BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H404247

DAVID BONEWELL, EMPLOYEE	CLAIMANT
VAN BUREN SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 29, 2026

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

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

Respondents represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed May 21, 2026. The administrative law judge found that the claimant's attorney was entitled to fees for legal services. After reviewing the entire record *de novo*, the Full Commission finds that the claimant's attorney proved that the respondents controverted the claimant's entitlement to additional medical treatment. The claimant's attorney therefore proved that he was entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2012).

I. HISTORY

The parties stipulated that the claimant, now age 75, "sustained a compensable cervical spine, right shoulder, and lumbar back injury" on April 22, 2024. It was reported at Mercy Clinic on June 3, 2024, "David was standing on the platform of a scissor/high lift when him and co worker when bringing down the lift, to grab additional equipment. As David was getting ready to exit the lift that has 3 steps below the platform to reach the ground. He held on to the double hinge bar but the bars did not have the safety pin in place, causing him to fall on your back on the floor of the machine."

Dr. Chad Songy returned the claimant to restricted work on April 2, 2025.

An MRI of the claimant's cervical spine was taken on September 30, 2025 with the impression, "Mild to moderate cervical spondylosis as detailed above."

Dr. David L. Knox noted on October 8, 2025:

> David Allen Bonewell is a 74 y.o. male who presents for follow up after new imaging. Patient is now 20 months status post cervical spine injury following a fall from a forklift. Landing on his back he suffered severe neck pain shoulder pain. He has been through the gamut of conservative measures. In clinic we reviewed his MRI scan together….
> Patient comes in with continuing difficulty with neck pain posterior scalp pain radiating into the orbit on the right with movement to the right. He is 20 months into his workplace injury. I recommended that he undergo cervical spine films as well as an MRI scan which were all completed. We reviewed his MRI scan together demonstrating a large spur formation at C3-4 on the left. The significant changes and there may very well be [an] acute disc herniation into the neuroforamen C4-5.

> I believe he would benefit from surgery consequently I have recommended that he consider surgical options. There is a chance that he may not get significant benefit with this surgery but I am inclined to think that he should undergo the surgery as he has been through the gamut of conservative measures consequently have recommended neurosurgical consultation which will be done in the next week or 2….

Dr. Brent P. Peterson reported on or about October 30, 2025:

> This patient was seen today in follow-up evaluation. He has a history of pain in his neck radiating into his right upper extremity for the past 21 months. He has undergone extensive treatment including physical therapy and epidural steroid injections. He has also undergone median branch block. He has also had his right shoulder rotator cuff repaired. He describes pain in his neck that is constant that radiates into his right shoulder. He also has numbness beyond his right elbow involving his hand….
> MRI scan of the cervical spine shows severe disc space narrowing at C3-4 and severe foraminal stenosis on the left at C3-4. There is stenosis of the lateral recess on the right at C4-5 and there is a focal bone spur abutting the spinal cord on the right at C5-6. This patient has undergone extensive treatment but continues to have symptoms that are very bothersome to him. He would like to discuss surgical intervention. Due to his symptoms radiating beyond his elbow, I think the C5-6 level should be addressed in addition to the C3-4 and C4-5 levels. Therefore, I have discussed anterior cervical diskectomy and fusion at C3-4, C4-5 and C5-6 with allograft and plate including indications, risks and benefits. At this time, he states he understands and would like to proceed with surgery. We will go ahead and set this up for him….

The record contains a Systemedic Corporation "Preauthorization Review" dated November 7, 2025: "A request has been received for **Preauthorization** of procedures/treatment on the above claimant." A box was checked beside the comment, "RN level review criteria **met**." In

addition, a Preauthorization Review Sheet dated November 7, 2025 indicated "Approval" for the procedure "Anterior Cervical Discectomy and Fusion C3-4, C4-5 and C5-6."

The claimant's attorney corresponded with the respondents' attorney on November 26, 2025:

> We have been notified that although surgery has been recommended for Mr. Bonewell regarding his neck, the workers' compensation insurance carrier is refusing to authorize the surgery that I understand was already actually scheduled at Washington Regional.
> Please let me know the Respondents' position regarding whether they are accepting or denying liability regarding Mr. Bonewell's need for additional medical treatment on his neck. If the Respondents are accepting liability, please ask them to immediately authorize the surgery….

The claimant testified on direct examination:

> Q. There is also a report that indicates that surgery was actually scheduled for you to undergo on December 1 of 2025. Is that right?
> A. Yes.
> Q. Did you have surgery on December 1, 2025?
> A. No.
> Q. What happened?
> A. There was not an authorization number for my surgery. They tried to get my Medicare information so they could charge me with the expense….
> Q. Did you intend to have surgery on December 1, 2025, as had been directed by two neurosurgeons?
> A. Yes.
> Q. Did you intend to do that?
> A. Yes. I planned on it, prepared for it, and the 30th of November, I was notified that it was not going to happen. It was cancelled or postponed.

Ann Wilson, a case manager with Systemedic, corresponded with Dr. Peterson on December 2, 2025 and stated in part:

> I am the nurse case manager asked by Arkansas School Boards Association to provide pre-authorization and assist with clarification of injury relatedness of pathology and treatment regarding the proposed procedure for Mr. David Bonewell's 04/22/24 work injury.
> Mr. Bonewell is a 74-year-old left hand dominant male, who fell while trying to pull on a bar of a safety rail resulting in and (sic) injury to the right and left shoulders, back, neck, and head. He had a previous history of a left rotator cuff repair after moving a filing cabinet. A right shoulder arthroscopic rotator cuff repair was done by Dr. Chad Songy, orthopedic surgeon….
> Registered nurse review criteria was met for the C3-C4, C4-C5 and C5-C6 anterior cervical discectomy and fusions, but injury relatedness of the pathology and surgery appears questionable, based the cervical spine pathology at all three levels being degenerative in nature. In view of the above, please clarify the questions below prior to consideration of approval for procedures.
> 1. What pathology on the cervical MRI is considered acute 04/22/24 injury related versus pre-existing pathology? (See enclosed MRI). Please explain and provide supporting rationale.
>
> 2. To what degree are his current symptoms resultant from the pre-existing degenerative disc disease versus acute 04/22/24 injury related pathology?
>
> 3. If his symptoms are related to an aggravation to a pre-existing degenerative spine disease, when did the 04/22/24 work injury aggravation end and progressive degenerative spine disease symptoms start?
>
> 4. Can you state, within a reasonable degree of medical certainty, the major cause (greater than 51%) for the proposed anterior cervical discectomy and fusions to C3-C4, C4-C5 and C5-C6 are indicated as the direct result of the 04/22/24 work incident versus pre-existing degenerative spine

> disease and neuroforaminal narrowing and spinal canal stenosis? Please explain and provide supporting rationale.
>
> 5. If surgery is indicated for the pre-existing pathology, is there any additional treatment indicated as the result of the 04/22/24 injury? If so, please outline and provide additional treatment recommendations and duration for achievement of maximum medical improvement.

Meanwhile, the claimant's attorney wrote to the Clerk of the Commission on December 8, 2025:

> It is my understanding that a surgery that has been recommended regarding Mr. Bonewell's neck still has not been approved; therefore, please assign this case to an administrative law judge so that this matter can be set for hearing.
> The issue will be the claimant' (sic) entitlement to recommended medical treatment regarding the neck.

The claimant's attorney corresponded with the Clerk of the Commission on January 6, 2026:

> By email dated December 8, 2025 I requested that this case be assigned to an administrative law judge so that the matter could be set for hearing regarding the claimant's entitlement to recommended medical treatment.
> Please consider this a follow up to that request….

The respondents' attorney corresponded with Kara Quinton, a Claims Adjuster with the Arkansas School Boards Association, on January 8, 2026:

> Eddie has requested a hearing and made a pre-hearing filing (dictation pending) re: the neck surgery associated with H404247 DOI 04/22/24.
> In the initial meds we showed accepted body parts as neck, back and right shoulder for this date of injury.

> Can you let me know if you've denied the neck and/or the surgery recommended?

The respondents' attorney further corresponded with Kara Quinton on January 8, 2026:

> I see from the file that the NCM wrote Dr. Peterson on 12/19. Has she gotten a response yet?

Kara Quinton replied to the respondents' attorney on January 8, 2026:

> No –
> I had her let them know as well that any and all treatment is not authorized until we get a response from him. That was on Monday….still have not heard from his office. Mr. Bonewell is aware as well and is apparently calling their office to encourage them to respond.

Dr. Peterson wrote a "To Whom It May Concern" note on January 8, 2026:

> I am writing this to inform you that I do not have an opinion regarding the causation of these issues. I will attach all notes to for you (sic) to review. I will render my opinion on my interpretation on imaging which correlate (sic) with the patient's symptoms.

A physician with Medical Review Institute of America, LLC corresponded with Ann Wilson on January 15, 2026 and concluded, "The proposed anterior cervical discectomy and fusion C3-4, C4-5 and C5-6 is indicated and medically appropriate. The progression on imaging at C3-6 of the stenosis noted on imaging is considered acute 04/22/2024. The

need for this treatment does indicated (sic) as the direct result of the 04/23/2024 injury or pre-existing pathology."

The respondents' attorney informed the claimant's attorney on January 22, 2026, "The adjuster is approving the neck surgery. Let me know if there is anything else that needs to be litigated."

A pre-hearing order was filed on February 13, 2026. The claimant contended, "The claimant contends that any disability benefits paid or payable in regard to the claimant's cervical spine have been controverted and therefore claimant's attorney is entitled to an appropriate attorney's fee."

The respondents contended, "They have approved surgery as recommended by Dr. Peterson, and it has been scheduled for March 19, 2026. After Dr. Peterson recommended surgery, the nurse case manager asked him for clarification as to his recommendations and whether they were causally related to the work injury since the problems the doctor aimed to treat included stenosis and other conditions that were traditionally viewed as being degenerative/chronic in nature. Dr. Peterson would not initially provide a response. On January 8, 2026, he provided a brief note wherein he stated that he did not have an opinion regarding the causation of the problems that he felt made surgery necessary. The adjuster then

submitted the case for a peer review. Upon receipt of the peer review report, the adjuster approved the surgery and authorized its scheduling."

The parties agreed to litigate the following issue: "1. Whether this claim was controverted so as to entitle claimant to an attorney's fee. All other issues are reserved by the parties."

Dr. Peterson performed surgery on February 13, 2026: "Cervical Fusion Anterior Interbody Discectomy (5) C3-4, 4-5, 5-6." The pre- and post-operative diagnosis was "Cervical spondylosis with myelopathy."

The claimant testified on direct examination:

> Q. Do you have any reason to believe that that surgery would have ever been authorized if you didn't have an attorney?
> A. No….
> Q. So even though surgery was recommended on September 11, 2025, you didn't get to undergo the surgery until February 13th of 2026?
> A. Yes.
> Q. How was your condition during that time?
> A. I could not turn my head to the right. If I did, I had severe headaches and the headaches would not go away. It was continuous. It had been that way since the injury occurred.

The respondents' attorney cross-examined the claimant:

> Q. And comp paid for the surgery that you had. Right?
> A. Yes….
> Q. Did you know the adjuster started the precertification process soon after Dr. Peterson recommended surgery and submitted the case for precertification? Did you know that?
> A. No….
> Q. My question to you, sir, were you aware the nurse case manager was trying to get Dr. Peterson to give an answer as to whether the surgical recommendation was related to your injury?

A. No….
Q. Do you remember anything about a delay in him responding, him resisting giving an answer to the question about your surgery?
A. No….
Q. Were you aware that when he finally did respond, he indicated that he didn't have an opinion as to whether your surgery was related or he wouldn't provide one? Were you aware of that?
A. Yes….
Q. Were you aware that the surgery was approved based on the independent review that the adjuster went and got on her own?
A. No….
Q. I had the surgery was scheduled for March 19th, but you said you had it on February 13th?
A. Yes.
Q. Is that correct?
A. Yes.
Q. And afterwards you received temporary total disability payments every two weeks?
A. Yes.

Dr. Peterson provided the claimant a WORK/SCHOOL RELEASE on February 25, 2026. The WORK/SCHOOL RELEASE indicated that the claimant was to remain off work until "after 3 month postop." The claimant was assigned limitations on lifting, pushing, pulling, bending, twisting, etc. Dr. Peterson provided the claimant another WORK/SCHOOL RELEASE on February 26, 2026. The WORK/SCHOOL RELEASE indicated that the claimant was to remain off work until "follow up visit on March 17, 2026." Dr. Peterson provided the claimant with a third WORK/SCHOOL RELEASE on March 17, 2026. The WORK/SCHOOL RELEASE indicated that the claimant was to remain off work "until reevaluated at next post op."

A hearing was held on April 20, 2026. The respondents' attorney cross-examined the claimant:

> Q. Are you still drawing a check?
> A. Yes.
> Q. Did you get one last week?
> A. I believe so.
> Q. Okay.
> A. I am not sure of the date.
> Q. And those benefits were paid you without you having to come to a hearing like this and get a judge to order them. Correct?
> A. Yes.

An administrative law judge filed an opinion on May 21, 2026. The administrative law judge found that the claimant's attorney was entitled to fees for legal services. The administrative law judge ordered, "Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion (sic)." The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-715(Repl. 2012) provides, in pertinent part:

> (a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.
> (B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee….
> (B)(i) In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (½) by the employer or carrier in addition to compensation awarded; and

> one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them. (ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

An administrative law judge found in the present matter, "2. Claimant's attorney is entitled to an attorney fee on temporary total disability benefits previously paid to claimant, and on future indemnity benefits, if any." The Full Commission finds that the claimant's attorney proved he was entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2012).

The parties stipulated that the claimant sustained "a compensable cervical spine" injury on June 3, 2024. The record indicates that the claimant fell from an industrial machine. The claimant was initially returned to restricted work on April 2, 2025. Dr. Knox examined the claimant on October 8, 2025 and recommended a neurosurgical consultation. Dr. Peterson reported on October 30, 2025 that the claimant would proceed with surgery. A Systemedic Corporation "Preauthorization Review," dated November 7, 2025, indicated an RN's approval for an anterior cervical discectomy and fusion.

The claimant's attorney corresponded with the respondents' attorney on November 26, 2025 and stated in part, "the workers' compensation insurance carrier is refusing to authorize the surgery that I understand was

already actually scheduled at Washington Regional." The claimant's attorney asked for the respondents' position with regard to whether or not the respondents authorized surgery on the claimant's neck. The claimant testified that he was scheduled to undergo surgery on December 1, 2025 but that his surgery was cancelled because it was not "authorized." Ann Wilson, a Systemedic case manager, corresponded with Dr. Peterson on December 2, 2025 and queried Dr. Peterson with regard to pre-existing condition, disc degeneration, and the necessity for surgery.

The claimant's attorney corresponded with the Clerk of Commission on December 8, 2025 and January 26, 2026. Counsel requested that the matter be set for a hearing before an administrative law judge with regard to the claimant's entitlement to additional medical treatment. Kara Quinton, a claims adjuster for the respondent-carrier, plainly informed the respondents' attorney on that "treatment is not authorized" until a causation opinion was received from Dr. Peterson. Dr. Peterson replied on January 8, 2026, "I do not have an opinion regarding the causation of these issues." A physician with Medical Review Institute of America opined that surgery proposed by Dr. Peterson was "medically appropriate." The respondents' attorney subsequently informed the claimant's attorney on January 22, 2026, "The adjuster is approving the neck surgery. Let me know if there is *anything*

else that needs to be litigated [emphasis supplied]." The claimant underwent surgery on February 13, 2026.

It has long been recognized that making an employer liable for attorney's fees serves legitimate social purposes such as discouraging oppressive delay in recognition of liability, deterring arbitrary or capricious denial of claims, and insuring the ability of necessitous claimants to obtain adequate and competent legal representation. *Wal-Mart Stores, Inc. v. Brown*, 73 Ark. App. 174, 40 S.W.3d 835 (2001), citing *Cleek v. Great S. Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998). One of the purposes of the statute and case law is to put the economic burden of litigation on the party that makes litigation necessary by controverting the claim. *Prier Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1988). *See also Little Rock Ambulance Auth. v. Binkley*, 2022 Ark. App. 229, 646 S.W.3d 193. A fee is payable from the employer or carrier only if benefits are controverted and awarded. *Burton v. Chartis Claims, Inc.*, 2014 Ark. App. 47.

In the present matter, the evidence demonstrates that the respondents made litigation necessary by controverting the claim. The claimant sustained a compensable injury to his cervical spine on April 22, 2024. Dr. Knox and Dr. Peterson both examined the claimant in October 2025 and recommended cervical surgery. Counsel for the claimant informed the respondents beginning November 26, 2025 that the

respondent-carrier had refused to authorize surgery recommended by Dr. Knox and Dr. Peterson. The claimant testified that surgery scheduled for December 1, 2025 was summarily cancelled on or about November 30, 2025. On December 8, 2025 and January 6, 2026, the claimant requested a hearing before the Commission. A claims adjuster plainly informed the respondents' attorney on January 8, 2026 that treatment was "not authorized" pending additional comments from Dr. Peterson. Following a favorable review by Medical Review Institute of America, counsel for the respondents informed the claimant's attorney on January 22, 2026, "The adjuster is approving the neck surgery. Let me know if there is *anything else that needs to be litigated* [emphasis suppled]." The record shows in the present matter that if the claimant had not hired an attorney and requested a hearing, then the respondents would not have approved surgery recommended by treating physicians. The Full Commission finds that the respondents made litigation necessary. *See Brown, supra*.

After reviewing the entire record *de novo*, therefore, the Full Commission finds that the claimant's attorney proved he was entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2012). The evidence demonstrates that the respondents controverted the claimant's entitlement to surgical treatment recommended by Dr. Knox and Dr. Peterson. The evidence demonstrates that the claimant entered a

healing period beginning February 13, 2026, the date of surgery, and that the claimant has remained within a healing period and has been totally incapacitated from earning wages since that time. The Full Commission therefore finds that the claimant proved he was entitled to temporary total disability benefits beginning February 13, 2026 until a date yet to be determined. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(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 Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant's attorney has proved that he is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715.

Our Rules provide that "fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded." Ark. Code Ann. § 11-9-715(a)(2)(B)(ii) (emphasis added). "[T]he mere failure of the employer to pay certain benefits does not, in and of itself, amount to controversion, especially when the carrier accepts the injury as compensable and is attempting to determine the extent of the disability." *Osborne v*. *Bekaert Corp*., 97 Ark. App. 147, 245 S.W.3d 185 (2006).

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 (1988).

Whether or not a particular claim is controverted is a question of fact for the Commission. *Aluminum Co. of America v. Henning*, 260 Ark. 699, 543 S.W.2d 480 (1976).

The mere fact a party investigates a claim prior to admitting liability does not require a finding of controversion. *Lee v. Alcoa*, 89 Ark. App. 228, 201 S.W.3d 449 (2005).

In the present matter, the respondents accepted responsibility for the claimant's cervical spine surgery within three (3) business days of receiving a medical opinion stating that the procedure was related to the claimant's compensable injury. Dr. Peterson, the claimant's treating physician, had

not clearly related his recommendation for surgery to the compensable injury and declined to do so at the respondents' request.

In his findings, the ALJ opines that a three-week delay resulting from the respondents' investigation "without any timely attempt to resolve the causation question," leading to the cancellation of the claimant's December 1, 2025 surgery amounted to controversion. The Majority agrees, asserting that this purported delay made litigation of this matter necessary. This is an unreasonable standard to maintain in a field where extensive waiting periods are the norm. It is punitively strict to expect respondents to blindly accept compensability without investigation of a procedure's work-relatedness in less than a month, especially without cooperation from the claimant's treating physician. The respondents should not be punished for performing their due diligence in investigating a claim prior to accepting liability.

More importantly, there was no award issued in this matter for which attorney's fees would be allowed. The statutory language provides for attorney's fees when indemnity benefits are "controverted and awarded," not when a claim is controverted, and an attorney is hired or when it inconveniences one party. Our Rules do not provide for the payment of attorney's fees simply based on a request for a hearing being made.

Because there was no award issued or any litigation on the issue of compensability at all, an award of attorney's fees is improper.

The respondents' timely acceptance of the claimant's surgery did not render litigation necessary, nor did it put any burden on the claimant during the pendency of their investigation. For these reasons, the controversion requirements set out in Ark. Code Ann. § 11-9-715 have not been met and the ALJ's findings should be reversed.

Accordingly, for the reasons stated above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner