

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G305023

JOHN BOGGS, Employee	CLAIMANT
ARK DEPT OF TRANSPORTATION, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT

OPINION FILED JANUARY 12, 2026

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by CHARLES MCLEMORE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 3, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on July 16, 2025, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. Prior Opinions of Full Commission filed May 13, 2022, and Administrative Law Judge Opinion filed July 16, 2024, are final.

The issues to be litigated at the forthcoming hearing are as follows:

1. Claimant's entitlement to additional benefits for wage loss due to a change in physical condition.

2. Attorney fee.

The claimant contends:

"a. The Claimant contends that his condition has materially worsened since his March 4, 2024 MMI date and that although the respondents have been apprised of that material worsening and requested to provide a job that accommodates the claimant's worsened condition, the respondents have failed to do so.

b. The Claimant contends that his wage loss disability is greater than it was before the material worsening in his condition occurred.

c. The Claimant contends that his attorney is entitled to an attorney's fee in regard to any wage loss disability awarded over and above that which has previously been awarded."

The respondents contend:

"The Respondents contend that this claim has been accepted as compensable and that the claimant has been provided all benefits to which he is entitled. The Respondents contend that, to date, the claimant has been provided all medical treatment that is reasonable and necessary for the compensable injury that he sustained, including pain management.

There was a previous hearing in this matter on November 22, 2021 resulting in the December 17, 2021 Opinion of the Administrative Law Judge, followed by a May 13, 2022 Opinion of the Full Commission. There was also another previous hearing in this matter on June 17, 2024, the issue litigated was the claimant's demand for wage loss disability benefits, resulting in the July 16, 2024 Opinion of the administrative Law Judge finding that the claimant is entitled to 35% wage loss disability benefits. This award has already been paid in a lump sum to the claimant at his request. The

prior decisions in this matter are final, res judicata, and the law of the case.

Subsequent to the hearing and award, the claimant demanded a new FCE, then after the Respondent scheduled an FCE for him, the claimant demanded that the FCE be cancelled. The claimant then eventually underwent his own FCE and demanded that he be accommodated at work for new sedentary limitations he claimed to have. The claimant had performed unreliably at an FCE on March 27, 2024 in the sedentary classification with 24 of 46 consistency measures. Dr. Blankenship released the claimant at MMI and on March 4, 2024 wrote that the claimant has a 13% permanent impairment rating. Dr. Blankenship also wrote that the claimant could return to gainful employment with work restrictions. The claimant in fact returned to work for his employer where his restrictions were accommodated, and this was the subject of previous litigation. The claimant now contends that his restrictions have changed in some way, that he is no longer able to perform his job with the accommodations provided by his employer, and that he is entitled to a greater wage loss award.

The Respondent contends that the claimant has not had another surgery, has not been assigned any greater permanent impairment rating or different work restrictions from an authorized treating physician, and he cannot establish a change in physical condition to modify the previous compensation award. The Respondent contends that the claimant cannot prove his work injury is the major cause of his abstinence from working or any greater disability he claims to have. The Respondent contends that a bona fide offer of employment has been made to the claimant, which the claimant has declined and cannot be entitled to an award of wage loss disability benefits or permanent total disability benefits. The Respondent also contends that the claimant's demands are barred by the doctrine of res judicata since his demands have already been litigated.

The Respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery."

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 16, 2025, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant's claim for additional benefits is not untimely.
3. Claimant's claim for additional benefits is not barred by *res judicata*.
4. Claimant has failed to prove by a preponderance of the evidence that he has suffered a change in physical condition that would entitle him to additional benefits for wage loss.

FACTUAL BACKGROUND

The claimant is a 54-year-old man who began working for respondent approximately 16 years ago. He suffered an admittedly compensable injury to his lumbar spine on December 19, 2011. Surgery on claimant's lumbar spine was recommended by two neurosurgeons, but claimant elected not to undergo the recommended procedure. Instead, claimant returned to work for respondent performing a job that allowed supervisory work, and he continued to receive medical treatment in the form of pain management, which primarily consisted of pain medication.

A prior hearing was conducted on claimant's entitlement to stem cell injections. Before a final decision could be made by the Commission regarding this request, the physician recommending the injections indicated that the injections would no longer benefit claimant's condition. Accordingly, claimant withdrew his request for the injections.

Thereafter, claimant filed for and received a Change of Physician to Dr. Blankenship, who initially treated claimant on February 20, 2023. Dr. Blankenship recommended a different surgical procedure than that previously recommended for claimant and he performed the surgery on April 18, 2023. Following that procedure, claimant continued treating with Dr. Blankenship; underwent epidural steroid injections by Dr. Cannon; and underwent physical therapy.

Dr. Blankenship opined that claimant had reached maximum medical improvement on March 4, 2024, and assigned claimant a 13% impairment rating to the body as a whole for his compensable low back injury. A hearing was conducted on June 17, 2024, on the issue of claimant's entitlement to benefits for wage loss resulting from his compensable injury. An Order was filed on July 16, 2024, finding that claimant had suffered a loss in wage earning capacity in an amount equal to 35% to the body as a whole. That opinion was not appealed, and the parties have stipulated that it is final.

Claimant has filed this current claim contending that his physical condition has worsened and that he is entitled to additional permanent disability benefits over and above the 35% previously awarded.

ADJUDICATION

Initially, respondent contends that claimant's request for additional benefits based upon a change in physical condition is untimely. In support of this contention, respondent cites ACA §11-9-522(d) and ACA §11-9-713. With regard to ACA §11-9-713, respondent contends that claimant's request for a hearing on May 22, 2025, was more than six months after the lump sum payment for previously awarded benefits was made on September 6, 2024.

However, I find that claimant's request was timely because his request was filed within one year of the date of last payment of compensation. While ACA §11-9-713 does contain a six-month time period for filing a claim based upon a change in physical condition, ACA §11-9-702(b)(1) states that claims for additional benefits must be filed within one year from the date of last payment of compensation. The conflict between the six-month period and the one-year period was addressed in *Southern Wooden Box Company v. Smith*, 5 Ark. App. 14, 631 S.W.2d 620 (1982) in which the Court held that where a claimant seeks additional benefits after a final award, ACA §11-9-713 governs as to the grounds required and ACA §11-9-702(b) governs the period of limitation for all claims for additional benefits, whether or not there has been a final award.

Thus, claimant's request for a hearing for additional benefits based on a change in physical condition filed on May 22, 2025, was within one year of the lump sum payment on September 6, 2024. Since I have found that this was within the one-year time period, it is not necessary to consider whether the claim was filed within one year of payment of other benefits such as medical benefits. Accordingly, I find that claimant's claim was timely filed.

Next, respondent argues that claimant's claim is barred by the doctrine of *res judicata*. The purpose of *res judicata* is to put an end to litigation by preventing a party who has had one fair trial on a matter from relitigating the same matter a second time. *Cox v. Keahey*, 84 Ark. App. 121, 133 S.W.3d 430 (2003). *Res judicata* applies where there has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the issue which might have been litigated. *Beliew v. Stuttgart Rice Mill*, 64 Ark. App. 334, 987 S.W.2d 281 (1998).

While there was a prior hearing on the issue of claimant's wage loss, the Arkansas Workers' Compensation law provides for an award to be reviewed and modified at the request of any party in interest on the ground of a change in physical condition. See ACA §11-9-713(a)(3). Here, claimant is contending that he has suffered a change in his physical condition since the last hearing and is therefore entitled to additional benefits for wage loss resulting from that change. I do not find that claimant's claim based upon a change in physical condition is barred by the doctrine of *res judicata*. In fact, his claim is specifically permitted by statute.

The primary issue in this claim is whether claimant has proven that he suffered a change in his physical condition such that his prior award of benefits of wage loss should be modified. As previously noted, modification of awards is governed by the provisions of ACA §11-9-713. That statute states that the Commission may review any compensation order, award, or decision.

I find based on the evidence presented that claimant has failed to prove that he has suffered a change in physical condition since the prior award.

Prior to the last hearing on June 17, 2024, claimant was provided work as a storeroom assistant for respondent, working five hours per day, five days per week. His job duties included handing out inventory, data entry, general office work, clerical work, answering emails, and answering the telephone.

Claimant testified that his job required him to perform a lot of twisting and turning in an office chair to reach a fax/scanner machine behind him. He testified that this activity increased his spasms and pain which, in turn, prevented him from sleeping at night. However, claimant admitted that he has been taking medication for muscle spasms for many years.

Q What do you take for muscle spasms?

A It's Flexeril something – it's a generic form of Flexeril. I don't know. I don't remember what it is called.

Q How long have you been prescribed that?

A For years. I don't know how long. As long as I've been going to pain management.

Q Okay. Who treats you for pain management?

A Dr. Gaines.

Q And how long have you seen Dr. Gaines.

A I don't know.

Q Has it been some years?

A It has been many years, yes.

With respect to muscles spasms, I note that medical records dated prior to the last hearing contain numerous observations of muscle spasms. This includes the

medical records of Dr. Slabbert, claimant's primary care physician, whose medical records have been introduced at the most recent hearing.

With regard to his inability to sleep, claimant also had these same complaints at the time of the hearing in 2024.

Q So does your pain have any affect on your ability to sleep?

A Yes.

Q What?

A Most nights I don't. If I get any sleep, it is about three hours of sleep, if I get sleep.

Q What time do you typically try to get to bed?

A 8:30, 9 o'clock.

Q If you get to bed by 9 o'clock, about what time will you actually be able to go to sleep?

A Well, as I said, most times I don't. If I get sleep, after midnight.

Q And why is that?

A Because I can't – because of my pain. There is not a comfortable position that I can get in that my back and that leg does not hurt.

Q Do you have firsthand knowledge that you are not able to work able to work five hours a day, five days a week?

A Yes, sir.

Q And how do you know that?

A Because I don't get any sleep. I get zero sleep. I am in too much pain.

Thus, at the hearing in 2024, claimant testified that he did not sleep at night due to pain.

Interestingly, the claimant's last day to work for respondent was on October 11, 2024. Claimant testified that on that day he was driving home when he dozed off and ran off the road into a ditch, tearing up the air dam on his vehicle. Claimant testified that he is has not worked since that day and he attributes his falling asleep to his inability to sleep at night caused by pain and muscle spasms. Again, these are the same complaints claimant had at the time of the 2024 hearing. In addition, I also note that the medical records indicate that the claimant suffers from narcolepsy for which he is currently receiving treatment.

With respect to claimant's ability to perform the job offered to him by respondent, I note that claimant's supervisor offered to provide claimant with a sitting/standing desk; however, claimant chose not to accept that offer.

Q Didn't your supervisor offer you a sitting-standing desk?

A They – yes.

Q Okay. But you didn't want that?

A I told him that if – that I would let him know. I wasn't there long enough to kind of figure out what my problem was. I had asked for a chair because I thought that the chair was the issue. They provided a chair. I hadn't used it long enough to see if that benefited me because the condition didn't improve and it got worse before I had a chance to try the other option.

I also note that claimant testified that he does not believe he is capable of performing any job at this time. However, claimant had the same testimony at the 2024 hearing.

Q Okay. Page 11 of the respondent's medical exhibit describes the work duties you had and the last sentence on page 11 of the exhibit says, "He reports he is unable to perform those activities at this time due to his injury."

Did you say that to the FCE examiner?

A I absolutely probably did.

Q So you don't feel like you could do that supervisor job?

A I don't – if you are asking me, I don't feel like I can do any job right now, but I am. I still – I don't even feel like I am fixed.

Thus, claimant had the same complaints at the time of the prior hearing in 2024.

Before the hearing on June 17, 2024, claimant had undergone a functional capacity evaluation which was determined to be unreliable due to inconsistent effort on claimant's behalf. However, the evaluation determined that claimant demonstrated the ability to work in at least a sedentary classification of work over the course of a normal eight-hour workday. Dr. Blankenship eventually placed some restrictions on claimant that were less restrictive than the FCE.

Since the 2024 hearing, claimant has undergone another FCE. Notably, the second evaluation indicated that claimant gave a consistent effort and was reliable. That evaluation was performed by Velvet Medlock. Medlock compared the two FCE evaluations and in a report dated March 17, 2025, noted that both reached the same

conclusion – that claimant was capable of performing sedentary work. The most recent FCE did not indicate that claimant was incapable of performing any work.

Claimant also relies on the opinion of his primary care physician, Dr. Slabbert, in support of his contention that his physical condition has worsened.

First, I note that claimant has received medical treatment from Dr. Slabbert for many nonwork-related conditions including – gout; anxiety; depression; neck pain; upper back spasms; allergies; hypertension; narcolepsy; low Vitamin D. Furthermore, claimant has not been treating with Dr. Slabbert for his low back complaints; instead, he has been receiving pain management treatment from Dr. Gaines who is currently his authorized treating physician. Basically, Dr. Slabbert, in a report dated January 17, 2025, indicated that he did not believe claimant would be able to continue his current work in spite of the accommodations which had been made for him. Notably, at the time this report was written by Dr. Slabbert, claimant had not worked for the respondent since October 2024, some three months earlier.

In addition, on June 6, 2025, Dr. Slabbert completed a form for claimant regarding FMLA. Dr. Slabbert again indicated that he did not believe claimant would be able to return to work in the foreseeable future. Significantly, Dr. Slabbert's opinion is based on a number of factors which are not related to his compensable injury. For instance, Dr. Slabbert indicates that the probable duration of claimant's condition is for his lifetime and that it could be work related. He then notes that claimant has undergone cervical spine and lumbar spine surgery. However, claimant's cervical spine surgery and issues related to that condition are not related to his work-related injury. Dr. Slabbert also notes that claimant is taking antidepressant medication with a pending

psychiatric appointment. Again, these are conditions which are not related to claimant's work-related injury. In describing other relevant medical facts related to claimant's condition Dr. Slabbert noted that claimant was being evaluated for worsening depression and was on medication that could/will affect his concentration. Again, this is a condition which is not related to claimant's work injury. Dr. Slabbert goes on to note various conditions which include depression; radiculopathy; chronic back pain; the use of a cane; spasm of the thoracic back muscle; restlessness and agitation due to pain; chronic right shoulder pain; spinal stenosis of the cervical region; and hypertension. Again, many of these issues are not related to claimant's low back complaints.

Therefore, I do not find Dr. Slabbert's opinion regarding claimant's ability to return to work persuasive given that his opinion is based in large part on conditions which are not related to claimant's work-related injury and his lack of any specific medical observations noting that claimant's work-related condition has worsened since the time of the last hearing in 2024.

I also find Dr. Blankenship's opinion of November 21, 2024, significant. This report was written approximately one month after claimant last worked for respondent. Dr. Blankenship stated:

The gentleman's main pain complaint is right buttock pain and leg pain. He underwent surgical intervention with a multilevel anterior lumbar interbody arthrodesis now a year and a half ago. He is also complaining of some headaches and mid scapular pain. Before I saw him for his low back, he had anterior cervical arthrodesis and fusion by Dr. Johnson. His SI joint examination is negative in all-5 testing. His piriformis examination is positive. The gentleman also had a right-sided transforaminal L5 ESI that did not afford any relief; it actually exacerbated his pain. He is back in doing physical therapy with the folks at Total Spine. Unfortunately,

initially after surgery he was not very compliant with his physical therapy. I just do not see a compressive etiology that would explain his leg pain. His surgical construct is good. It appears to be solidly fused. There is no advancement of adjacent segment disease. His postoperative myelogram that was done last year also looked good with no residual or retained stenosis and no complication of the orthopedic implants. His MRI does demonstrate well-decompressed thecal sac with no gross complications. With his plain x-rays looking as good as they do, I do not think there is any problem with the orthopedic implants or the decompression. He does not have any advancement of adjacent segment disease. Solidity of arthrodesis cannot be determined on his MRI but, combined with his plain radiographs and visualization of anterior bone formation, I do not think pseudoarthrosis is a problem. (Emphasis added).

Dr. Blankenship went on to indicate that he had nothing further to offer the claimant other than a repeat functional capacity evaluation which claimant did not want. Again, Dr. Blankenship's report is notable because it was given almost one month after the claimant last worked for the respondent.

I do note Dr. Blankenship subsequently indicated he would defer to the opinion of medical providers who had evaluated and treated the claimant after he last saw the claimant on November 21, 2024. However, that deferral does not change the fact that Dr. Blankenship, as a specialist, evaluated the claimant and gave an opinion based upon specific medical findings in his report of November 17, 2024. Even though Dr. Slabbert has expressed an opinion regarding claimant's ability to return to work, Dr. Slabbert is a primary care physician, not a specialist. Furthermore, Dr. Slabbert's medical reports do not contain any details regarding his specific evaluation of claimant's low back complaints. Furthermore, as previously noted, Dr. Slabbert's opinion is based on conditions which are not related to claimant's compensable low back injury.

I also note that claimant was evaluated by Carol Kennedy, APRN, at My Psych Health on May 17, 2025. That report contains the following:

Psych Impression: Presents with depression; a sleep wake disorder; trauma, and related disorders. Level of stress was severe and included economic problems, health problems, occupational problems, problems with access to healthcare, and relationship problems.

Many of these issues are not related to claimant's compensable low back injury. Dr. Slabbert has also indicated that claimant suffers from depression. However, Dr. Gaines, claimant's pain management physician, in her report dated June 19, 2025, stated that claimant was not depressed based upon a depression screening that was performed and returned normal.

In summary, since the time of the last hearing in 2024, claimant has undergone no additional surgical treatment. He has not been assigned any additional permanent impairment. Claimant has not received any change in the treatment provided by his authorized treating physicians. Claimant is still receiving pain management treatment from Dr. Gaines as he was receiving at the time of the hearing in 2024. To the contrary, Dr. Gaines' medical records indicate that she has decreased the amount of pain medications given to claimant. Although I acknowledge that Dr. Slabbert has opined that he does not believe that claimant can return to his job with respondent, I do not find his opinion persuasive. First, his opinion is based on conditions that are not related to claimant's work-related injury. Second, Dr. Blankenship in his report noted testing and his exam findings did not explain claimant's continued complaints of leg pain. Furthermore, Dr. Gaines, claimant's authorized treating physician for pain management, has not opined that claimant's condition has worsened but instead, has reduced the

amount of pain medications prescribed. Finally, the complaints claimant mentioned at the hearing which included muscle spasms, pain, lack of sleeping, and a belief that he is incapable of working were all present at the time of the hearing in 2024.

Based upon the foregoing evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he has suffered a change in his physical condition. Therefore, I find that claimant is not entitled to additional compensation benefits for wage loss.

ORDER

Claimant's claim was timely filed, and it is not barred by the doctrine of res judicata. However, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a change in his physical condition since the last hearing in 2024. Accordingly, claimant's claim for additional compensation benefits is hereby denied and dismissed.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE