimant is therefore not required to establish "objective medical findings" in order to prove that she is entitled to additional benefits. *Chamber Door Indus., Inc. v Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

In determining whether the claimant has sustained her required burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark.

364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.,* 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. *Dalton v. Allen Engineering Co.,* 66 Ark. App. 201, 635 S.W. 2d 823 (1982). Preponderance of the evidence means the evidence having greater weight or convincing force*. Metropolitan Nat'l Bank v. La Sher Oil Co*., 81 Ark App. 263, 101 S.W.3d 252 (2003). Further, pursuant to Ark. Code Ann. §11-9-509(a), medical benefits owed under the Workers' Compensation Act are only those that are reasonable and necessary. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment of the compensable injury. *Owens Plating Co. v. Graham,* 102 Ark. App. 299, 284 S.W. 3d 537 (2008). What constitutes reasonable and necessary treatment is a question for the Commission. *Anaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 282 S.W. 3d 269 (2008). Also, the respondent is only responsible for medical services which are causally related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury, are considered reasonable medical services. *Foster v. Kann Enterprises*, 2019 Ark. App. 746, 350 S.W.2d 796 (2009).

When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission filed December 13, 1989 (Claim No. D512553). It is noted that 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's credibility and how much weight to accord the person's testimony are solely up to the Commission. *White v. Gregg Agriculture Ent*. 72 Ark. App. 309, 37 S.W.3d 549 (2001). Additionally, the employer takes an employee as he finds her and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460. 120 S.W.3d 150 (2003).

Where there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007). The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). However, the Commission may not arbitrarily disregard the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

Here there were no future procedures proposed in regard to the claimant's lower back injury. Dr. Rica had opined on June 1, 2013, that the claimant had reached MMI with a five percent (5%) partial impairment rating to the body as a whole and additionally provided that the claimant could safely engage in returning to work medium duty. The claimant continued to have issues and was referred to Dr. Mason who performed surgery

on her lower back on July 19, 2017. On October 5, 2017, Dr. Mason opined that the claimant had reached MMI and assigned her a nine percent (9%) impairment rating to the body as a whole and further stated that the claimant could return to work "regular duty." That based upon these facts and the applicable law that provides that a claimant's testimony is never considered uncontroverted, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove, by a preponderance of the evidence, that she is entitled to addition medical treatment.

In regard to the claimant's disability rating, Dr. Mason performed surgery on the claimant on July 19, 2017, and although he opined that the claimant could return to work regular duty on October 5, 2017, he also opined that the claimant had reached maximum medical improvement and assigned an impairment rating of nine percent (9%) to the body as a whole. Although the claimant contended at the start of the hearing that she was entitled to a higher impairment rating closer to twelve percent (12%) to the body as a whole, the opinion of Dr. Mason, the doctor who performed the lower back surgery is found controlling and also given more weight than the earlier opinion of Dr. Rica. Consequently, the claimant has satisfied the required burden of proof beyond a reasonable doubt to show she has a nine percent (9%) disability rating to the body as a whole.

In regard to the claim for PTSD, the claimant's proof consisted of statements by the claimant and this does not satisfy the required burden of proof.

In regard to the issue of permanent and total disability or in the alternative wage-loss, permanent and total disability means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

Ark. Code Ann. §11-9-519(e)(1). The burden of proof shall be on the employee to prove inability to earn any meaningful wage in the same or other employment. Ark. Code Ann. §11-9-519(e)(2). Permanent benefits may be awarded only if the compensable injury was the major cause of the disability of the disability or impairment. Ark. Code Ann. §11-9-102(4)(F)(ii)(a). Here the only evidence produced at the hearing that the claimant was unable to earn meaningful wages as a result of the compensable injury was the testimony of the claimant. The treating physician who performed surgery on the claimant's lower back opined on October 5, 2017, that the claimant had reached maximum medical improvement and could return to regular duty. It is also noted that no medical provider indicated that the claimant was unable to work. Based upon the available evidence, the claimant has failed to prove, by a preponderance of the evidence, she is unable to earn meaningful wages as the result of the compensable injury, and consequently has failed to satisfy the required burden of proof for permanent and total disability. See *Greenfield v. Conagra Foods*, 210 Ark. App. 292 (2010)

In regard to the issue of wage-loss, it is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Rutherford v. Mid-Delta Cmty. Servs., Inc.* 102 Ark. App. 317, 285 S.W.3d 248 (2008). The Commission is charged with assessing wage-loss on a case-by-case basis. Factors to be considered in accessing wage-loss include the employees age, education, post-injury income, work experience, medical evidence, and other maters which may reasonably be expected to affect the workers' future earning power such as motivation, post-injury income, *bonafide* job offers, credibility or voluntary termination. *Glass v. Edens*, 232 Ark. 786, 346 S.W.2d 685 (1961); *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W. 276 (1982); *Hope School*

District v. Charles Watson, 2011 Ark App 219, 382 S.W. 3d 782 (2011). The Award of wage-loss is not a mathematical formula but a judicial determination based on the Commission's knowledge of industrial demands, limitations, and requirements. *Henson v. General Electric*, 99 Ark. App. 129, 257s.W. 3d 908 (2008) Pursuant to Ark. Code Ann. §11-9-522(b)(1), when a claimant has an impairment rating to the body as a whole, like in the current matter, the Commission has the authority to increase the disability rating based upon wage-loss factors. The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W. 3d 848 (2001). Objective and measurable physical findings which are necessary to support a determination of "physical impairment" or anatomical disability are not necessary to support a determination of wage-loss. *Arkansas Methodist v. Adams*, 43 Ark. App. 1, 858 S.W. 2d (1993)

Here the parties stipulated that the claimant sustained a compensable low back injury while assisting a resident of the respondents. Evidence provided that the claimant was born January 28, 1983, making her in her late thirties at the time of the hearing. She obtained two (2) Associate Degrees, one as a LPN, a job that frequently requires a strong back, and one in Health Information Technology, where the claimant has been unable to obtain employment. She previously had worked in a barbeque place and at a hotel in Mountain View. In the military she worked as a munitions system journeyman where she maintained and stored munitions which included guns, bullets, and bombs. All of the jobs that she has performed require the use of a good back. She was suffering from depression prior to the work-related compensable low back injury and was awarded a nine percent (9%) rating to the body as a whole. That based upon the above, it is

determined that the claimant is entitled to a fourteen percent (14%) wage-loss determination.

After reviewing and weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove, by a preponderance of the evidence, that she is entitled to additional medical treatment. The claimant has satisfied the required burden of proof, by a preponderance of the evidence, that she is entitled to a nine percent (9%) impairment rating to the body as a whole. That the claimant has failed to satisfy the burden of proof, by a preponderance of the evidence, that her claim for PTSD is compensable. The claimant has failed to satisfy the required burden of proof that she is entitled to permanent total disability, but in the alternative, has satisfied the required burden of proof that she is entitled to wage-loss in the amount of fourteen percent (14%).

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. §11-9-715.

The Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge