BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H202795

JESSIE KIRK, EMPLOYEE	**CLAIMANT**
VS.	
VAN BUREN WATER & SEWER DEPT., EMPLOYER	**RESPONDENT**
ARKANSAS MUNICIPAL LEAGUE, Carrier/TPA	**RESPONDENT**

OPINION FILED SEPTEMBER 9, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 25TH day of August 2026, in Fort Smith, Arkansas.

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

Respondents are represented by Mary K. Edwards, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 25th day of August 2026, and at the time of the hearing, the issues before the Commission were wage loss, and attorney's fees. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order filed on June 17, 2026, provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee/carrier relationship existed on March 30, 2022, when the claimant sustained injuries to his back, head, and right shoulder. At the time of the injury, the claimant was earning sufficient wages for a TTD/PPD rate of $643.00/$482.00, respectively. Respondents accepted this claim and paid claimant permanent partial disability benefits based on a 2% rating to the body as a whole. The respondents had previously paid claimant permanent partial disability benefits for a 10% impairment rating

in a previous claim. By an Opinion dated October 16, 2023, the claimant was assessed a 35% wage loss disability which the respondents are currently paying. The respondents are currently paying an additional 9% permanent impairment rating, due to an SI joint surgery. All prior hearings are res judicata. No objection to the stipulations were made at the time of the hearing.

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 he underwent an SI joint fusion as the result of the effects of his job-related injury and that he now has additional permanent impairment as a result of that condition. Claimant contends that as a result of lost time that occurred as a result of his SI joint treatment, he lost his job he had at the time the October 16, 2023, Opinion was rendered, and that therefore, he is entitled to additional wage loss disability based on the change in his permanent condition and that his attorney is entitled to an appropriate attorney's fee.

The respondents contend that after the previous hearing in this matter, Dr. Frank Tomecek retired and referred the claimant to Dr. Kyle Mangels. Respondents authorized claimant to see Dr. Mangels who recommended an SI joint fusion. The claimant underwent the fusion on August 8, 2025, and on March 18, 2026, Dr. Mangels placed the claimant at MMI, and released him to work with no restrictions, and released him from his care for his back and his SI joint. Following an evaluation at Functional Testing Centers (FTC), the claimant was found to have an impairment rating of nine percent (9%) to the body as a whole following the SI joint fusion and respondents have accepted this rating. The respondents further contend that the claimant is not entitled to wage loss disability

due to the fact that the matter has already been litigated and is barred by the doctrine of res judicata. However, according to A.C.A. §11-9-713(a)(2), an award can be modified if there is a "change in physical condition." The respondents contend that the claimant has not had a change in physical condition. His loss of job is not a change in physical condition as required by the Statute. Therefore, claimant is not entitled to a modification to his previous wage loss award. In addition, in Dr. Mangels' report dated March 18, 2026, he opined that the claimant was able to sit and stand more easily than before the surgery.

The sole witness was the claimant, Jessie Kirk. 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 CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on March 30, 2022, when the claimant sustained a compensable work-related injury to his back, head, and right shoulder.
3. That at the time of the injury, the claimant was earning sufficient wages for a compensation rate of $643.00 for TTD benefits and $482.00 for PPD benefits.
4. The respondents accepted and paid permanent partial disability benefits based on a 2% rating to the body as a whole.

5. The respondents previously paid the claimant permanent partial disability benefits for a 10% impairment rating in a previous claim.
6. By an Opinion dated October 16, 2023, the claimant was assessed a 35% wage loss disability, which the respondents are currently paying.
7. The respondents have accepted an additional 9% permanent impairment rating due to the SI joint surgery.
8. All prior opinions are res judicata.
9. That the claimant has satisfied the required burden of proof by a preponderance of the evidence that he is entitled to an additional 10% wage loss determination, plus attorney fees pursuant to A.C.A. §11-9-715.
10. 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 respondents and the claimant submitted a joint medical record that consisted of 125 pages. The respondents also submitted 55 pages of non-medical without objection.

The claimant testified that he was working for the respondent employer and sustained an injury that resulted in a 10% impairment rating, and was later allowed to return to work, where he worked until another injury occurred, where he received a 2% rating. He then attempted to return to work and was told that they had nothing available for him within his restrictions. This caused the claimant to request a hearing which resulted in a 35% wage loss disability finding. By the time of that hearing, the claimant

had found a job with the city of Fort Smith, working as a waste treatment operator which was the same job as claimant's job with the respondent employer, city of Van Buren. However, the job with the city of Fort Smith employer did not have as many responsibilities as his job with the city of Van Buren. The claimant worked for Fort Smith for two and a half years but was then let go due to running out of FMLA. He was given a 30-day extension without pay and when the extension ran out, it was not extended, and Dr. Mangels had not released him to return to work. At the time of his hearing, Dr. Tomecek was his treating physician, who retired in June of last year and the claimant was referred to Dr. Mangels at that time. (Tr. 5-7)

When claimant went to work for the city of Fort Smith, he testified that he continued to receive treatment for his back, hip, and SI joint, due to his injury sustained while he was working for the city of Van Buren. Claimant went on to state that Dr. Mangels had figured out that his SI joint was causing a lot of his problems, and that he had received an ablation of his lumbar spine on April 29, 2024, and he did receive some temporary benefit for about five or six months. He also received injections to his back in May of 2025, which also provided some relief. Later in September, Dr. Mangels started focusing on his SI joint, after the retirement of Dr. Tomecek. The claimant went on to testify that sitting, walking, hiking, and going up and down stairs kill him. During this time period, claimant was continuing to work for the city of Fort Smith. Eventually Dr. Mangels made the decision that claimant should receive surgery on his SI joint, which occurred on November 13, 2025, and up until that date, the claimant had continued to work for the city of Fort Smith, due for the need to make a living. When claimant notified the city of Fort Smith of his need for surgery set on November 13, 2025, he was placed on FMLA, for twelve

weeks, and then was given a 30-day extension by his supervisor. At the end of the 30-day extension, the claimant was still under active treatment by Dr. Mangels, who still had the claimant off work. Claimant stated that he attempted to obtain a second extension but was unsuccessful. (Tr. 6 – 11)

Claimant testified that while employed by the city of Fort Smith, he worked the 11:00 p.m. to 7:00 a.m. shift which was later changed to the 10:00 p.m. to 6:00 a.m. shift. This was not his choice, but this shift was less physical and accommodated his situation due to the shift being less physically demanding. The claimant went on to testify that he had checked with the city of Fort Smith to see if any jobs were available since Dr. Mangels had released him on March 18, but that none had come available. He stated that he was still in a lot of pain and had not suffered any new injuries. The claimant provided that he was going to see Dr. Mangels the following day in Tulsa. Claimant agreed that he had two different things going on, his SI joint problem and his back problems, which he could distinguish. If he sat to long on a bench, his SI joint injury side would be miserable. “If I stand too long in one spot, I have to keep my weight shifted to my left side. Walking, trying to go up and down stairs, I have to use a handrail. And with my back, it is just a constant pain that don’t ever go away and all I want is to be like it was before and be able to work.” The claimant went on to state that he thought that his SI joint issue was better after his surgery. In regard to his back, claimant stated his back was about the same. “Maybe worse on days. It just varies.” He went on to state that he could not sleep because it feels like nails are sticking in him. The claimant was asked about Dr. Mangels stating in a report on June 24, 2026, that claimant’s back was worse in his opinion, and claimant responded, “I think it is.” Claimant went on to testify that he had been unable to find any work and

was earning $19.86 an hour before he lost his job with the City of Fort Smith, while working as a 40 hour a week full time employee. (Tr. 12-16)

The claimant denied filing for social security and stated he wanted to get into the job market due to only being 51 years of age. (Tr. 17)

Under cross examination, the claimant admitted that he was 51 years old, had graduated from high school, and had not attended college. His Class 3 Wastewater Operation License and CDL were still current, but his other licenses were not. The claimant went on to testify that he started working for the city of Fort Smith on July 1, 2023, and worked a 40-hour week, the last day he worked for the city of Fort Smith was November 12th, 2025, and that he received his SI joint fusion by Dr. Mangels on November 13th, 2025. The claimant agreed he was earning more for the city of Fort Smith when he left the job than when he had started and that he had informed the city of his permanent work restrictions. He also admitted that he went through a physical evaluation to determine if he could work the third shift job, and he assumed that he had passed. He thought that parts of his job for the city of Fort Smith were within his permanent work restrictions and then responded that he meant yes. He also agreed that he had seen Dr. Mangels somewhere around July 15, 2026, and his work restrictions had not changed since his SI joint fusion surgery. It was also determined that the claimant had not undergone a functional capacity evaluation since his SI joint fusion but had undergone an evaluation for an impairment rating. The claimant also admitted being on FMLA leave from the date of November 12, 2025, for 12 weeks, plus an additional 30 days, and that he was terminated by the city of Fort Smith in March of 2026, due to running out of leave time. (Tr. 17 – 22)

The claimant affirmed that he had not worked any since his SI joint fusion by Dr. Mangels, but that he had looked for jobs and that he had talked to supervisors for any potential jobs with the city of Fort Smith. He also denied filling out any job applications, denied going to an employment agency looking for work, and denied looking for jobs online. However, the claimant testified that he had personally talked to potential employers other than the city of Fort Smith. The claimant also admitted that his current income consisted of the 9 percent impairment rating and the wage loss finding from the previous hearing. He was also aware of the fact that Dr. Mangels on his March 18, 2026, visit, released him to return to regular duty and that he was placed on maximum medical improvement at that time. Later, on claimant's visit to Dr. Mangels on June 24, 2026, Dr. Mangels opined that the claimant could return to regular duty. (Tr. 23 – 25) Finally, claimant was aware that his visit to Dr. Mangels on July 15, 2026, also provided he could return to regular duty. Claimant also admitted that the respondent had continuing to pay for his medical treatment and that his primary symptoms that he is currently experiencing were localized between his lower back and hip. (Tr. 26) The claimant testified "My back pain is getting worse." However, he thought that back pain was "probably" better right after his surgery by Dr. Tomecek. However, right now, he thought it worse and stated, "I can't hardly sit here." He admitted that it was the same some days, better some days, and worse some days. (Tr. 27, 28)

In regard to his SI joint fusion surgery, immediately after the surgery, he was feeling better, but after the passage of some time, claimant felt that his SI joint pain was worse. The claimant felt that he was now hurting as much as he was before his surgery. (Tr. 29, 30)

On redirect, the claimant was asked since it appeared that he had been on the stand about 30 minutes, and that he had stood up once, was that normal, and he responded that it was “Every day.” He was asked about being able to work for the city of Fort Smith, and he responded “I don’t know. I could try.” The following question then occurred:

> Q: Okay. I am not asking what you are willing to try. What I am asking you is if your current condition is as bad as you are telling us it is right now, could you have been working for the city of Fort Smith for two and a half years in that condition?
>
> A: No.
>
> Q: So does that mean you are worse?
>
> A: Yeah

The claimant agreed that he trusted the opinion of Dr. Mangels. (Tr. 31, 32)

The parties submitted 125 pages of joint medical records. The initial report of record dated May 14, 2009, was a Final Report from Prime Medical Imaging that provided under history claimant had a prior lumbar surgery, and an MRI of the lumbar spine showed an annular tear and a mild disc bulge without spinal or foraminal stenosis at L4-5. At L5-S1, a laminectomy on the right was shown with a right paracentral disc protrusion/herniation that contacts the right S1 nerve centrally with a mild disc bulge. (Jt. Ex. P. 1) A surgical note dated August 12, 2010, by Dr. Arthur M. Johnson, provided that the claimant received an interlaminar laminotomy at L5-S1. (Jt. Ex. 1, P. 2, 3)

A Functional Capacity Evaluation was performed on August 8, 2011, at River Valley Rehab, which provided claimant had suffered an injury on April 15, 2009, while shoveling mud out of a ditch and that he received a Lumbar discectomy on August 12, 2010. He then returned to light duty on January 19, 2011. The report provided that his job

demands should be within his capabilities as listed in the Functional Capacity Exam and had maximum lifting tolerances of 40 to 45 pounds depending on the type of lift. The report also provided claimant should alternate between sitting, standing, and walking if possible. (Jt. Ex. 1, P. 4 – 24)

A report from River Valley Musculoskeletal Center, dated February 25, 2011, provided the claimant had reached MMI and was given a permanent impairment rating of 10% to the body as a whole, pursuant to the AMA guidelines. (Jt. Ex. 1, P. 25) The claimant then returned to Prime Medical Imaging on April 15, 2022, for another lumbar MRI, which provided there was a disc desiccation with a central protrusion at L4-5 and a possible tiny protrusion at L5-S1, with mild degenerative facet changes. (Jt. Ex. 1, P. 26, 27) Claimant then presented to Mercy Clinic Orthopedic Surgery and Doctor Trent Johnson on June 21, 2022, for a follow up with a chief complaint of shoulder pain. The report provided that the claimant had reached MMI and could return to work with no restrictions. (Jt. Ex. 1, P. 28)

An Operative Note by Dr. Frank Tomecek dated August 24, 2022, provided that a bilateral redo of L5 laminotomies, a bilateral redo of a L5-S1, a bilateral L5-S1 diskectomy (redo on the right) and a posterior spinal fusion at L5-S1 was performed. The report went on to provide that the claimant had a long history of low back pain and right greater than left sciatic type leg pain, and that the claimant had a previous lumbar diskectomies in 2000 and 2009. (Jt. Ex. 1, P. 29 – 34)

Claimant again returned to Prime Medical Imaging on January 9, 2023, for a lumbar spine CT which provided for an interval diskectomy and a posterior instrumented spinal fusion and mild disk bulges at both L3-4 and L4-5. (Jt. Ex. 1, P. 35) The claimant

returned for an MRI on February 16, 2023, which provided for a minimal central disk protrusion at L3-4, a mild disk protrusion at L4-5, and no residual or recurrent epidural defect at L5-S1. (Jt. Ex. 1, P. 36)

The claimant then underwent another Functional Capacity Evaluation on April 19, 2023. The claimant reported that he had been injured when he was struck by a vehicle at his work site and was suffering from low back pain. The claimant sat through the 26-minute interview with mild pain behaviors and with occasional postural adjustments. The report provided that the claimant demonstrated functional limitations and low tolerance to repetitive and sustained stooping and bending, and that he demonstrated the ability to perform within the medium classification of work as defined by the US Department of Labor's Guidelines. (Jt. Ex. 1, P. 37 -55)

The claimant then returned to Dr. Tomecek on May 4, 2023. The report provided that the claimant was receiving a full medical release and had reached MMI. It further provided that the claimant had certain lifting restrictions and could perform work in the medium classification of work. (Jt. Ex. 1, P. 56, 57) An Impairment Evaluation Summary was then obtained from the Functional Testing Center on May 24, 2023, which provided that the claimant's "Rating for his current injury is 12% Whole Person Impairment but he has already been rated at 10% for this same level (L5-S1) so therefore, he has a net increase of 2% Whole Person Rating. This results in a 2% Whole Person Impairment as a result of this work related injury." Dr. Tomecek reviewed and agreed with the impairment evaluation. (Jt. Ex. 1, P. 58, 59)

The claimant returned to Dr. Tomecek on March 14, 2024, for a follow up which provided that the claimant was still suffering from recurrent low back pain right low lumbar

paraspinal pain in the region of the SI joint and that overall, his back pain is better than before the surgery. Unfortunately, he had some recurrent paraspinal pain in the lumbar region that never had gone away. (Jt. Ex. 1, P. 60, 61)

Claimant presented to Dr. Andreas F. Revelis, at the Tulsa Spine and Specialty Hospital Pain Clinic on April 1, 2024, for Sacro-Iliac pain on the right side. Claimant received a SI joint injection. (Jt. Ex. 1, P. 62-64) On April 4, 2024, the claimant presented to Utica Park Neurosurgery and the progress noted that he is rating his current pain as 2 out of 10 after his right SI Joint injection a few days earlier. The report further provided that the claimant could work full duty without temporary restrictions but that he is not released from active medical care. This note was signed by Kelly A. Watson, APRN-CNS. (Jt. Ex. 1, P. 65, 66) On April 29, 2024, the claimant received a right radiofrequency ablation of the dorsal primary ramus of L5 and the right lateral branches of S1, S2, and S3. (Jt. Ex. 1, P. 67-69) A Return-to-Work Note provided on May 2, 2024, provided the claimant could return to work full duty without temporary restrictions. (Jt. Ex. 1, P. 70)

Claimant again returned to Utica Park Neurosurgery and Dr. Tomecek on June 6, 2024, with a chief complaint of mild intermittent right paraspinal pain. The report provided that the claimant had done extremely well with his right radiofrequency ablation and had done well with his SI joint injections and surgery but has had some chronic problems with his right SI joint. The report went on to provide that the claimant had reached MMI and was released from active medical care but could return as needed. (Jt. Ex. 1, P. 71, 72) A full duty release was provided on the same date by Dr. Tomecek. (Jt. Ex. 1, P. 73)

The claimant later returned to Utica Park Neurosurgery on March 6, 2025, with chronic right SI joint pain. The claimant provided that he has pain on the right side of his

buttock that goes down the back of his leg midway to his posterior calf. Sitting any length of time increased his pain and walking and going up and down stairs made the pain worse. X-rays of the lumbar spine provided that there was good position of the posterior hardware at L5-S1. The report recommended repeat right SI joint radiofrequency ablation by Dr. Revelis. (Jt. Ex. 1, P. 74, 75) On March 17, 2025, claimant presented for a right radiofrequency ablation of the dorsal primary ramus of L5 and the right lateral branches of S1, S2, and S3. (Jt. Ex. 1, P. 76) The claimant then returned for a follow-up on April 3, 2025, and was given a full duty release without temporary restrictions which provided that the claimant could work full duty. (Jt. Ex. 1, P. 77 - 79) The claimant then again returned to Utica Park Neurosurgery on April 17, 2025, and the report provided that the claimant had underwent a 2nd right SI joint RFA on March 17, 2025, but had received no relief from the procedure and he felt that his pain was worse. A lumbar myelogram CAT scan was performed and there was no evidence of instability or abnormal translational motion in the lumbar spine. Postoperative changes were seen at L5-S1. At L3-4, a broad-based disc protrusion and a central disc protrusion causing mild compression of the thecal sac mid right and mild to moderate left foraminal stenosis was seen. At L4-5, facet arthropathy and ligamentum flavum thickening causing mild compression of the thecal sac and mild bilateral foraminal stenosis was noted. The report went on to provide that the claimant could continue to work full duty without restrictions although he must be off work for 48 hours after the CAT scan that occurred on April 17, 2025. (Jt. Ex. 1, P. 80 – 84)

Claimant again returned to Utica Park Neurosurgery on May 12, 2025. The report by Dr. Revells provided that the claimant had been examined and that no red flags were noted but that the claimant's pain had been present for three months. The claimant had

failed to respond to adequate conservative care, including surgical evaluation, previous surgery, home exercises, the use of NSAIDS, core strengthening and physical therapy. As a result, the claimant received a lidocaine injection at L3-4 and L4-5. (Jt. Ex. 1, P. 85, 86) A telephone visit with the claimant and Utica Park Neurosurgery occurred on the following day which provided that the claimant would be scheduled for a right L3-4 and a L4-5 medial branch block or radiofrequency ablation depending upon approval. (Jt. Ex. 1, P. 85, 86.) A telephone visit occurred the following day with Utica Park Pain Management Clinic and claimant provided that he had been told that he was approved for a radiofrequency ablation. (Jt. Ex. 1, P. 87-89)

The claimant returned to Utica Park Neurosurgery on June 5, 2025, with his continued complaint of chronic right low lumbar paraspinal pain and right buttock pain. The report provided that the claimant was currently released to work full duty without temporary restrictions but was not released from medical care due to his chronic restrictions. The report further provided Dr. Tomecek was retiring and that the claimant was being referred to Dr. Kyle Mangels. (Jt. Ex. 1, P. 90, 91) On June 16, 2025, the claimant presented to Dr. Revelis for a lumbar medial branch block radiofrequency ablation of the right L3-4 and L4-5 joint. (Jt. Ex. 1, P. 92, 93)

The claimant then presented for the first time to Dr. Kyle Mangels on June 11, 2025, who assessed his sacroiliitis and lumbar pain. He went on to provided that he would like the claimant to receive a right SI injection at this point by Dr. Calava. (Jt. Ex. 1, P. 94, 95) Claimant was then seen at the Specialty Pain Management Center by Dr. Jeffrey Calava for his right SI joint arthropathy and post laminectomy pain. (Jt. Ex. 1, P. 96-98)

On August 8, 2025, claimant presented to Dr. Calava for a right sacroiliac joint injection. (Jt. Ex. 1, P. 99, 100)

The claimant then presented back to Dr. Mangels on August 20, 2025. He opined that he would defer SI joint fusion at this time but that he had no doubt that the claimant was going to require a SI joint fusion later. He also recommended per a return to work note that claimant had not reached MMI but was released to full regular duty. (Jt. Ex. 1, P. 101 – 103)

On September 17, 2025, the claimant returned to Dr. Mangels, and new lumbar spine x-rays were obtained. Dr. Mangels opined that the claimant should receive a minimally invasive right sided surgical treatment for his sacroiliac joint. (Jt. Ex. 1, P. 104, 105) The claimant returned to Dr. Mangels October 22, 2025, and the report provided that the claimant would be setup for the procedure involving his SI joint. (Jt. Ex. 1, P. 106, 107) On November 13, 2025, claimant underwent a right sided SI joint surgery. (Jt. Ex. 1, P. 108 – 111)

Claimant then presented to Dr. Mangels on December 17, 2025, for a follow up following the surgery. Later on March 18, 2026, the claimant again returned to Dr. Mangels, and the report mentioned that the claimant had injured his knee at home and provided that the claimant was doing better and better and could return to work regular duty as far as his back and his SI joint on the right side were concerned and that claimant was going to be released from his care. Dr. Mangels opined that his best bet was that the SI joint fusion resulted in an 8% impairment to the body as a whole. (Jt. Ex. 1, P. 114 – 117)

At this point the claimant underwent another functional capacity evaluation on May 21, 2026, and the report provided that the claimant had a permanent impairment of 9% to the whole person. (Jt. Ex. 1, P. 118, 119)

On June 18, 2026, claimant received an MRI of the lumbar spine that provided there was broad based disc bulging with a posterior annular fissure and facet disease along with mild spinal canal stenosis and mild bilateral neural foraminal stenosis at L3-4. At L4-5, there was a diffuse disc bulge with facet arthrosis and hypertrophy of the ligamentum flavum. A posterior annular fissure was also visualized. Mild spinal canal enosis and mild bilateral neural foraminal stenosis was also noted. At L5-S1, the posterior fusion hardware was noted with bilateral foraminal stenosis from a residual disc osteophyte complex, with not spinal canal stenosis. (Jt. Ex. 1, P. 120) Claimant then returned to Dr. Mangels for a progress note on June 24, 2026, and the report provided that the claimant has had a turn for the worse. The report provided that the SI joint procedure had done well but that he does have some annular tearing at L4-5 more so than L3-4. He opined that he thought that the lumbar spine appeared worse than "what the radiologist let on" and went on to state that he thought the claimant should have a diagnostic lumbar spine injection by Dr. Calava. In addition to the problems involving the claimant's lumbar spine, the claimant had right knee surgery since last seen by Dr. Mangels and has a right rotator cuff surgery pending on July 8, 2026. The report additionally mentioned increased pain since April without injury. (Jt. Ex. 1, P. 121, 122) Claimant returned to Dr. Mangels on July 15, 2026, and the report referred to failed back surgical syndrome, lumbar pain, obesity, and sacroiliitis. The claimant was released to full regular duty. (Jt. Ex. 1, P. 125)

The respondents also submitted 55 pages of non-medical that was admitted without objection. An evaluation dated June 28, 2023, provided that the claimant had satisfied all the critical demands as required for a treatment operator for a water and wastewater prework screen but was limited to pushing and pulling 70 pounds due to a return-to-work slip. The report provided that the claimant passed the test. The Physical Results Report provided that the claimant could perform all the essential job functions with accommodations. The documents also provided that the claimant's employment with the city of Fort Smith was terminated effective March 10, 2026, and that his final paycheck was on November 26, 2025. (Resp. 1, P. 1 - 7) The remaining 55 pages provided for payments in regard to the work history of the claimant. (Resp. 1, P. 8 – 55)

DISCUSION AND ADJUDICATION OF ISSUES

The claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained the burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, 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 appears to be no dispute that the claimant sustained compensable work-related injuries while working for the respondent, city of Van Buren. A review of the history provides that the claimant injured his back, head, and right shoulder, while working for the city of Van Buren, the claim was accepted, and the claimant received a 2% a

permanent partial disability rating to the body as a whole, which respondents accepted. The claimant had suffered a previous injury while working for the respondent employer and had received a 10% permanent impairment rating for that injury. The claimant was assessed a 35% wage loss rating by an issued Opinion on October 16, 2023. The respondents are currently paying an additional 9% permanent impairment rating due to the SI joint surgery by Dr. Mangels on November 13, 2025.

After the claimant suffered his injuries while working for the respondent employer, he was able to obtain a similar job working for the city of Ft. Smith. However, per his testimony which was found to be believable, claimant worked the late shift due to the late shift requiring less physical labor. The claimant continued to seek and receive medical treatment for his back and SI joint injuries, first being treated by Dr. Tomecek, who retired and who referred claimant to Dr. Mangels. During this time, the claimant made numerous doctor visits to Dr. Tomecek and Dr. Revelis, who performed multiple SI Joint injections and radiofrequency ablations involving the dorsal ramus of the L5 and the right lateral branches of the S1, S2, and S3, nerve roots. The claimant continued to suffer issues involving his lower back and SI joint and Dr. Mangels found that claimant required right sided SI joint fusion surgery, which he performed on November 13, 2025. Claimant's employer during this time-period was the city of Fort Smith, who worked with the claimant in regard to this medical care and leave, allowing the claimant to use FMLA leave and then providing an extended 30 day leave period without pay. Eventually, the city of Fort Smith terminated the claimant's employment due to his extensive absences. During this period, the claimant received numerous opinions by his care providers that he could return to work full duty, but claimant continued to suffer issues involving his lower back

and his right SI joint. The claimant received an MRI of the lumbar spine on June 18, 2026, that provided there was a broad-based disc bulging with a posterior annular fissure. On June 24, 2026, Dr. Mangels opined that the claimant had taken a turn for the worse.

The claimant testified that he earned $19.86 an hour as a 40 hour a week employee for the city of Fort Smith which was more than he earned while working for the respondent, city of Van Buren. The claimant also admitted that he was 51 years old at the time of the hearing and had graduated high school but had not attended college. In addition, claimant admitted he still maintained his Class 3 Wastewater Operator License as well as his CDL and had started to work for the city of Fort Smith on July 1st, 2023, and the last day he physically worked for the city of Fort Smith, was on November 12th, 2025, the day before his SI joint surgery with Dr. Mangels. Claimant also admitted that that he had passed the physical evaluation for his job with the city of Fort Smith. Although claimant suffered from some work lifting restrictions, he also admitted that his work restrictions had not changed since his somewhat recent SI joint surgery.

With these facts, the claimant contends that he is entitled to additional wage loss disability. Wage loss is the degree to which a compensable injury has affected the claimant's earning capacity. The extent of disability is a question of fact for the Commission. *Cross v. Crawford County Memorial Hospital*, 54 Ark. App 130, 923 S.W.2d 886 (1996). The Commission is charged with assessing wage loss on a case-by-case basis. Factors to be considered in accessing wage loss include the claimant's age, education, post injury income, work experience, medical evidence and other matters, which may reasonably be expected to affect the workers' future earning power such as motivation, post injury income, bonafide job offers, credibility or voluntary termination.

Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961); *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982); *Hope School District v. Charles Wilson*, 2011 Ark. App. 219, 382 S.W.3d 782 (2011). The award of wage-loss is not a mathematical formula, but a judicial determination based on the Commission's knowledge of industrial demands, limitations, and requirements. *Henson v. General Electric*, 99 Ark. App. 129, 257 S.W. 3d 908 (2008).

Pursuant to A.C.A. §11-9-522 (b) (1), when a claimant has an impairment rating to the body as a whole, the Commission has the authority to increase the disability rating based upon 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. *Emerson Electric v. Gaston*, 75 Ark. App.232, 58 S.W.3d 848 (2001). Objective and measurable physical findings which are necessary to support a determination of "physical impairment" or anatomical disability are not necessary to support a determination of wage loss. *Arkansas Methodist v. Adams*, 43 Ark. App. 1, 858 S.W.2d (1993). To be entitled to any wage loss disability benefit in excess of a permanent impairment, a claimant must first prove that he or she sustained a permanent physical impairment as a result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 882 (2000).

Here the claimant was found to have suffered a 35% wage loss disability after a hearing and a finding issued in an opinion. Since that time, the claimant has sought and received multiple treatments in regard to his work- related injuries, and received right sided SI joint surgery on November 13, 2025, by Dr. Mangels who opined, that the SI joint surgery probably resulted in a 8% permanent impairment rating and a Functional Capacity Evaluation on May 21, 2026, provided for a permanent impairment rating of 9% to the

whole person as a result of the surgery. Dr. Mangels later opined after an evaluation of the claimant that he had taken a turn for the worse. This finding shows that the claimant was suffering from a change in his physical condition.

The Arkansas Workers' Compensation Commission is authorized under A.C.A. §11-9-522(b)(1) to consider claims for permanent-partial disability benefits in excess of an employee's percentage of permanent physical impairment for unscheduled injuries. In the present matter, the claimant, who is currently 51 years of age, was working for the city of Fort Smith in a similar position as his respondent employer and was making more money than while employed by the respondent employer. However, the claimant lost his job due to repeated health care visits due to issues involving his back and SI joint, which eventually resulted in a right SI joint fusion performed by Dr. Mangels on November 13, 2025. Claimant's absence for this needed surgery ended the claimant's employment with the city of Fort Smith. It is noted that the claimant had obtained his high school education, his Class 3 Wastewater Operator License and his CDL. With that said, the claimant worked the late-night shift before being laid off due to his health-related issues, due to there being less physical labor required. Claimant is found to have been motivated to work due to being willing to take the late-night shift along with his testimony, which provided he needed to work. However, he was unable to perform his work-related duties as required by his employer due to multiple visits to his health care providers which caused him to be absent from his employment. Based upon the above findings and the last Functional Capacity Evaluation of record which found that the claimant was found to have a 9 percent partial disability rating from the SI joint surgery and fusion, the claimant

is found to have proven by a preponderance of the evidence that he is entitled to an additional 10 % wage loss determination due to his SI Joint fusion.

After reviewing the evidence impartially, it is found that the claimant has satisfied his burden of proof by a preponderance of the evidence that he is entitled to a 10% wage loss determination, plus attorney fees pursuant to A.C.A. §11-9-715.

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