BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G506221

ROGER GRUBBS, EMPLOYEE	**CLAIMANT**
VS.	
CABINET SHOP, INC. , EMPLOYER	**RESPONDENT #1**
AMTRUST NORTH AMERICA, Carrier/TPA	**RESPONDENT #1**
DEATH AND PERMANENT TOTAL DISBILITY TRUST FUND	**RESPONDENT #2**

OPINION FILED AUGUST 12, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 23rd day of June 2026, in Fort Smith, Arkansas.

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

Respondents #1 are represented by William C. Frye, Attorney at Law, North Little Rock, Arkansas.

Respondents #2 waived their appearance.

STATEMENT OF THE CASE

A hearing was conducted on the 23rd day of June 2026, to determine the issues of additional medical treatment in the form of SI joint surgery as recommended by Dr. Blankenship, whether the claimant is entitled to the reinstatement of TTD benefits as of December 12, 2024, and attorney fees. The claimant was instructed at the time of the hearing to submit a brief in response to the pretrial brief submitted by respondents #1 and the brief is attached and made part of this opinion. Respondent #2 waived its appearance. A copy of the Pre-hearing order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and

that an employer/employee relationship existed on August 7, 2015, and that the claimant sustained compensable injuries of the cervical spine, thoracic spine, and lumbar spine on or about that date. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of $325.00 for TTD benefits and $244.00 for PPD benefits. All prior opinions are final and the law of the case. By agreement of the parties the issues to litigate were limited to the following: Whether the claimant is entitled to reinstatement of temporary total disability benefits as of September 12, 2024, whether the claimant is entitled to additional medical treatment in the form of the SI joint surgery, and whether the claimant is entitled to attorney fees. There was no objection to these stipulations and the Prehearing Order was admitted into the record.

The claimant's and respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The claimant contends that subsequent to the last hearing held in this case, there is now objective evidence which did not exist at the time of the last hearing, and which shows that the claimant's SI joints are not auto fused as opined by Dr. Tomecek. Accordingly, the evidence that now exists was not and could not have been considered by the Full Commission or the Court of Appeals and accordingly constitutes a basis for a new hearing. Further, the claimant contends that the preponderance of the evidence shows that the claimant is in need of SI joint surgery and has been temporarily totally disabled from September 12, 2024, and continues to be temporarily totally disabled until treatment and he is determined to have reached maximum medical improvement subsequent to that treatment. The claimant also contends that he is entitled to attorney fees.

The respondents contend that this case has been subject to multiple prior opinions. An opinion by an ALJ on February 28, 2018, found that the claimant had proven that he had sustained injuries to his cervical, thoracic, and lumbar spine on August 7, 2015, and that the claimant was entitled to additional medical treatment as recommended by Dr. Blankenship. The claimant was also awarded temporary total disability benefits from September 30, 2015, through October 14, 2015, and again from February 14, 2017, through April 11, 2017. Respondents appealed the Opinion to the Full Commission, which issued an Opinion on October 1, 2018, affirming the findings of compensability and entitlement to conservative medical treatment as recommended by Dr. Blankenship. However, the Full Commission found that the Claimant had reached the end of his healing period on August 31, 2015, and reversed the ALJ's finding that the claimant was entitled to TTD benefits beginning September 30, 2015, or any time thereafter. The case was then subject to a second hearing on wage loss and on June 10, 2021, the ALJ awarded the Claimant 30% wage loss, and this opinion was not appealed.

Later, on November 29, 2023, another Administrative Law Judge opinion was issued wherein the Claimant was found to still be in his healing period based upon Dr. Blankenship's recommendation for additional surgery. Claimant was awarded temporary total disability benefits beginning September 13, 2022, and continuing through a date yet to be determined. The claimant was also found to be entitled to additional medical treatment including the SI joint surgery recommended by Dr. Blankenship. The respondents then appealed this decision to the Full Commission which issued an Opinion on May 21, 2024, reversing the ALJ's decision. The Claimant then appealed to the Arkansas Court of Appeals which entered an opinion on June 4, 2024, affirming the Full

Commission's decision that the claimant was only entitled to additional physical therapy and injections by Dr. David Cannon. All prior opinions are *res judicata.*

Based upon the above, the respondents contend that the Full Commission issued an opinion finding that the surgery recommended by Dr. Blankenship was not reasonable and necessary and the claimant was entitled conservative care. Additionally, the Full Commission sided with Dr. Tomecek, who performed a myelogram and post myelogram CT and opined that it would be a very high-risk procedure for vascular and other organs in face of the prior fusion. Dr. Tomecek believed that the bone was already fused. Secondly, Dr. Blankenship noted that claimant's SI joint popped and he did not have pain for a while. Claimant then came back and said he now wanted surgery.

The Commission gave an explicit award for only conservative treatment and noted that the claimant had continued with chronic pain and had reached maximum medical improvement. The respondents also noted that the Commission found that the claimant did not get relief after his prior surgery and made a distinct finding that Dr. Tomecek's opinion was entitled to more weight, and that the claimant did not receive long lasting relief and just needed conservative care.

In regard to the issue of temporary total disability, the respondents contend that the claimant had been placed at maximum medical improvement and was not entitled to temporary total disability and also affirmed the request for temporary total disability from September 2024. In conclusion, the respondents contend that the claimant appealed the decision of the Full Commission, and the Arkansas Court of Appeals affirmed the Full Commission decision and agreed with Dr. Tomecek's opinion as he was the doctor that

had performed the diagnostic studies, and the court further agreed to conservative treatment.

The sole witness consisted of Roger Grubbs, the claimant. 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 of this claim.
2. That an employer/employee relationship existed on August 7, 2015, the date claimant sustained compensable injuries to his cervical spine, thoracic spine, and lumbar spine.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of $325.00 for temporary total disability benefits and $244.00 for permanent partial disability benefits.
4. All prior opinions are final and the law of the case.
5. That the opinion issued by Dr. Tomecek is found to be controlling as determined and affirmed by the Arkansas Court of Appeals on June 4, 2025, and the doctrines of res judicata and collateral estoppel or issue preclusion are found to be applicable in regard to the finding that the opinion of Dr. Tomecek is in fact controlling and that consequently, the claimant has failed to prove that he is entitled to the SI joint surgery recommended by Dr. Blankenship.

6. That the claimant has failed to satisfy the required burden of proof that he is entitled to TTD.
7. The claimant is entitled to be reimbursed for the for the payment of $232.75 for conservative medical treatment forthwith if not already paid, for his personal payment regarding an injection procedure.
8. That all other issues are moot.
9. 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 an exhibit of medical evidence consisting of 40 pages that was admitted into the record without objection and also a nine-page exhibit of non-medical that was admitted without objection. The respondents submitted two exhibits that were both admitted into the record without objection with the first exhibit consisting of 15 pages of medical records and the second exhibit consisting of Opinions by the Arkansas Workers' Compensation Full Commission and the Arkansas Court of Appeals, consisting of a total of fifty pages. The respondents also submitted a pretrial brief that was made part of the record, and the claimant was requested to submit a brief which is attached to this opinion.

The claimant was the only witness to testify and stated that he remembered having a previous hearing in this matter regarding a request for a workers' compensation insurance carrier to pay for an SI joint fusion recommended by Dr. Blankenship. The claimant was then instructed that we are not talking about anything prior to that hearing,

and was then asked since that hearing, has there been any change in your condition and he responded his condition had continued to deteriorate, getting worse and worse. "It hurts more. It's hurt at a higher pain level and it's keeping me from doing a lot of things." He admitted to additional testing since the previous hearing, with one of the tests consisting of an X-ray of his SI joint in August of 2024. He also admitted that he was aware of the location of the SI joint and that his treating doctors had provided its location. He went on to testify that the pain became worse when he stood on one spot for over a minute, "Slightly leaning over and reaching out, leaning a little bit and twisting and turning." He further stated that his condition was now much worse with an everyday pain level of at least five and probably six and sometimes a ten. (Tr. 6 – 8) He went on to testify that when the pain level reached a ten, he could not do anything. "Physically there is nothing I can do to relieve it. All I can do is lay down and lean back in the recliner for most of the day. He also admitted still seeing Dr. Cannon, who would provide pain injections for his SI joint, which helped for six to eight weeks. (Tr. 9) He agreed that the injections were not as beneficial as they previously were. He also admitted that he would go to his family doctor due to his condition because it would take so long to obtain approval for treatment by Dr. Cannon. He also denied earning any wages since September 12, 2024, and denied being able to hold down a job. (Tr. 10)

Under cross examination, the claimant was asked if his PCP provided any actual treatment or did the claimant just go there and obtain an X-ray and a CT scan, and he replied that they asked a lot of questions, and he would describe what he was going through and they took an x-ray and sent it to a radiologist. He then responded "No" to the

question was there any actual treatment other than just diagnostic studies with the PCP. The following questioning then occurred:

> Q: Okay. You are indicating that it has really gotten bad and you have a ten out of ten and that is as bad as it gets.
>
> A: Yes.
>
> Q: Do you realize than in August of 2023 and September of 2023, that is exactly what you told Dr. Blankenship, that it had gotten really bad, it was ten out of ten, and it was as bad as it gets?
>
> A: It has gotten to that level at different times.
>
> Q: Okay. What test did Dr. Blankenship do on your SI joint? Any?
>
> A: You mean the last time I saw him?
>
> Q: No. Has he done any diagnostic studies on you?
>
> A: Yes. (Tr. 10, 11)

The claimant then went on to testify that Dr. Blankenship had performed MRI's and at the time of the last hearing had wanted to perform surgery and his opinion had not changed. Claimant also admitted Dr. Tomecek had performed a CT scan of his SI joint as well as a myelogram and a myelogram CT, along with another CT scan on August 21, but denied being aware that the overall appearance was similar to the study in February. Claimant admitted that he had increased pain while fishing. He was then asked if he had provided the same information to Dr. Blankenship and the claimant responded, "I probably had." (Tr. 12, 13) In response to the question of whether he was any worse now than at the time of his last hearing, he responded that he was worse and stated that the "Pain and inflammation has gotten a whole lot more intolerable." (Tr 14)

On redirect, the claimant was asked at the time of the last hearing, had anybody specifically asked a radiologist to look at his SI joint to see if it was open and he responded "Yes" and stated that Dr. Speake's office had a radiologist in Fort Smith.

The following questioning then occurred.

> Q: Okay. That was done on August the 21st of 2024, which was after the hearing. What I am asking you is has anybody, as far as you know, specifically had a radiologist look at your X-rays to determine the status of your SI joint before that last hearing? Not before this hearing, but before the last. Let me ask you another way.
>
> A: I was thinking.
>
> Q: Was the August 21, 2024, evaluation of your X-ray by a radiologist in regard to your SI joint the first time that that had been done as far as you know?
>
> A: Yes
>
> Q: So that is something different that what had happened before the last hearing; is that correct?
>
> A: I think that it was done just prior to the last hearing. (Tr. 15, 16)

In addition to the testimony, the claimant submitted an exhibit that consisted of 40 pages of medical records. A report from Mercy Clinic dated August 21, 2024, provided claimant presented for an X-ray of the lumbar spine which provided for a unilateral left posterior instrumented fusion and interbody fusion at L3-L5. The hardware appeared well-positioned and stable. The lumbar alignment and vertebral body heights were maintained. No definite fractures were noted. Moderate discogenic degeneration at the nonoperative levels with disc height loss and endplate spurring was noted. Overall appearance was similar to a prior study in February. (Cl. Ex. 1, P. 1-4) An ancillary CT scan on the same date at Mercy Clinic provided that the SI joints were patent and symmetric, again stating

that the overall appearance was similar to the prior study in February. The result notes were approved by Dr. Joseph Lee Speakes, DO. (Cl. Ex. 1, P. 5 – 8)

A report from Dr. Blankenship dated September 12, 2024, provided that the claimant was back in today and wanted to again discuss the SI Joint Surgery. He had gone to his family doctor and had a CAT scan that provided for patent SI joints, and provided that his pain was getting significantly worse. The report provided under examination that no limitation in the range of motion to the lumbar spine was noted. Gaenslen's test, straight leg raising, FABER test, Pelvic test, and Distraction tests were all negative as stated in the test results under the lumbar spine. However, the same report provided under impression that as per Dr. Blankenship's last letter, the claimant had a positive Gaenslen's, thrust, distraction, compression, and FABER's testing of the left SI joint and also had a confirmatory injection and all of these fit along with the SI joint being the current pathology that was creating his left sided and upper buttock pain. As an aside, it was noted that the report also mentioned issues involving litigation and conflicting opinions in the past between Dr. Tomecek and Dr. Blankenship. (Cl. Ex. 1, P. 9 – 14) An off work note dated September 17, 2024, provided that the claimant had been a regular patient since September 12, 2024, and he needed to be off work until after the recommended SI surgery. (Cl. Ex. 1, P. 15)

A report from Gina Null, APRN – BC, dated June 2, 2025, provided that the claimant was being followed for chronic lymphocytic leukemia and that he also mentioned severe pain in the SI joint that had occurred on several occasions. (Cl. Ex. 1, P. 16 – 22) A report from Dr. Cannon dated August 12, 2025, provided that the claimant had reported

a four-year history of pain and that previous SI joint injections had helped with the pain. (Cl. Ex. 1, P. 23 – 27)

The claimant returned for a follow up with Dr. Blankenship on December 11, 2025, and the report provided that the claimant still experienced left sided low back pain radiating into the left hip and buttock as well as distal pain in the left lower extremity. Over the past two months, the pain has progressively worsened and now interfered with the claimant's daily activities. The report again provided under examination of the lumbar spine that there was no limitation in regard to the range of motion noted and that Gaenslen's, straight leg raising, FABER test, Pelvic compression, and Distraction test were all negative. However, under impression the report provided that the claimant had obtained radiographs interpreted by a radiologist which documented that the claimant's SI joint had not fused and that the SI joints were patent bilaterally. The report also stated "Unfortunately, a workers' compensation judge sided with Dr. Tomecek, whose opinion was obtained by the workers' compensation carrier." The report again recommended and offered the patient SI joint arthrodesis and stated it was a relatively quick and straightforward surgical procedure. (Cl. Ex. 1, P. 28 – 33) A fax to Leslie Henderson asked for approval to perform the left SI joint arthrodesis. (Cl. Ex. 1, P. 34)

Reports from Dr. Robert Cannon for the period between August 7, 2019, thru February 23, 2026, provided for visits and charges during that time period. A nerve conduction study by Dr. Speake, dated March 10, 2026, provided that the main issue was the low back and that the study was abnormal due to the presence of paraspinal muscle denervation in the left L4-L5 vertebral level which was consistent with left L4-L5 radiculopathy as well as mild left peroneal neuropathy. (Cl. Ex. 1, P. 39)

The claimant also submitted a letter to the respondent's counsel, showing that a $232.75 payment had been denied involving an injection procedure and which the claimant contended the respondents were still responsible for being that it constituted conservative treatment. (Cl. Ex. 2, P. 1 – 9)

The respondents also submitted medical records consisting of 15 pages that were admitted without objection. A report from Dr. Frank Tomecek dated December 1, 2021, consisted of an independent medical examination which provided that the claimant was a pleasant man who had presented to his office and who had been involved in a motor vehicle accident on August 7, 2015. The report provided that Dr. Tomecek did not agree with Dr. Blankenship's opinion after his review of the MRI. The claimant had failed non-operative treatments and on April 9, 2020, Dr. Blankenship performed anterior and posterior decompression and fusion with instrumentation. Dr. Tomecek further stated that he reviewed the operative report and did not see anything that was done posteriorly. The report went on to provide that he had the opportunity to review several post operative reports from Dr. Blankenship and a functional capacity evaluation from the Functional Testing Center in Mountain Home. He also had reviewed reports from Dr. Cannon, a pain specialist. The report further provided that the claimant had received a left sided sacroiliac joint injection on July 14, 2021, which was performed after his lumbar fusion and that the claimant stated that a significant amount of pain that he had suffered in his lower back had gone away. Some of his symptoms along with his right hip pain did not improve. The claimant had provided that his pain was usually between 4 to 5 but that it can get up to an 8. The report referred to a positive straight leg raising on the left and a positive straight leg raising on the left when his right leg was manipulated. The report also provided for a

positive Parick's sign on the left, a positive FABER's test, a positive Gaenslen's test, and positive high thrust test, and a positive Fortin's finger test. The claimant does not have a positive pelvic compression or distraction test. Dr. Tomecek felt that the sacroiliac joint injection had been reasonable and necessary and the physical therapy he had after surgery was reasonable. He recommended more physical therapy and at least one more sacroiliac joint injection before committing to another major operation. (Resp. Ex. 1, P. 1 – 7)

A second medical report from Dr. Tomecek dated January 17, 2022, provided that the claimant had returned for a follow up and referred to a thoracic myelogram CT scan and provided he suffered a lot of pain in his lower back. The report went on to provide that Dr. Tomecek opined that the sacroiliac injury most likely was caused from the accident that occurred on or around August 7, 2015, a motor vehicle accident and he did not feel capable of performing a reoperation in the claimant's retroperitoneal area when he had a previous surgery with anterior lumbar interbody fusion, and he felt that this would be a very high-risk procedure for vascular or other organ injury in the face of the previous surgery. He further opined that he believed he would not recommend a sacroiliac joint fusion on the left due to his believing that it was auto fused. He recommended that his Primary Care provider access the CT scan and if he felt warranted, that it would be reasonable to refer the claimant to his oncologist due to the radiologist being concerned about his lymph nodes in the retroperitoneal area. He recommended non-surgical treatments including injections and therapy. Surgery on this abnormal osteophyte on the left over the sacroiliac joint would be the last resort treatment. (Resp. Ex. 1, P. 8 -11)

The claimant returned to Dr. Tomecek on May 4, 2023, for his final visit of record. The report provided that the claimant returned to the clinic with a persisting gnawing pain that waxed and waned in his left paraspinal area and his left gluteal crest that ran laterally to his hip and the back of his legs. The report provided that the claimant's left foot was numb from the ankle down. Dr. Tomecek reviewed the MRI of August 2, 2022, ordered by Dr. Blankenship. The report went on to provide that he totally disagreed with the opinion of Dr. Blankenship as to treatment. He felt that the patient had an auto fusion of the SI joint and that the only operation he would consider was a posterior left-sided hardware removal and fusion exploration and fusion revision posteriorly, only if pseudoarthrosis was noted. The report mentioned a negative FABER's, a negative Gaenslen's, a negative thigh thrust, a negative compression, and a negative distraction test. Dr. Tomecek stated that due to the solid auto fusion of the left SI joint, confirmed on a post myelogram CAT scan, and negative provocative testing of tests used to assess the SI joint, he again repeated that he would not recommend a left SI joint fusion. (Resp. Ex. 1, P. 12 – 15)

The respondents second exhibit admitted into the record without objection consisted of an Opinion and Order of 35 pages issued by the Full Commission of the Arkansas Workers' Compensation Commission, dated May 21, 2024. The Opinion and Order reversed the Opinion and Order of an Administrative Law Judge issued on November 29, 2023, and the Full Commission opinion found that Dr. Tomecek's expert opinion was credible and entitled to more evidentiary weight than Dr. Blankenship's opinion and that the claimant failed to prove that the sacroiliac joint fusion proposed by Dr. Blankenship was reasonably necessary in connection with the compensable injury

sustained by the claimant on August 7, 2015. The Full Commission went on to state that the evidence demonstrated that the claimant had not experienced lasting significant improvement in his back pain following the surgery performed by Dr. Blankenship on April 9, 2020, and that the evidence of record supported the opinion of Dr. Tomecek that the claimant would benefit from conservative treatment modalities originally awarded by the Full Commission on October 1, 2018. The Full Commission never found that surgery was reasonably necessary in accordance with A.C.A 11-9-508(a) but found that the claimant had proved that he was entitled to additional physical therapy and injection treatment by Dr. Cannon.

The Full Commission Opinion went on to state in regard to Temporary Total Disability, that TTD is that period within the healing period when the claimant suffered a total incapacity to earn wages. The healing period continues until the employee is as far restored as the permanent character of the injury will permit and that the determination of when the healing period ended is a question of fact for the Commission. The Full Commission found on October 1, 2018, that the claimant had reached “maximum medical improvement” and the claimant did not prove he was entitled to temporary total disability benefits beginning on September 30, 2015, or any time thereafter. The opinion went on to note that the respondents apparently authorized a surgical procedure to be performed by Dr. Blankenship on April 9, 2020, and the parties entered into a stipulation that the claimant reached maximum medical improvement on October 22, 2020, and paid a 12% anatomical impairment rating assessed by Dr. Blankenship on October 22, 2020. (Resp. Ex. 2, P 1-35)

The claimant appealed the decision by the Full Commission of the Arkansas Workers' Compensation Commission to the Arkansas Court of Appeals who issued an opinion on June 4, 2025, which affirmed the Opinion issued by the Full Commission. In the Opinion issued by the Court of Appeals, they discussed the opinion by the Full Commission on October 1, 2018, which found that the claimant had proven a compensable injury to his neck and back on August 7, 2015, and that the current treatment by Dr. Blankenship was reasonably necessary at the time of the 2018 opinion by the Full Commission. Further the claimant had not proven entitlement to TTD benefits beginning on September 30, 2015, or any time thereafter, and neither party had appealed the Opinion of October 1, 2018, of the Full Commission.

The Opinion by the Court of Appeals went into some detail to describe the history of this matter and provided that on June 10, an ALJ had determined that the claimant was entitled to permanent partial disability benefits in an amount equal to 30% to the body as a whole resulting from the August 7, 2015 compensable injury and the parties stipulated that the prior opinions in the matter were final. In 2021, Dr. Blankenship opined that the claimant should receive a SI joint arthrodesis. Later, the respondents obtained an independent medical examination by Dr. Tomecek, who stated that further diagnostic testing was necessary and who recommended a myelogram CT scan. The claimant received a myelogram, and a post myelogram CT scan and Dr. Tomecek then opined that the left SI joint appeared to be auto fused and stated that he disagreed with Dr. Blankenship. On February 21, the claimant returned to Dr. Blankenship and reported that his SI joint pain had been completely resolved, and Dr. Blankenship told him he would see him in a year and that the claimant had reached surgical MMI. An MRI was arranged

for August 2, with no significant findings and in fact per the opinion, Dr. Blankenship opined that the MRI "looked good." However, later, on September 12, the claimant's low back pain had gotten significantly worse. Later in progress notes dated May 4, 2023, Dr. Tomecek reported that he had reviewed the claimant's August 2022 MRI and stated that "the status of the patient's fusion is impossible to access on this MRI." He went on to opine that there was nothing on the MRI that would change his opinion given on January 17, 2022, and repeated his concern that the claimant had pseudoarthrosis. He also stated that he "totally" disagreed with Dr. Blankenship's treatment recommendations.

The Court of Appeals went on to state that the Commission was presented with two conflicting medical opinions and chose to believe Dr. Tomecek and gave more weight to his opinion. The court went on to discuss the disagreement between the opinion issued by Dr. Blankenship and Dr. Tomecek in regard to SI joint fusion surgery.

In regard to temporary total disability, the Court of Appeals also went into some detail in regard to the issue and referred to a functional capacity evaluation of the claimant in November of 2020, which indicated that he could perform light duty work. Dr. Blankenship reported at the time that the claimant had reached MMI in February of 2022, after the claimant reported that his SI joint had completely resolved and Dr. Tomecek's May 2023 progress notes as well as the claimant's own testimony indicated that the claimant was getting around well. The Court of Appeals held that there was a substantial basis for the denial of the additional TTD benefits due to the claimant failing to prove that he reentered a healing period after October 22, 2020. (Resp. Ex. 2, P. 36 – 50)

DISCUSSION AND ADJUDICATION OF ISSUES

The claimant sustained compensable injuries to his cervical, thoracic, and lumbar spine on or about August 7, 2015, and claims he is entitled to reinstatement of the temporary total disability benefits as of September 12, 2024, and additional medical in the form of SI Joint surgery as recommended by Dr. Blankenship, along with attorney fees. The respondents contend this case has been subject to prior opinions that found that the surgery recommended by Dr. Blankenship was not reasonable and necessary and that the claimant was found to be entitled to conservative treatment. Further, in regard to temporary total disability, respondents contend that the claimant was placed at maximum medical improvement on September 30, 2015, by the opinion of the Full Commission, and later affirmed by the Arkansas Court of Appeals, which found that the claimant failed to prove that he was entitled to temporary total disability. Additionally, the respondents have raised the doctrine of res judicata and finality as a bar to this litigation.

There is no doubt that this case has been litigated significantly more than the average Arkansas Workers' Compensation matter, with at least one appeal to the Arkansas Court of Appeals and with multiple opinions issued by Administrative Law Judges and the Full Commission. There is also no doubt that there is apparently a strong disagreement between Dr. Blankenship and Dr. Tomecek and their opinions. The following list is an attempt to clarify the various hearings and important dates involved in this matter after a review of the various matters of record:

1. Claimant suffered a compensable injury to his cervical, thoracic, and lumbar spine on August 7, 2015.

2. An ALJ issued an opinion on February 28, 2018, that found that the claimant had sustained injuries to his cervical, thoracic, and lumbar spine on August 7, 2015, and that the claimant was entitled to additional medical treatment as recommended by Dr. Blankenship and claimant was awarded TTD from September 30, 2015, thru October 14, 2015, and again from February 14, 2017, thru April 17, 2017. The respondents appealed this decision to the Full Commission.
3. The Full Commission issued an opinion on October 1, 2018, that affirmed the findings of compensability and treatment as recommended by Dr. Blankenship. However, the Full Commission found that the claimant had reached the end of his healing period on August 31, 2015, and reversed the ALJ's finding that the claimant was entitled to TTD beginning on September 30, 2015, or anytime thereafter.
4. Additional litigation occurred and an ALJ issued an opinion on June 10, 2021, that awarded 30% wage loss, and this decision was apparently not appealed.
5. Additional litigation again occurred and on May 29, 2023, an ALJ issued another opinion that was later reversed by the Full Commission on May 21, 2024. The Full Commission opinion found that the expert opinion issued by Dr. Tomecek was credible and controlling and entitled to more evidentiary weight than the opinion by Dr. Blankenship and that the claimant failed to prove that the SI joint fusion recommended by Dr. Blankenship was reasonably necessary in connection with the compensable injury. The Full Commission found that the claimant was entitled to the conservative care previously awarded on October

1, 2018. In regard to the request for TTD, the Full Commission stated that they had found on October 1, 2018, that the claimant did not prove he was entitled to TTD benefits on September 30, 2015, or any time thereafter. It is noted that the parties later stipulated the claimant reached MMI on October 22, 2020, and respondents paid a 12% impairment rating based upon an opinion issued by Dr. Blankenship and additionally authorized a surgical procedure proposed Dr. Blankenship.

6. On June 4, 2025, the Arkansas Court of Appeals affirmed the opinion issued by the Full Commission
7. On December 11, 2025, Dr. Blankenship issued another opinion which provided that the claimant had obtained another radiology report that showed the SI Joint was not fused and he then opined that the claimant should receive an SI joint arthrodesis which Dr. Blankenship described as a relatively quick and straight forward procedure.

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). There is no doubt that this claim has involved an ongoing issue involving opposing opinions by Dr. Blankenship and Dr. Dr. Tomecek. Both Doctors physically saw the claimant and although the ALJ found that the opinion of Dr. Blankenship was controlling, the matter was appealed to the Full Commission, which reviewed the matter de novo and found that the opinion of Dr. Tomecek was credible and controlling and entitled to more evidentiary weight than the opinion issued by Dr. Blankenship, and consequently reversed the ALJ opinion. This finding by the Full

Commission was later affirmed by the Arkansas Court of Appeals on June 4, 2025. Dr. Tomecek opined that the claimant should not receive surgery but conservative treatment after personally seeing the patient and reviewing a myelogram and a post myelogram CT. Dr. Blankenship had recommended a SI Joint fusion and later again recommended a SI Joint fusion on December 11, 2025, after the claimant obtained another radiograph that had been interpreted by another radiologist as stated in the report provided by Dr. Blankenship.

The respondents contend that A.C.A. §11-9-705(c)(1)(B) is controlling and the CT scan fails to meet the evidentiary standard for reopening a record and the statute requires that the parties present all evidence at the initial hearing. Claimant contends that the assertion that the above statute controls is misplaced and that A.C.A. §11-9-702(b)(1) actually controls and that the current matter before the Commission is not an attempt to supplement the record of a hearing already held. The claimant contends that the current issue before the Commission is actually a claim for additional compensation pursuant to A.C.A. §11-9-702(b)(1) and is a separate proceeding and not an attempt to supplement an existing record.

The respondents raised the issue of res judicata in this matter in regard to the decision issued by the Arkansas Court of Appeals that affirmed the decision of the Full Commission that the opinion of Dr. Tomecek was controlling. The doctrine of res judicata applies when there has been a final adjudication on the merits of an issue by a court of competent jurisdiction on matters litigated and matters that might have been litigated. The doctrine of res judicata is applicable to decisions of the Arkansas Workers' Compensation Commission, although the final decision here, involving the issue of the controlling

medical opinion, was actually issued by the Arkansas Court of Appeals. See *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W. 3d 211 (2000); *Pine Bluff Warehouse & Continental Loss Adjusting, Services v. Berry*, 51 Ark. App. 139, 912 S.W. 2d 11 (1995). The key question regarding the application of res judicata in the present matter is whether the party whom the earlier decision is being asserted had a full opportunity to litigate the issue of which doctor's opinion controlled, and it is found that the claimant did in fact have that opportunity.

It is also found that the doctrine of collateral estoppel or issue preclusion is applicable. Collateral estoppel simply means that when an issue of ultimate fact has been determined with a valid and final judgement, the issue cannot again be litigated between the same parties in any future litigation. This doctrine bars re-litigation of issues, whether law or fact, that has been previously litigated. For collateral estoppel to apply, the following elements must be met: (1) The issue sought to be precluded must be the same as that involved in the prior litigation; (2) The issue must have been litigated; (3) The issue must have been determined by a valid and final judgement; (4) The determination must have been essential to the judgement. See *Searcy Indus. Laundry Inc. v. Ferren*, 92 Ark. App. 65, 211 S.W.3d 11, (2005); *Craven v. Fulton Sanitation Serv., Inc.* 361 Ark. 390, 206 S.W.3d 842 (2005). The decision by the Court of Appeals confirming the opinion of the Full Commission finding that the opinion by Dr. Tomecek was controlling satisfies all these requirements.

In regard to the issue of the TTD, TTD cannot be based upon speculation or conjecture. The injuries to claimant's spine constituted an unscheduled injury for which claimant has the burden of proving that he remained within 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). The Full Commission found that the claimant had reached MMI based on the controlling medical opinion issued by Dr. Tomecek and the claimant did not prove that he was entitled to TTD benefits beginning on September 30, 2015, or any time thereafter, and this was also confirmed by the Arkansas Court of Appeals. The claimant was determined to be able to perform light duty work and even mentioned going fishing during his testimony at the time of the current hearing.

The claimant had previously been determined to be entitled to conservative medical treatment, and the respondents are found to be required to reimburse the claimant forthwith for the cost of $232.75, if not already paid, for claimant's personal payment regarding an injection procedure.

All other issues are moot.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the doctrine of res judicata and collateral estoppel are applicable in this matter and that the medical opinion issued by Dr. Tomecek that was previously found to be controlling still is. Consequently, the claimant is not entitled to the surgery recommended by Dr. Blankenship. The claimant failed to satisfy the required burden of proof that he is entitled to additional TTD. The respondents are ordered to reimburse the claimant forthwith for the payment he personally made in regard to an injection as conservative care, if not already paid. All other issues are moot. This award shall bear interest at the legal rate pursuant to A.C.A. §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