BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H003073

KENNETH BREWTON, EMPLOYEE **CLAIMANT**

VS.

MAY AVENUE PLUMBING, INC., EMPLOYER **RESPONDENT**

UNITED FIRE AND CASUALTY, TPA/CARRIER **RESPONDENT**

OPINION FILED JULY 29, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 9TH day of June 2026, in Fort Smith, Arkansas.

Claimant is represented by Eddie H. Walker, Attorney at Law, Fort Smith, Arkansas.

Respondents are represented by Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 9th day of June 2026, to determine the issue of Respondents entitlement to an independent medical evaluation (IME) by Dr. Carlos Roman. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Pre-hearing Order by Administrative Law Judge Greg Stewart provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that the Full Commission Opinion of August 15, 2025, is final. The parties agreed that the transcript of the March 10,2 025, hearing would be incorporated. The Claimant submitted four exhibits that were admitted without objection. The sole issue to be litigated is Respondent's entitlement to an independent medical evaluation (IME) by Dr. Carlos Roman. The Claimant contends that the respondent is not entitled to an IME by Dr. Roman. The

Respondents contend that all appropriate benefits are being paid in regard to the Claimant's injuries, and that Respondents request an IME with pain management physician Dr. Carlos Roman, who has agreed to evaluate the Claimant at his Russellville Arkansas. The Respondents request for an IME was made pursuant to A.C.A. §11-9-511 and §11-9-811. 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 Claimant, 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. The Full Commission Opinion of August 25, 2025, is final.
3. An in-person medical examination by Dr. Roman of the claimant at his Russellville office is reasonable and necessary pursuant to A.C.A. §11-9-511(a) and Claimant is entitled to mileage for the trip
4. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were admitted into the record without objection. The claimant submitted four exhibits that were admitted without objection.

The claimant was the only witness to testify and testified that he had suffered a job-related injury involving his lower back and shoulder in January of 2022 and as a result,

went through two surgeries to his left shoulder along with treatment for his back. He testified that he was treated by Dr. Cannon for pain management and Dr. Blankenship, a neurosurgeon. The claimant stated that he had gone to see Dr. Cannon in an attempt to avoid surgery and that he has “done me great.” I get injections in my back every three months and I had an ablation twice. The claimant went on to state that it was his personal opinion that he would not be able to engage in gainful employment if he was not under the treatment of Dr. Cannon. (Tr. 5, 6)

The claimant was then referred to Claimant’s Exhibit 4, which appeared to be a copy of a bill for $4900.00, with a balance of $1040.53 from Dr. Cannon. Claimant testified that he paid the bill out of his pocket due to the pain being so bad that he needed it. “It keeps me functioning and going when I get the injections.” Workers’ Compensation had been paying for the treatment in the past, but they denied part of this bill. The claimant stated that he Googled the location of Dr. Roman’s office and saw that there was one in Russellville which would be closer to him than Little Rock, and that he would be out the amount of $85.00 an hour for the trip and evaluation to go see Dr. Roman, due to that was what he gets paid. The claimant had been under the treatment of Dr. Cannon since 22 or 23 and stated it was his opinion “That he is doing me great because he takes care of me. And every time I get in bad pain, I call and he gets me an appointment and gets me the injections and helps me to function.” He felt that Dr. Cannon’s treatment had allowed him to engage in gainful employment. He was then asked based upon his actual experience and knowledge what would happen if he was no long able to be treated by Dr. Cannon, and he responded “I would most likely have to have surgery and be possibly

dysfunctional, not able to work, according to Dr. Blankenship" and confirmed that he was not interested in care from another doctor. (Tr. 7 – 9)

Under cross examination, the claimant testified that he was self employed and owned Brewton Plumbing. He admitted that he charged for his labor and would go and bid jobs and keep the three men working for him going, guiding and assisting them. He stated that he is currently not taking any medications, with the exception of the muscle relaxer, Tizanidine, which he only takes when he is hurting "real bad" and that he tries to only take it at bedtime because it makes him sleepy. He typically only takes it once a week on weekends. He thought that he hadn't taken any hydrocodone in a year. He admitted that he had gone for a second opinion with Dr. Bruffett, a pain management doctor in Little Rock. He stated that if he was ordered to see another pain management doctor closer than Russellville, he would attend but that he did not want to change from Dr. Cannon. He agreed that there were probably other great doctors that might have a different opinion. (Tr. 10 – 12)

On redirect, the claimant agreed that Dr. Cannon had provided him with what he needed to be gainfully employed. (Tr. 13)

The claimant submitted four exhibits without objection. The first exhibit consisted of an Opinion issued by Administrative Law Judge Gregory Stewart on March 20, 2025, which found that the claimant had met his burden of proving by a preponderance of the evidence that he had a 13% impairment rating to the body as whole for his low back injuries. (Cl. Ex. 1, P. 1 – 8)

The second exhibit consisted of 21 pages of medical that was admitted without objection. An MRI on June 3, 2024, provided that the claimant does have some mild disc

changes at L4-5 and L5- S1. At the lumbosacrum, there was an indication of annular fissuring, with midline disc bulging. Marked facet changes were noted. (Cl. Ex. 2, P 1) Dr. Blankenship issued an Office Note on July 15, 2024, that provided the claimant had significant hyperlordosis of the lumbar spine and degenerative changes. His chief complaint was lower back pain, and he has been receiving facet joint injections at L4-5 and L5-S1 and "gets pretty decent relief" for 2 months. Dr. Cannon does this about every 3 months, and he gets 75% relief. (Cl. Ex. 2, P. 2 - 7) Dr. Blankenship issued a letter to a Mr. Walker, on September 5, 2024, that provided that the claimant's MRI demonstrated a grade 1 anterolisthesis at the L4-5 level and also a posterior disc protrusion at the lumbosacrum and these two combined problems would qualify the claimant for a 13% to the body as a whole impairment rating based upon the *4th Edition AMA Guidelines*. (Cl. Ex. 2, P. 8)

The remaining reports provided that the claimant presented to Dr. Cannon on September 5, 2024; September 25, 2024; February 12, 2025; April 17, 2025; June 12, 2025; and September 4, 2025, for facet joint injections on the right and left side at L4-5 and L5-S1. On February 9, 2026. the claimant presented to Dr. Cannon due to aching, sharp burning, throbbing and shocking pain, and he provided that his pain was under control until he laid on his back underneath a sink. Later the claimant returned to Dr. Cannon on February 26, 2026, where he received the same facet joint injections. A radiofrequency ablation of the bilateral L4 medial branches and a bilateral primary dorsal rami was performed on April 30, 2024. (Cl. Ex. 2, P. 9-21)

An email from Dr. Canon's office dated November 12, 2025, attempted to obtain approval for a bilateral L4-5 nerve ablation which was denied. (Cl. Ex. 3, P. 1) A statement

dated February 26, 2026, provided that the claimant received a pain injection and the total charge for the injection was $4903.00, and the claimant was responsible for the deductible which was $1040.03. (Cl. Ex. 4, P. 1)

DISCUSSION AND ADJUDICATION OF ISSUES

The sole issue before the Commission is the request for an IME by the Respondents pursuant to A.C.A. §11-9-511 and A.C.A. §11-9-811, over the objection of the Claimant. The Commission has the responsibility to weigh all evidence impartially, without giving the benefit of doubt to either party. Ark. Code Ann §11-9-704. See *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989).

The medical records and testimony in the present matter clearly provide that the claimant was found by Dr. Blankenship to have a 13% to the body as a whole impairment rating based upon the *4th Edition AMA Guidelines* in regard to the combined findings of a grade 1 anterolisthesis at the L4-5 level and also a posterior disc protrusion at the lumbosacrum and this was confirmed and made final by the Full Commission Opinion of August 25, 2025.

A.C.A. §11-9-511 provides that an injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Arkansas Workers' Compensation Commission as the Commission may require from time to time if reasonable and necessary. (b) The places of examination and treatment shall be reasonably convenient for the employee. (c) Such physician as the employee, employer, or insurance carrier may select and pay for may participate in the examination if the employee, employer, or insurance carrier so requests.

The claimant contends that A.C.A. §11-9-511 does not create an independent stand-alone right to have an IME performed by a physician of respondent's own choosing.

In this case, the respondent requested the claimant undergo an in-person evaluation by Dr. Roman, in Russellville, Arkansas. Regardless of whether A.C.A. §11-9-511(c) creates an independent stand-alone right, it is found that subsection (a) allows the Commission to approve a physical examination if the Commission feels that the examination is reasonable and necessary. Here, it appears that the Russellville office of Dr. Roman is only approximately about 30 miles further from the city of Fort Smith and the claimant, than the general whereabouts of his treating physician, Dr. Cannon's office in Fayetteville, and due to Interstate 40 to Russellville from Fort Smith, would consequently be less than a thirty minute longer drive to Russellville than to the office of Dr. Cannon in Fayetteville.

In reaching this finding, it should be noted that the claimant is very satisfied with the care that he is receiving from Dr. Cannon and has been receiving great results that have allowed him to continue working. It is also noted that the only issue before the Commission at this time is whether the claimant should undergo a physical examination by Dr. Roman. Whether claimant should continue receiving the recommended treatment by Dr. Cannon is not currently before the Commission. Given the fact that the claimant has been assigned a 13% total body anatomical impairment rating for an injury that occurred a few years earlier, it does not seem unreasonable to have the claimant undergo an in-person evaluation by Dr. Roman.

Accordingly, for the foregoing reasons, it is found that an in-person physical examination and evaluation of the claimant by Dr. Roman is reasonable and necessary, and this examination is pursuant to A.C.A. §11-9-511.

Pursuant to A.C.A. §11-9-511, claimant is to undergo an in-person physical examination by Dr. Roman at his Russellville office and additionally receive mileage for his travels which will be paid for by the respondents. 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