

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G802688

ROSA HERNANDEZ, Employee	CLAIMANT
DEPARTMENT OF HUMAN SERVICES, Employer	RESPONDENT NO. 1
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED FEBRUARY 9, 2026

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

Claimant represented by LAURI THOMAS, Attorney at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by CHARLES MCLEMORE, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas; not appearing at hearing.

STATEMENT OF THE CASE

On January 14, 2026, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 19, 2025, and an amended pre-hearing order was filed on December 15, 2025. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

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

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

2. Prior Full Commission Opinion of September 10, 2019, is final.

3. Claimant was released at maximum medical improvement by Dr. Blankenship on March 2, 2023.

4. Respondents have accepted and paid claimant permanent partial disability benefits based on a 21% impairment rating.

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

1. Claimant's entitlement to permanent total disability benefits, or in the alternative wage loss.

2. Attorney's fee.

The claimant contends "claimant sustained a compensable injury while working for Respondent on or about February 12, 2018. At that time, Claimant was in the course and scope of her employment with Respondent and as lifting a child when she felt pain in her low back and tailbone.

Dr. Blankenship was the authorized treating physician to first treat claimant. Rosa has failed conservative treatment multiple times consisting of injections and physical therapy. Dr. Blankenship performed a right S1 fusion in December 2019, a left S1 fusion in January 2020.

Dr. Blankenship then did a lumbar fusion in May 2021. After attempting some PT, and then some injections with continued pain with Dr. Cannon, Claimant was referred to Dr. Sites by Dr. Blankenship for further evaluation and treatment.

Claimant was treating with Dr. Sites since September 2021. Dr. Sites recommended surgery on January 20, 2022 to claimant's right hip in the form of a right IT band release, Greater Trochanteric (GT) Bursectomy and Piriformis Release which Claimant had in September 2022. Claimant then did physical therapy.

Dr. Blankenship stated she is at MMI for surgical intervention and it no way means that she is fully recovered. In the future she may very well need to have further injections or piriformis otherwise.

Claimant had a Functional Capacity Evaluation on 01/09/2023. Dr. Blankenship assigned claimant a 21% impairment to the body as a whole on 03/02/23.

Dr. Blankenship noted he would recommend that she get back in to see Dr. Sites for the left-hand side which can raise her impairment rating to the body as a whole.

Dr. Blankenship gave our client the permanent restrictions of a 25-pound weight-lifting restriction with no sedentary work and no prolonged sitting, no prolonged standing, no twisting and bending at the waist.

Claimant has received some injections from Dr. Cannon. Claimant is also still waiting for the piriformis release recommended by Dr. Blankenship to be performed by Dr Yakin, because Dr. Sites is no longer practicing.

Our client attended a Vocational Rehab meeting, applied with various employments, to which a job offer has not been extended to her.

Respondents have controverted Claimant's right to wage loss disability benefits and or in the alternative, PTD benefit.

Claimant recently did an FCE on 07/23/2025 to which claimant scored a 50 out of 50 consistency."

Respondents No. 1 contend “that the claimant reported an injury to her low back and right elbow occurring February 12, 2018, which the Respondents No. 1 accepted, and benefits including medical and indemnity have been and continue to be provided to or on behalf of the claimant by Respondent No. 1.

This claim was the subject of a prior hearing on April 10, 2019 with an opinion of the Administrative Law Judge dated May 6, 2019 and decision of the Full Commission dated September 10, 2019 which is now a final decision, res judicata and the law of the case.

That decision held that the claimant was not entitled to additional TTD benefits, but was entitled to the “additional medical treatment from Dr. Blankenship. This includes his proposed surgery.” The proposed surgical procedure included in that award was fusion of the SI joint by Dr. Blankenship. The claimant has been provided this treatment, she underwent surgery on the right SI joint on December 3, 2019, and on the left SI joint on January 14, 2020. After these procedures the claimant underwent lumbar fusion surgery by Dr. Blankenship at L4-5, L5-S1 on May 12, 2021. The claimant has also had injections by Dr. Robert Cannon. The claimant underwent right hip iliotibial band release, greater trochanteric bursectomy and piriformis release on September 28, 2022 by Dr. Terry Sites. On December 15, 2022, Dr. Sites released the claimant at MMI with no recommendation of surgery at this time and no permanent restrictions or permanent impairment.

The claimant was released at maximum medical improvement by Dr. Blankenship on March 2, 2023, at which time he assigned the claimant 21% anatomical

impairment to the body as a whole for all of her surgeries. Respondent has accepted this impairment rating and has paid PPD benefits to the claimant for this rating.

The claimant performed unreliably at a Functional Capacity Evaluation on January 9, 2023 in the Sedentary classification of work, with only 30 out of 53 consistency measures. Subsequently, when Dr. Blankenship released the claimant at MMI on March 2, 2023, h assigned work restrictions of 25 pound weight lifting restriction, no prolonged sitting, standing, twisting and bending at the waist.

The claimant has been provided with medical treatment subsequent to her release, including treatment and injections by Dr. Cannon. The claimant has not had the left side piriformis release because she pursued injections instead, which have been provided to her. After demanding an injection in her back, the claimant was provided with a follow up appointment with Dr. Cannon on January 14, 2025 where he recommended an injection in her bilateral SI joint, even though she already had the fusion. This injection was authorized by Respondent and provided for the claimant on January 29. The claimant is now seeking LESI injections with Dr. Cannon, which have been provided by Respondent No. 1. The claimant continues to receive injections, provided by Respondent, including bilateral SI joint injections and sacral hiatus injections, which the claimant has benefited from. No surgery is recommended for her at this time. The claimant tested reliably in the Sedentary classification of work at another FCE on July 23, 2025.

The Respondents No. 1 contend that the claimant, age 51, cannot establish that she is unable to earn any meaningful wages at the same or other employment, and is therefore not permanently totally disabled. The Respondent No. 1 further contends that

the claimant cannot meet her burden of proving that she is owed permanent disability benefits in excess of her permanent anatomical impairment rating. The claimant, who has a family business and had contended to be permanent totally disabled in April 2023, has been provided vocational rehabilitation but contends that she has not returned to work.

Discovery is ongoing in this claim and the Respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.”

Respondent No. 2 contends if the claimant is found to be permanently and totally disabled, the Trust Fund stands ready to commence weekly benefits in compliance with A.C.A. §11-9-502. Therefore, the Trust Fund has not controverted the claimant’s entitlement to benefits.

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 November 19, 2025, and contained in an amended pre-hearing order filed December 15, 2025, are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is permanently totally disabled as a result of her compensable injury.

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to permanent partial disability benefits in an amount equal to 50% to the body as a whole for a loss in wage earning capacity.

3. Respondent has controverted claimant's entitlement to payment of permanent partial disability benefits in an amount equal to 50% to the body as a whole.

FACTUAL BACKGROUND

Claimant is a 51-year-old woman who began working for respondent as a program assistant in February 2017. Her job duties included picking up children from school or daycare and taking them for supervised visits with family members. She also assisted clients with housekeeping; took them to and from therapy appointments; and set up therapy appointments.

Claimant suffered an admittedly compensable injury to her back on February 12, 2018, when she fell in a parking lot after returning to the office from picking up a child. Claimant had pain in her low back and tailbone area that continued to worsen during the course of the day. She initially received medical treatment from Washington Regional Medical Center before treating with her family physician, Dr. Anna Eremieva. Dr. Eremieva eventually ordered an MRI scan which revealed degenerative disc disease and disc bulges at L4-L5 and L5-S1. Thereafter, claimant received conservative treatment which included physical therapy; injections; and medication. Claimant was also evaluated by Dr. Luke Knox, neurosurgeon, who indicated that he had nothing to offer the claimant and recommended that she undergo a functional capacity evaluation. The FCE was performed and numerous inconsistencies were noted. On September 28,

2018, Dr. Knox released claimant from his care and indicated that claimant was capable of performing sedentary work.

After her release by Dr. Knox, claimant filed for and received a change of physician to Dr. Blankenship. Dr. Blankenship ordered a second MRI scan and opined that claimant's issues were caused by her SI joint and he referred her to Dr. Cannon for an SI joint injection. Respondent denied additional medical treatment recommended by Dr. Blankenship and a hearing was conducted on April 10, 2019. In an opinion filed May 6, 2019, this administrative law judge found that claimant had met her burden of proving by a preponderance of the evidence that she was entitled to additional medical treatment from Dr. Blankenship. It was also determined that claimant had failed to prove entitlement to additional total temporary disability benefits from November 26, 2018, through a date yet to be determined. That opinion was appealed and was affirmed and adopted by the Full Commission in an opinion filed September 10, 2019.

Thereafter, claimant continued to treat with Dr. Blankenship who performed a right SI joint arthrodesis on December 3, 2019, and a left SI joint arthrodesis on January 14, 2020. Dr. Blankenship also performed an arthrodesis at L4-L5 and L5-S1 on May 12, 2021. Claimant also underwent a piriformis release by Dr. Sites on September 28, 2022, and was released from his care on December 15, 2022. The parties have stipulated that claimant was released at maximum medical improvement by Dr. Blankenship on March 2, 2023, and that respondent has accepted and paid claimant permanent partial disability benefits based upon a 21% impairment rating to the body as a whole.

Since the time of her release by Dr. Blankenship claimant has continued to receive pain management treatment in the form of injections from Dr. Cannon. As of the date of the hearing respondent had continued to pay for that medical treatment.

Claimant has filed this claim contending that she is permanently totally disabled, or in the alternative, that she is entitled to permanent partial disability benefits for wage loss as a result of her compensable injury.

ADJUDICATION

Claimant contends that as a result of her compensable injury she is permanently totally disabled. Pursuant to A.C.A. §11-9-519(e), in order to be entitled to permanent total disability benefits claimant has the burden of proving by a preponderance of the evidence that because of her compensable injury she has an inability to earn any meaningful wages in the same or other employment.

After reviewing the relevant wage loss factors in this claim, I find that claimant has failed to prove that she is permanently totally disabled but instead, find that she is entitled to payment of permanent partial disability benefits in an amount equal to 50% to the body as a whole for a loss in wage earning capacity.

In considering whether claimant is entitled to permanent disability benefits in excess of her permanent physical impairment rating, the Commission may take into account various factors including the percentage of permanent impairment, the claimant's age, education, work experience, and all other matters reasonably expected to affect her future earning capacity. A.C.A. §11-9-522(b)(1).

First, I note that no treating physician has opined that claimant is incapable of working. In a report dated February 6, 2023, Dr. Blankenship indicated that claimant could return to work with restrictions of no lifting over 25 lbs.; no prolonged sitting, standing, walking, bending, or twisting; no stooping, climbing, or crawling. He reiterated these restrictions in his report of March 2, 2023.

More than two years after this report by Dr. Blankenship, the claimant underwent a second functional capacity evaluation on July 23, 2025. The evaluation was interpreted as reliable with 50 of 50 consistency measures within expected limits. The evaluation determined that claimant was capable of returning to work in the sedentary classification of work. Claimant's ability to lift was limited to 10 lbs. with both her right and left upper extremities and an occasional bi-manual lift/carry of 10 lbs.

Prior to the second FCE, claimant was evaluated by a rehabilitation specialist, Keondra Hampton. Hampton did not have the benefit of the second FCE but did identify various jobs for the claimant. Claimant applied for many of these jobs as well as other jobs; however, she was unable to obtain employment. Even though claimant was unable to obtain employment at these particular jobs, I nevertheless find that claimant has the capacity to become employed at sedentary work.

As previously noted, the claimant is 51 years old. The June 26, 2023, rehab evaluation indicates that claimant obtained her GED in 1994 and that she attended Western Business College in Portland, Oregon, for bookkeeping training. Claimant also had an insurance license from 2005 through 2009.

Claimant's prior job experience also indicates that she is capable of sedentary type work. From 2003 through 2008 the claimant worked as a claims clerk for Payless

Insurance. Thereafter, from 2009 through 2010 the claimant owned and operated a daycare center out of her home. From 2016 through 2017 claimant worked for Interpreters Unlimited, translating between patients and physicians. From 2011 through 2014 claimant worked for Ozark Guidance Centers translating counseling sessions for students and therapists. In 2010 claimant translated for patients in Washington Regional Medical Center. Finally, claimant worked as a program specialist for the respondent where her duties included picking up children from school or daycare and taking them for supervised visits with family members and assisting clients by taking them to and from therapy appointments.

Notably, the rehabilitation specialist identified various transferrable skills of the claimant. These included the preparation of financial documents, reports, or budgets; determining resource needs; maintaining operational records; preparing documentation for contracts, transactions, or regulatory compliance; reviewing documentation; interpreting/effective communication.

At the hearing, claimant testified that she and her husband previously shared ownership of a landscaping business. Claimant is currently separated from her husband and no longer has any ownership interest in that business. In connection with her prior work for the landscaping business claimant not only performed physical labor but also used her phone to deposit checks. In fact, claimant testified that she used her phone to complete job applications sent to her by the vocational rehabilitation specialist as well as other jobs which she applied for on her own.

I also note that respondent introduced into evidence videos from 2022 and 2023. The video from 2022 is before claimant was released by Dr. Blankenship. With respect

to the 2023 video, I do not see any activity on the video which contradicts claimant's testimony or violates her work restrictions.

In short, I do not find that claimant has proven that she suffers a total incapacity to earn wages. As previously noted, none of claimant's treating physicians have opined that she is permanently totally disabled. Instead, Dr. Blankenship indicated that claimant could return to work with restrictions. Approximately two years after her release by Dr. Blankenship claimant underwent an FCE which was reliable and determined that claimant was capable of performing work in the sedentary classification of work. A review of claimant's prior jobs indicates that she has skills which would enable her to perform sedentary type work. Although the claimant has a significant impairment rating in an amount equal to 21% to the body as a whole, I find based upon the evidence presented that claimant is capable of performing sedentary type work and find that she has suffered a loss in wage earning capacity in an amount equal to 50% to the body as a whole.

AWARD

Claimant has failed to prove by a preponderance of the evidence that she is permanently totally disabled as a result of her compensable injury. Instead, I find that claimant is entitled to permanent partial disability benefits in an amount equal to 50% to the body as a whole based upon a loss in wage earning capacity. Respondent has controverted claimant's entitlement to permanent partial disability benefits in an amount equal to 50% to the body as a whole.

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 \$1,021.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE