

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H408000

CARLOS REINA GOMEZ, Employee	CLAIMANT
C M CONSTRUCTION, LLC, Employer	RESPONDENT
WELLFLEET NEW YORK INS. CO., Carrier	RESPONDENT

OPINION FILED OCTOBER 15, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 17, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 6, 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. The employee/employer/carrier relationship existed among the parties on December 5, 2024.
3. Respondents have controverted this claim in its entirety.

4. The claimant was earning an average weekly wage of \$788.87 which would entitle him to compensation at the weekly rates of \$519.00 for total disability benefits and \$384.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's low back and right hip on December 5, 2024.
2. Related medical.
3. Claimant's entitlement to temporary total disability benefits from December 6, 2024, through a date yet to be determined.
4. Attorney's fee.

The claimant contends that he sustained a compensable injury to lower back on 12/5/24 when he fell from a roof. In addition, the claimant contends that he is entitled to reasonable and necessary medical treatment in connection with his compensable injury. The claimant further contends that he is entitled to temporary total disability benefits from the date of accident through a date to be determined by the Commission. Finally, the claimant contends that he is entitled to controverted attorney fees for indemnity benefits awarded and any and all future indemnity benefits approved or awarded.

The respondents contend that claimant did not suffer a compensable injury to his low back on December 5, 2024.

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 August 6, 2025, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back and right hip on December 5, 2024.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided to claimant for his compensable injuries.

4. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to payment of one day of temporary total disability benefits.

5. Claimant's attorney is entitled to an attorney fee on all unpaid indemnity benefits.

FACTUAL BACKGROUND

Claimant is a 46-year-old man who performed construction work for respondent beginning in May 2024. On December 5, 2024, claimant was using a jackhammer to demolish some concrete at the Springdale library when he tripped and fell approximately 12 feet onto the ground. After this accident, claimant was taken to the emergency room at Northwest Medical Center in Springdale where he was hospitalized from December 5, 2024, through December 13, 2024.

Claimant's primary complaints immediately after the accident included severe back pain and right ankle pain. While in the hospital, claimant underwent a number of

tests; including CT scans of the brain, cervical spine, chest, abdomen, and pelvis. He also underwent MRI scans of the pelvis, cervical spine, thoracic spine, and lumbar spine. These tests were interpreted as negative.

While in the hospital, claimant underwent a telephonic consultation with a neurologist who opined that claimant might be suffering from neurapraxia of the right lumbosacral plexus. The neurologist stated that neurapraxia is the mildest form of peripheral nerve injury and that it is generally caused by localized compression, stretching or ischemia without disruption of the nerve structure. He stated that neurapraxia usually resolves in days to weeks with treatment including rest; physical therapy; and the use of NSAIDS for pain and inflammation.

Claimant's discharge summary dated December 13, 2024, indicates that based on the neurologist's suspicion of neurapraxia, outpatient physical therapy and follow-up care at Community Clinic would be recommended. Subsequent medical records indicate that claimant did receive care and physical therapy from Community Clinic for neurapraxia. The medical records also indicate that claimant made complaints of right groin pain. Due to claimant's continued complaints, Kathy Mayhew, D.O. at Community Clinic recommended that claimant undergo an evaluation by an orthopedic specialist.

On March 5, 2025, claimant was evaluated by Dr. Marcus Heim, D.O. at the Orthopedic Center of Northwest Arkansas. Dr. Heim noted claimant's complaints of pain involving his right hip and was concerned that claimant may suffer from avascular necrosis of the femoral head. He ordered an MRI scan of the right hip and an EMG/NCV of the right lower extremity. Dr. Heim assessed claimant's condition at that time as right hip pain and right lumbar radiculopathy.

Claimant underwent the right hip MRI scan on March 26, 2025, and it was interpreted as showing degenerative changes as well as mild fraying of the anterior superior right labrum. The EMG/NCV of the right lower extremity was performed by Dr. Miles Johnson on March 31, 2025, with the following assessment:

Essentially normal electrodiagnostic study of the right lower extremity except for the diffusely decreased interference pattern and no active function noted in the right EHL. These types of findings could be seen secondary to pain or lack of effort. There are no findings to suggest a radiculopathy, plexopathy, generalized peripheral neuropathy or peripheral nerve entrapment syndrome or injury.

Following these tests, claimant returned to Dr. Heim. In his report of May 14, 2025, Dr. Heim stated that the MRI scan of the hip showed early degenerative changes but no evidence of acute osseous pathology or avascular necrosis. He also noted that the EMG/NCV was essentially normal with the exception of the “lack of recruitment of fibers to the EHL.” Dr. Heim also stated that claimant continued to see improvement in his neurologic recovery of his right lower extremity. Finally, Dr. Heim recommended that with respect to the hip, claimant undergo an articular injection to see if his symptoms improved. He noted that if claimant’s symptoms did not improve, claimant might need to be screened for a possible right hip labral tear.

Respondent has denied compensability of the claim and as a result, claimant has filed this claim contending that he suffered a compensable injury to his low back and right hip on December 5, 2024. He requests payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his low back and right hip as a result of a fall on December 5, 2024. Claimant's claim is for a specific injury, identifiable by time and place of occurrence.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back and right hip.

First, I find that claimant has met his burden of proving by a preponderance of the evidence that the injury arose out of and in the course of his employment and that the injury was caused by a specific incident, identifiable by time and place of occurrence. Here, claimant testified that on December 5, 2024, he was using a jackhammer to break up concrete when he tripped and fell some 12 feet to the ground. Claimant was taken to the emergency room after that accident, and I note that the

history contained in the emergency room medical records is consistent with the claimant's testimony.

Accordingly, I find that claimant has proven by a preponderance of the evidence that his injury arose out of and in the course of employment and that the injury was caused by a specific incident, identifiable by time and place of occurrence.

I also find that claimant has proven that his injury caused internal or external harm to his body that required medical services or resulted in disability and that he has offered medical evidence supported by objective findings establishing an injury.

As previously noted, claimant underwent multiple tests at the emergency room and during his hospitalization that were interpreted as negative. However, those medical records also contain numerous notations of claimant being given Flexeril for muscle spasms. For example, the medical records indicate the claimant was given some pain medication by IV and "in addition to Flexeril for muscle spasms...".

Recently, in *Nucor Yamato Steel Co v Shelton*, 2025 Ark. App. 249, _____ SW 3d _____, the Arkansas Court of Appeals declined to overrule its prior opinion in *Melius v Chapel Ridge Nursing Center, LLC*, 2021 Ark. App. 61, 618 SW. 3d 410, that a diagnosis of lumbar sprain along with prescribed treatment of medication for "muscle spasms" is sufficient to establish objective findings of a compensable injury. In *Shelton*, as in the present case, medical testing did not reveal an acute injury. However, in *Shelton*, the claimant was prescribed the muscle relaxer Flexeril for muscle spasms. In reaching its decision, the Court noted that there was no requirement that a doctor or medical provider observe muscle spasms before the injury can be compensable. The Court further noted that a doctor would not prescribe medications for muscle spasms if

the doctor did not believe muscle spasms were present. Accordingly, the Court found that in *Shelton* the claimant's diagnosis of a lumbar sprain along with the prescribed course of medication for muscle spasms, physical therapy, and pain management was sufficient to establish objective findings.

Likewise in this case, while claimant's testing was negative, he was prescribed Flexeril for muscle spasms. He was also prescribed physical therapy and was diagnosed by Dr. Heim as suffering from lumbar radiculopathy. Thus, these findings constitute objective findings.

I also note that the MRI scan of claimant's right hip dated March 26, 2025, was interpreted as showing mild fraying of the anterior superior right labrum. This would also qualify as an objective finding.

Accordingly, based upon the foregoing evidence, I find that claimant has offered medical evidence supported by objective findings establishing a compensable injury to his right hip and his low back as a result of the fall on December 5, 2024. Therefore, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right hip and low back on December 5, 2024.

Having found that claimant suffered a compensable injury to his right hip and lumbar spine, I find that respondent is liable for all reasonable and necessary medical treatment provided to claimant for those compensable injuries. This includes the emergency room treatment and subsequent hospitalization after the accident. It also includes treatment from Community Clinic and treatment from Dr. Heim.

The final issue for consideration involves claimant's request for temporary total disability benefits.

Claimant testified that he did not return to work for the respondent subsequent to December 5, 2024. In order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that he remained in his healing period and that he suffered a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

While I find that claimant has remained within his healing period, I do not find that claimant has proven that he continued to suffer a total incapacity to earn wages. Obviously, the claimant was totally incapacitated to earn wages during his hospitalization. However, claimant's hospitalization lasted eight days. Pursuant to A.C.A. §11-9-501(a)(1), compensation is not allowed for the first seven days of disability. Only if the disability extends for a period of two weeks is compensation allowed from the first day of disability. A.C.A. §11-9-501(a)(3). When claimant was discharged on December 13, 2024, no treating physician opined that claimant was incapable of returning to work or that claimant had any physical restrictions on his ability to return to work. Even when claimant sought medical treatment from the Community Clinic and from Dr. Heim, neither of those medical providers indicated that claimant was incapable of working or placed restrictions on his ability to return to work. In fact, claimant admitted on direct examination that at one point in time he performed some sporadic work after his injury.

Based upon the foregoing evidence, I find that claimant has failed to prove by a preponderance of the evidence that he was totally incapacitated from earning wages

subsequent to his discharge from the hospital on December 13, 2024. Based upon the provisions of A.C.A. §11-9-501, claimant is not entitled to temporary total disability benefits for the first seven days of disability because according to the evidence he was only disabled for eight days. Therefore, pursuant to A.C.A. §11-9-501, claimant is entitled to temporary total disability benefits for one day.

ORDER

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right hip and low back on December 5, 2024. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary total disability benefits for one day as a result of his compensable injury. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum and without discount. This award shall bear interest at the maximum legal rate until paid.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$358.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE