BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G703512

GARY D. JAYNES, EMPLOYEE	CLAIMANT
TEMPWORKS MANAGEMENT SERVICES, INC., EMPLOYER	RESPONDENT
WESCO INSURANCE COMPANY/ AMTRUST NORTH AMERICA, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 22, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by the Honorable Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the Honorable William C. Frye, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 24, 2025, the above-captioned claim came on for a hearing in Little, Arkansas. Previously, a pre-hearing telephone conference was held in this matter on July 23, 2025. A Pre-hearing Order was entered that same day pursuant to the telephone conference. Said order was admitted into evidence along with the parties' pre-hearing information filings without objection as Commission's Exhibit 1.

Stipulations

During the pre-hearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

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

2. That the employee-employer-insurance carrier relationship existed among the parties at all relevant times, including on or about March 8, 2017.

3. That the Claimant earned an average weekly wage of $1,259.37, which would entitle him to a weekly temporary total disability rate of $661.00, and a weekly permanent partial disability rate of $496.00.

4. That the Claimant sustained a compensable back injury on March 8, 2017, as found by the Full Commission.

5. That this case was the subject of a prior opinion, wherein the Full Commission found the Claimant was entitled to an eleven percent (11%) rating and a ten percent (10%) wage loss disability for his compensable hip injury of March 8, 2017.

6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing are as follows:

1. Whether the Claimant is entitled to a 10% impairment rating for his back injury.

2. Whether the Claimant is entitled to additional wage loss disability for his back injury.

3. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The Claimant's and Respondents' contentions are set out in their response to the Pre-hearing Questionnaire. Said contentions are as follows:

Claimant**:**

The Claimant contends that he sustained admitted compensable injuries on March 8, 2017. He was given an 11% body-as-a-whole impairment in connection with his hip/femoral nerve injury. A wage loss award was made. Subsequent to the previous hearing, the Claimant continued to received medical treatment for his low back, which required surgical intervention. In a report dated May 31, 2023, Dr. Scott Schlesinger indicated the Claimant was entitled to a 10% body-as-

a-whole impairment with regard to his low back surgical interventions. The Claimant contends entitlement to payment of benefits associated with this 10% impairment rating, and that he would be entitled to a wage loss determination, therefore. These matters have been controverted for purposes of attorney's fees. The Claimant's attorney respectfully requests that any attorney's fees owed by the Claimant on controverted benefits paid by award or otherwise be deducted from the Claimant's benefits and paid directly to the Claimant's attorney by separate check, and that any Commission Order direct the Respondent to make payment of attorney's fees in this matter.

Respondents:

Respondents contend that the rating should stay at 11%, which was awarded and paid. On wage loss, the Claimant's condition has not changed to warrant retrying wage loss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the medical reports, the documentary evidence, and other matters properly before the Commission, and after having had an opportunity to listen to the testimony of the claimant and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The proposed stipulations set forth above are reasonable and hereby accepted.
3. The Claimant proved his entitlement to a 10 % anatomical impairment rating for his compensable back injury of March 8, 2017.
4. The Claimant sustained a 9% wage-loss disability due to his compensable back injury.
5. The parties stipulated that the Respondents have controverted this claim in its entirety. Therefore, the Claimant's attorney is entitled to a controverted attorney's fee.

6. All issues not litigated herein or addressed in this Opinion are reserved under the Act.

Summary of Evidence

The only witness was the Claimant, Mr. Gary Douglas Jaynes.

The record consists of the transcript from the Full Hearing held September 24, 2025, and the exhibits held therein. In addition to the Pre-hearing Order discussed above, the exhibits admitted into evidence in this case were: Claimant's Exhibit 1, which is the Claimant's Documentary Evidence Exhibit consisting of eighteen(18) pages of his medical records; Respondents' Exhibit 1 is the Claimant's June 30, 2025 Deposition (It is retained in the Commission's file); Joint Exhibit 1 comprises the March 27, 2018, Hearing Transcript (It is retained in the Commission's file); Joint Exhibit 2 consists of the September 5, 2018 Hearing Transcript (It is also retained in the Commission's file); Joint Exhibit 3 consisting of the Hearing Transcript of November 18, 2020 (It is retained in the Commission's file); Joint Exhibit 4 entails the Opinions issued on September 5, 2018, May 13, 2019, and February on 5, 2020 consisting of fifty-five (55) pages; and Joint Exhibit 5 involves the Opinions issued on November 18, 2020, August 16, 2021, and March 15, 2023 encompassing sixty-six (66) pages.

Procedural History

Prior Hearings and Decisions

The Claimant "sustained admittedly compensable injuries to his back and left leg," on March 8, 2017. The Respondents accepted the claim, and paid benefits to and on behalf of the Claimant. He was found to have reached maximum medical improvement on October 24, 2017. Dr. Luke Knox assessed the Claimant with an 11% to the body as a whole impairment rating.

Subsequently a dispute arose between the parties regarding the Claimant's entitlement to additional benefits for his compensable injuries of March 8, 2017.

On March 27, 2018, a full hearing was held on this claim before Administrative Law Judge Mike Pickens. At that time, the issues being litigated included the following: 1. Whether the Claimant sustained an 11% permanent anatomical impairment to the body as a whole as a result of his compensable injuries. 2. Whether the Claimant was rendered permanently and totally disabled because of his compensable injuries, or in the alternative entitled to wage-loss disability benefits.

No decision was rendered from the March 2018 hearing because an issue arose regarding the severity of the symptoms displayed by the Claimant while testifying during the hearing. Instead, Administrative Law Judge Pickens recessed the hearing and proposed that the Claimant undergo an independent medical evaluation/IME in order to evaluate the fairly serious symptoms that the Claimant complained of while on the witness stand during the March 27, 2018, hearing. The parties agreed to recess the hearing for Dr. Lowry Barnes to conduct the IME, which was done in August 2018.

Therefore, the recessed hearing (from March 27, 2018) was resumed by Administrative Law Judge Pickens[1] on September 5, 2018. However, the previously noted issues as outlined for the recessed hearing remained unchanged.

Subsequently, Judge Pickens entered an Opinion on October 31, 2018, wherein he found that the Claimant failed to prove his entitlement to a permanent anatomical impairment and any wage-loss disability. He further found that the Claimant did not prove he was rendered permanently and totally disabled by his compensable injuries of March 8, 2017.

On May 13, 2019, the Full Commission reversed the above Opinion. The Full Commission found the following: 1. That the Claimant sustained an eleven percent (11%) to the body as a whole

[1] Although the cover sheet of the September 5, 2018, hearing transcript states that Administrative Law Judge James Kennedy conducted the hearing, the hearing was in fact conducted by Judge Pickens.

as a result of his March 8, 2017, compensable leg injury. 2. That the Claimant proved he sustained wage-loss disability benefits in the amount of 10%. Furthermore, the Full Commission noted that the Claimant did not contend he was permanently totally disabled at that time.

Nevertheless, this decision was appealed to the Arkansas Court of Appeals. On February 5, 2020, the court of appeals affirmed the Full Commission's decision. No further appeals were taken from that decision. The above issues are now *res judicata* and constitute the law of the case.

On November 18, 2020, another hearing was conducted by Administrative Law Judge Mike Pickens in this matter for a determination of the following: 1. Whether the Claimant is entitled to temporary total disability compensation for his lumbar injury from March 7, 2019 to a date yet to be determined. 2. Whether additional medical treatment is reasonably necessary for the treatment of the Claimant's compensable back injury.

Per an Opinion issued on February 26, 2021, Judge Pickens found among other things, that treatment provided by Dr. Scott Schlesinger was unauthorized and not reasonably necessary; and that the Claimant was not entitled to temporary total disability benefits.

The Claimant appealed this Opinion to the Full Commission. On August 16, 2021, the Full Commission reversed this decision. Specifically, the Full Commission found that the Respondents did not provide the Claimant with a notice explaining his rights and responsibilities concerning the change of physician rule. The Full Commission therefore found that the change of physician rule was not applicable and that the treatment provided by Dr. Scott Schlesinger was reasonably necessary. The Full Commission further found the Claimant was entitled to temporary total disability benefits from March 7, 2019, through April 30, 2019.

The Respondents appealed to the Arkansas Court of Appeals. On March 15, 2023, the court of appeals affirmed the Full Commission's decision.

No further appeals were taken.

Most Recent Hearing

The Claimant is now 63 years old. He completed high school in 1981 and became an electrician. He has been a Master Electrician since 1997. The Claimant has performed employment duties as an electrician for various companies. As an electrician, physically, he had to climb ladders, build cable trays, and even dig ditches. The Claimant has previously performed both residential and commercial electrician work. He confirmed that he last worked the day he got injured, which was on March 8, 2017.

In that regard, the Claimant was involved in a work-related accident while working for the respondent-employer on March 8, 2017. The Claimant gave the following account of what happended:

> A. I was in a ditch. There was six of us there. We was doing what they call a duct bank, meaning puttin' pipes up underneath the ground goin from transformer in one MC room to the other, in muddy area that we asked for anything to stand on. We was told it was dry enough and you need to continue to work. I - - we was laying pipe and I was standing there and my feet got hung in the mud. I tried to raise 'em out, I could not raise em out, and popped something in my back, and here I sit.
>
> Q. Okay. The symptoms that you had at the time were in your back, hip area, leg area; is that true?
>
> A. Yes.
>
> Q. And which leg are we talking about?
>
> A. Left leg.

The Claimant testified that his symptoms included burning from his knee all the way down to his groin area, and into the inside of his thigh. He confirmed that he has treated with several doctors. Ultimately, the Claimant came under the care of Dr. Scott Schlesinger. He agreed that on March 7, 2019, he underwent low back surgery by Dr. Schlesinger. The Claimant testified that

that he did not have surgery until he came under the care of Dr. Schlesinger. He admitted that Dr. Schlesinger assessed him with a 10% impairment rating on May 31, 2023, for his back injury. The Claimant has not seen him since that time. According to the Claimant, he is hoping and praying that he does not have any follow-up visits scheduled with Dr. Schlesinger for any additional treatment.

He sees Dr. Irvin, his family physician, in Mountain View, for continuing back issues. According to the Claimant, he previously had between 14 to 20 injections. The Claimant testified that his *back pain is sharp, and his leg jumps like when you are frying frog legs*. Per the Claimant, this happens periodically during the day, at three times. He confirmed that he has some days that are better and he is not in pain. However, according to the Claimant, there are times that he hurts and does not want to do anything else, and it just depends on how bad he wants to hurt. When his pain is severe, the Claimant stays home. This occurs about three times a week. He testified that these days randomly occur. The Claimant gets out of the house and goes for a drive or to the store. He testified that on a 30-day period, he has about six good days. The Claimant confirmed that he has to bend, stoop, push, pull, and be on his feet all day as an electrician. His hourly rate of pay was $28.00 at the time of his compensable injury. He confirmed that he worked through a temporary agency.

On cross-examination, the Claimant testified he takes over-the-counter medications and marijuana gummies. According to the Claimant he was unable to take the prescription medications such as Gabapentin. The Claimant confirmed that his surgery was back in 2019. Following his surgery, he confirmed that there was a three-year gap between his visits to Dr. Schlesinger. The Claimant essentially agreed that he saw Dr. Schlesinger a couple times in 2023. He admitted that he has basically gone five years without any actual medical treatment for his back. Since his back

surgery, the Claimant maintained that he can now walk. Before he had surgery, per the Claimant, it was very, very difficult for him to walk.

The Claimant agreed that he continues with pain down his left leg. He admitted that he testified that the FCE evaluator was a joke. Currently, the Claimant does not continue to use the TENS unit. He is unable to stoop or bend nor is he able to sit for prolonged periods of time. He maintained that he is able to play cards on a good day. The Claimant was not aware that the evaluator stated that he could fully flex his back and when they gave him tasks to perform his walking improved. He reluctantly admitted that there is no report from any doctor saying that any physical limitations or restrictions have been placed on him. The Claimant admitted that he has not followed up on any of the job leads. He claimed that he was not aware the Full Commission found that *he had legitimately shown he was not interested in returning to work*. The Claimant confirmed that he stated the surgery performed by Dr. Schlesinger did not provide him with any relief for his symptoms.

On redirect examination, the Claimant confirmed that he has difficulty sleeping. According to the Claimant, he sleeps in a chair for two or three hours depending on the severity of pain. He also maintained that he would like to be working if he could rather than sitting at home. The Claimant admitted that he obtained his marijuana card from Dr. Irvin, and he has continued to see him. He testified that he disagreed with the finding that he does not want to work. According to the Claimant, he loved his job and making money.

Medical Evidence

On May 18, 2023, the Claimant sought medical treatment from Legacy Spine & Neurological Specialists under the care of Dr. Scott Schlesinger. The Claimant complained of low back pain that radiated down his left leg. This clinical encounter was performed utilizing a real-

time telehealth audio-visual connection. This particular event occurred during the 2020 COVID-19 outbreak. The Claimant reported that his pain has gotten worse over the last couple of years. He rated his pain on average as being an 8-9 on a scale of 10. The Claimant reported numbness and tingling in his left leg. However, he denied burning and weakness. The Claimant reported undergoing both physical therapy and chiropractic treatment with no relief of his symptoms. He was last seen on January 7, 2020, for radiating left groin pain with numbness that extended medially to his knee and occasionally his foot. At that time, Dr. Schlesinger had performed s/p two Transforaminal Epidural Steroid Injections at L2-3 on the left. The Claimant reported no significant relief from the transforaminal injections. Dr. Schlesinger reviewed the MRI of January 30, 2020, which showed moderate neural foramina stenosis at L2-3 Spinal Nerve Block. Per this clinic note, the EMG nerve conduction study from January 30, 2020, suggested L-2 and L3 left-sided radiculopathy changes. At that time, Dr. Schlesinger diagnosed the Claimant with "1. Radiculopathy, Lumbar region (54.16). 2. Encounter for other specific surgical after care (Z48.89)." In order to investigate the Claimant's neurological complaints, Dr. Schlesinger proposed that the Claimant undergo an EMG NCV of the lower left extremities. He also recommended that the Claimant proceed with further diagnostic testing in the form of modalities that included an MRI and x-rays of his lumbar spine. Dr. Schlesinger planned to proceed with a selective nerve root block/SNRB at left L2-3.

An MRI was performed of the Claimant's lumbar spine on May 31, 2023, which was read by Dr. Andrew Finkbeiner, with the following CONCLUSION:

> 1. Surgical intervention again seen at the L2-3 level with posterior spinous process hardware and suggestion of a partial left-side facetectomy defect. There is retrolisthesis, a broad-based disc bulge with left foraminal predominance and facet hypertrophy at this level contributing to abutment of bilateral exiting L2 nerves. There is enhancing granulation tissue along the surgical tract.

> 2. Retrolisthesis, a broad-based disc bulge and facet hypertrophy at the L3-4 and L4-5 levels with abutment of bilaterial existing and L3 and L4 nerves and abutment of bilateral descending L4- and L5 nerves.

Per a Chart note of May 31, 2023, the EMG NCS showed mild active and chronic denervation in left vastus lateralis could be related to radiculopathy in any level L2-L4 but was unable to confirm with paraspinals as was confirmed on a previous EMG in 2020.

Dr. Schlesinger saw the Claimant during an office visit that same day. The Claimant complained that his symptoms have a significant impact on the quality of life and activities of daily living. He had a chief complaint of continued low back pain that radiated down his left leg. On physical examination of the Claimant, Dr. Schlesinger's determined that the Claimant had increased truncal girth. Dr. Schlesinger opined that the Claimant's gait was very antalgic, and although he used a cane to ambulate and was still unable to tandem. The Claimant's left leg required repeated testing due to difficulty, weakness verses decreased effort due to pain. He was noted to have sensation decreased to palpation in his left leg. Dr. Schlesinger canceled the SNRB that was scheduled for that same day. His diagnoses were: "1. Intervertebral disc disorders with radiculopathy lumbar region (51.16). 2. Other spondylosis, lumbar region (M47.896)."

> <u>Dr. Schlesinger's Summary</u>:
> This 60-year-old male gives a long history of persistent back pain and left thigh pain despite an attempt of treating his with surgical intervention at L2-3. The patient does have some electrical abnormalities, but these are improved compared to the last test. Unfortunately, he still hurts, and the study suggested there is still some evidence of neural foramina narrowing at L2-3 and postoperative changes.
>
> The patient declares that he does not want to proceed with a planned left L2-3 SNRB today but instead desires to try to get his workman's compensation closed. Therefore, I will declare from the standpoint of his Workmen's Comp. case that he has reached maximal medical improvement. Based on the fact he has had prior surgery in his lumbar spine and continued pain would merit a 10% disability rating in accordance with the AMA guidelines.

> If down the road the patient does desire to have further work-up and treatment and I would proceed with a left L2-3 SNRB. If this does not give significant transient benefit and the next step would be to offer him the evaluation of a spinal cord stimulatory trial.
>
> If he does get transient benefits from a left L2-3 SNRB then there is an opportunity to further decompress the neural foramen with an interbody fusion device added to try to further enlarge the left L2-3 neuroforamen. This may or may not do any good since he has had long-standing problems with his left leg even before his surgery for at least a couple of years. The nerve may simply have too much electrical damage to get any improvement without a possible spinal cord stimulator trial. At this time, we give him his above right and release and be happy to see him back again as needed.

Adjudication

A. Permanent Anatomical Impairment

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. *See Commission Rule 099.34 (now codified at 11 C.A.R. § 25-129)*; Ark. Code Ann. §11-9-522(g) (Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the Claimant has proved he is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1) (Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i) (Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to prove a compensable injury, it does not follow that such evidence is required to establish each element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is needed is that the

medical evidence be supported by objective findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a) (Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to a preponderance of the evidence. Ark. Code Ann. §11-9-102(14) (Repl. 2012). Preponderance of the evidence means the evidence that has greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

The Claimant sustained a compensable injury to his lower back while working for the respondent-employer, on March 8, 2017. The Respondents paid for both conservative and surgical intervention for the Claimant's back injury. After the Claimant failed conservative treatment modalities, Dr. Schlesinger performed a one-level surgery on his back at L2-3, on March 7, 2019, for his compensable back injury. Following the surgery, the Claimant continued with severe back pain and symptoms in his left leg. He continues under the care of his primary care physician, Dr. Irvin, because of his continued with severe chronic back pain and related left leg pain and other symptomology. Dr. Irvin has prescribed marijuana gummies for the Claimant's resulting symptoms. On May 31, 2023, Dr. Schlesinger assessed the Claimant with a 10% permanent impairment to his lumbar spine using the AMA *Guides*. Although Dr. Schlesinger does not specifically state that he used the 4th Edition, it appears that he in fact did so. There are no expert opinions to the contrary, and Dr. Schlesinger's assessment comports with my review of AMA *Guides to the Evaluation of Permanent Impairment*, 4th Edition for assessing anatomical impairment to the spine. Dr. Schlesinger's expert opinion is logical and comports with my review

of Table 75, page 3/113 of the *Guides*, which assigns "Whole Person Impairment Percents Due to Specific Spine Disorders. Specifically, Table 75 Section II. E provides a 10% to the body as a whole for a surgically treated disk lesion with residual, medically documented pain, and rigidity.

Per his medical note of May 2023, Dr. Schlesinger assessed the Claimant with a 10% permanent impairment because he underwent surgical treatment with residual symptoms of pain due to electrical abnormalities and some stenosis at L3-4. Other objective abnormities pertaining to the Claimant's lumbar spine are demonstrated on the above MRI performed on May 31, 2023. These are all objective findings attributable to the Claimant's compensable back injury of March 8, 2017. There is no evidence whatsoever indicating that the Claimant's degenerative disc disease was symptomatic.

Prior to his compensable injury of March 8, there is no evidence that the Claimant did not have a history of any complaints or issues relating to his back. I found his testimony to be credible in this regard. In fact, the Claimant's credible testimony about him not having any prior back problems is corroborated by the lack of any medical evidence indicating a prior history of any medical treatment or diagnostic testing having been performed on his back.

Hence, the evidence before me clearly proves that prior to his work injury, the Claimant's pre-existing degenerative disc disease was asymptomatic. I am persuaded that Dr. Schelsinger's expert opinion is correct and with my review of the *Guides*, with there being no probative evidence or other recent expert opinions to the contrary.

Therefore, I have attached significant evidentiary weight to Dr. Schlesigner's expert opinion. For these reasons, I am also convinced that the major cause of the Claimant's 10% permanent anatomical impairment, resulted from his work-related injury of March 8, 2017.

I realize that Drs. Cathy and Knox opined that the Claimant sustained no permanent impairment on his lumbar spine. However, these opinions were given prior to the Claimant's lumbar surgery. As a result, I have attached minimal weight to these opinions.

B. Wage-Loss Disability

When a Claimant has sustained a permanent impairment rating to the body as a whole, the Commission is authorized to increase the disability rating based on wage-loss factors. The wage-loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Grimes v. North Am. Foundry*, 316 Ark. 295, 872 S.W.2d 59 (Ark. 1994). Ark. Code Ann. § 11-9-522(b) (Repl. 2012) provides, in pertinent part:

> (1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

Such other matters are motivation, post injury income, credibility, demeanor, and a multitude of other factors. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984); *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990); *Cross v. Crawford County Memorial Hosp*., *supra*. It is well established that a Claimant's prior work history and education are factors to be considered in determining eligibility for wage-loss benefits. *See Cross v. Crawford County Memorial Hosp., supra.; Glass v. Edens, supra.; City of Fayetteville v. Guess, supra.; Curry v. Franklin Electric, supra.*

On Mach 8, 2017, the Claimant sustained injuries to his back and leg. The parties previously litigated issues about the Claimant's left leg injury, which is now *res judicata.*

At issue now is whether the Claimant is entitled to wage-loss disability benefits relating to his back compensable injury of March 8, 2017.

The Claimant is now 63 years of age. His testimony shows that he began working with his dad in 1983 as an electrician. He became a certified Master Electrician in 1997. The Claimant's prior work as a commercial and residential electrician required that he be able to perform heavy manual labor.

Here, the Claimant sustained a compensable back injury in March 2017, while performing job duties as an electrician when his boot got stuck in mud and he tried to dislodge it. He felt an immediate onset of pain. The Claimant reported this incident to his employer, and Respondents referred the Claimant for treatment and evaluation of his compensable injuries.

After conservative treatment failed, the Claimant underwent surgical intervention at L2-3 on his lumbar spine by Dr. Schlesinger in 2019. No doctor has placed any physical limitations on the Claimant. He previously underwent an FCE with invalid results. The record shows that the Claimant suffers from chronic back pain, for which he takes marijuana gummies. The Claimant maintains that he is interested in returning to work. However, his inaction proves otherwise. Although the Claimant does not have any physical restrictions placed on him by a doctor, the evidence before me demonstrates that the Claimant is unable to perform majority of the functions of an electrician or any type of heavy manual labor.

His testimony shows that he has performed some odds job since his back surgery. He has not applied for any potential job openings since his March 8, 2017, injury. His testimony shows that he has not held full-time employment since that time. He is unable to perform heavy manual labor due to his compensable back injury of March 8, 2017.

However, the evidence clearly proves that the Claimant is legitimately not interested in returning to gainful employment within his physical limitations. The Claimant has applied and been approved for Social Security Disability benefits.

Based on the Claimant's compensable back injury, advanced age, his resulting permanent impairment of as a result of same, prior work history of heavy manual labor, limited education, non-transferable skills, his lack of interest and motivation in returning to other work within his physical limitations, and all of the other factors before me, I find that the Claimant proved that he sustained a wage-loss disability in the amount of 9%.

C. Attorney's Fee

The parties stipulated that the Respondents have controverted this claim for additional benefits. As such, the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein to the Claimant, pursuant to Ark. Code Ann. §11-9-715 (Repl. (2012).

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion. All accrued sums shall be paid in lump sum without a discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012). Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the insurance carrier and one-half by the Claimant.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge