

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.:H010136**

SANDRA L. LONG, EMPLOYEE	CLAIMANT
LITTLE ROCK SCHOOL DISTRICT TRANSPORTATION, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION WORKERS' COMPENSATION TRUST, INSURANCE CARRIER THIRD PARTY ADMINSTRATOR (TPA)	RESPONDENT

**OPINION FILED JUNE 7, 2022**

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

Claimant represented by Mr. Daniel A. Webb, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

On March 9, 2022, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing telephone conference was conducted on December 8, 2021, from which a Prehearing Order was filed on that same day. The parties agreed to the following stipulations at the time of the telephone conference or during the hearing. I hereby accept said stipulations as fact:

Stipulations

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times

pertinent hereto, including on November 3, 2020 when the Claimant sustained compensable injuries to her head and neck.

3. At the beginning of the hearing, the parties agreed to stipulate to hold the determination of the Claimant's average weekly wage in abeyance.

4. The Respondents have accepted this claim as compensable for injuries to the Claimant's head and neck for which they paid some medical benefits.

5. The Claimant was released to full-duty capacity on December 29, 2020. The Claimant retired after thirty-four (34) years of service with the Little Rock School District Transportation Department.

6. The Respondents have controverted this claim for additional benefits.

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

#### Issue(s)

At the beginning of the hearing, the parties mutually agreed to modify the issues as outlined in the December 8, 2021 Prehearing Order to the following:

1. Whether the Claimant is entitled benefits under Ark. Code Ann. §11-9-505 (a) (Repl. 2012). During the hearing, Ms. Long's attorney maintained her entitlement to these benefits from December 29, 2020 through the following year. (T. 39)

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

#### Contentions

The parties' respective contentions are as follows:

Claimant: The Claimant's attorney filed a letter with the Commission on January 18, 2022 to amend his contentions to state: Claimant contends that she should receive benefits pursuant to

ACA 11-9-505 (a). Claimant's medical bills that are related to her injury and have not been paid by her employer's workers' comp carrier should be paid by the carrier. Claimant should receive attorney's fees and mileage reimbursement and reserves all other benefits under the Workers' Compensation Act.

Claimant will not be asking for PPD, TTD, additional medical or wage loss at the March 9, 2022 hearing.

Respondents: Respondents contend that all appropriate benefits have been paid with regard to this matter. They have no medical documentation supporting the need for additional medical treatment beyond the Claimant's MMI date of 12/29/20 or the entitlement to additional indemnity benefits, be those temporary or permanent. Respondents have not been presented any mileage for reimbursement.

Based on my review of the record as a whole, to include the documentary evidence, all other matters properly before the Commission, and after having had an opportunity to listen to the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are accepted as fact.
3. The Claimant failed to prove by a preponderance of the evidence her entitlement to benefits under Ark. Code Ann. §11-9-505(a) in connection with the compensable head and neck injuries received by her on November 3, 2020. Because I found the Claimant failed to prove her entitlement to any indemnity benefits, the issue pertaining to a controverted attorney's fee has been rendered moot and addressed in this Opinion.

4. All issues not litigated at this time are hereby reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

The Claimant (Ms. Sandra L. Long) and Ms. Theresa Kirklin (the Little Rock School District "LRSD" Transportation Director) testified during the hearing.

The record consists of the hearing transcript of March 9, 2022 and the exhibits contained therein. Specifically, the following documentary exhibits are included in the record/transcript: Commission's Exhibit 1 contains the Commission's Prehearing Order of December 8, 2021, the parties' respective response to the Prehearing Questionnaire, Claimant's counsel letter of January 13, 2022, and Respondents' 1<sup>st</sup> Amendment to Response to Prehearing Questionnaire; Claimant's Medical Exhibit, consisting of thirty-five (35) numbered pages was marked as Claimant's Exhibit 1; Respondents' Medical Exhibit, encompassing twenty-nine (29) numbered pages was marked as Respondents' Exhibit 1; Respondents' Non-Medical Exhibit consisting of four (4) pages was marked as Respondents' Exhibit 2.

**Testimony**

Sandra L. Long

The Claimant, Ms. Sandra Long, testified during the hearing. Ms. Long is sixty-seven years old, and she is a high school graduate of Symbols High School, in Greenville Mississippi. She has lived in the central Arkansas area for forty-eight years. Ms. Long worked for the Little Rock School District for thirty-four years. She has prior work experience at various hospitals, performing work in the kitchen area. Ms. Long has also worked in the kitchen at several schools.

She worked primarily as a bus driver for the school district. While working in this position, Ms. Long had to perform "pre-checks" of the bus before taking it out. Her employment

duties included making sure the bus did not have any leaks, and she checked the oil level and under the hood for leaks. She also had to check the tires. Commonly, Ms. Long drove four routes a day and sometimes she would drive extra routes.

Ms. Long's last day of work with the Little Rock School District was November 3, 2020. She testified that on that day, she conducted her pre-trip check by raising the hood of the bus to check the oil. According to Ms. Long, it was early in the morning, and she had to use a flashlight. When she leaned over into bus, the hood came down and hit her in the head and on her shoulder. She estimated the hood to weigh around a 1,000 pounds. Ms. Long confirmed that she reported her injury to management. They accepted her injury as a compensable workers' compensation injury and sent her for some medical treatment.

She sought initial medical care for her injuries from Concentra. Ms. Long confirmed that they took her off work. She received payment for the time she was off work. According to Ms. Long, she underwent physical therapy on her neck, back and shoulder. She denied having sustained any broken bones during her work-related incident. Ms. Long confirmed that an MRI was performed, which did not reveal anything that required surgery. She testified that she went to Concentra at least three times.

Following her medical treatment at Concentra, Ms. Long was referred to OrthoArkansas. There, she treated with Dr. O.<sup>1</sup> According to Ms. Long, she saw Dr. O for two office visits. Ms. Long essentially testified that Dr. O did not perform any type of physical examination on her. She further testified that he only reviewed the CD of the MRI.

Ms. Long confirmed that her last visit with Dr. O was on December 29, 2020. At that point, Dr. O released Ms. Long to return to work, without any physical restrictions. However, she

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<sup>1</sup>During the hearing, Ms. Long referred to Dr. Ikemefuna Onyekwelu as Dr. "O."

confirmed that Dr. O also ordered physical therapy. Ms. Long testified that she went to her first physical therapy session on January 9, 2021, and her last day of therapy was July 7. She confirmed that she underwent seven months of physical therapy. According to Ms. Long, she went two days a week for physical therapy. Ms. Long gave a brief description of what her physical therapy sessions entailed. (T. 23). She admitted the therapy provided some relief of her symptoms.

Ms. Long denied she was able to drive the bus in December although she had been released to work. She also confirmed she was still undergoing physical therapy. Ms. Long denied that her employer offered her any kind of assistance in order for her to return to work. She agreed that at that time, she felt like she needed a little more time before she would be able to drive the bus again.

Under further questioning, Ms. Long confirmed that she is now healthy enough to drive the bus. She verified she holds a special driver's license to drive the bus, which is still current. Ms. Long verified had she known it was "the bus or nothing," she would have tried to drive the bus, even though it would have been against her better judgement.

Ms. Long confirmed she resigned from her position with the school district in February (2021). She began receiving a retirement check from her work with the school district and Social Security Retirement benefits.

On cross examination, Ms. Long was asked about the incident she described regarding the hood of the bus, which occurred on November 3. She admitted she does not bench press a 1,000 pounds. Ms. Long further admitted that she exaggerated the weight of the hood as being a 1,000 pounds. She agreed that the hood weighs, at most one hundred pounds. Ms. Long agreed that the hood is made of fiberglass. She further admitted she was able to lower and raise the hood of the bus daily by herself. Ms. Long confirmed she did not have any bruises, knots, or visible signs of

injury at the scene of the accident. In fact, Ms. Long admitted that she got in her bus and drove her route after the incident.

Once she received directions on which doctor to treat with, Ms. Long went to Concentra. She admitted that upon her arrival at Concentra, she did not have a knot or bruise. Ms. Long agreed that on direct examination, she testified that she was released from the care of Dr. O, after he reviewed her MRI diagnostic study. She also admitted that no doctor has restricted her from working since Dr. O's release of her in December 2020. Ms. Long confirmed that as of the day of the hearing, she continues with a full-duty release.

She admitted that after her November 3, 2020 accident, the transportation department asked her to come back to work as an aide on the bus. Ms. Long confirmed that she did in fact return to work for only half of the workday. She admitted the district asked her to show up for work on November 23 and 24; but she did not do so. Specifically, Ms. Long further testified:

A: Okay. Then you were asked to show up for some continuing education so you could maintain your C.D.L. and they gave you dates you needed to be there for that, correct?

Q: I don't know anything about C.D.L. but someone did call me.

A: All right. And they asked you to come to a seminar, or a presentation correct?

Q: They did, yes.

A: And you didn't show up for that, did you?

Q: I didn't show up.

Ms. Long confirmed that she had a meeting/phone conversation with Mr. Jordan Eason and Ms. Kirklin after Dr. O released her to full duty. She agreed that based on Dr. O's release of her to full duty, they asked her to drive the bus. Ms. Long denied she told them she was not going to drive a bus. However, she testified:

Q: Okay. You did not get on a bus and you did not go to work for them, did you?

A: No, I didn't get on a bus.

Q: And that's when discussion about retirement being an option came up, correct?

A: That's when they told me I need to retire.

Q: If you're not going to get on a bus and drive, like your regular job requires, correct?

A: Yes.

She admitted that at that point and time, there was no doctor-given restriction that would prevent her from getting on a bus and driving it. Ms. Long verified that she testified on direct that she was not ready to go back in January or February of 2021 to get on a bus. She confirmed she was contacted in the summer of 2021 by a gentleman with the transportation department, asking her to return to work. She denied telling him, "I ain't drivin' no bus." Ms. Long testified she told them she was working somewhere else. According to Ms. Long, she was working at Baseline Elementary School for Parks and Recreation. However, during her deposition, Ms. Long testified that she had not worked since she last worked for the school district. She explained: "That was during the summer. Yes."

Ms. Long admitted that they called her five to six months into her physical therapy and gave her an opportunity to come back and drive, but she turned then down again. Upon being asked by counsel for the Respondents why at her deposition, she did not tell him about her job at Baseline, Ms. Long replied: "I don't know if you asked me that or not." She admitted to having applied for the job in June. Next, Ms. Long maintained she did not recall being asked during her deposition if she had applied to work anywhere else since her accident.

On further cross examination, Ms. Long testified:

Q: The last couple of months of your physical therapy and you're already working somewhere else.

A: Oh, no, sir.

Q: You're at Baseline Elementary. You stopped physical therapy in July. You're at Baseline by June, right?

A: Oh, you're right. That's -- yes, that's -- that's correct.



Q: They are offering you a job to come back and drive, and you turned them down because you were working somewhere else, right?

A: Right.

She confirmed that after Dr. O's release of her in early 2021, she had a conversation with Ms. Kirklin, Ms. Eason, and Jordan Eason. At that point, they tried to bring her back to a job, per her doctor's release, but she refused to return to work. Ms. Long admitted that she did not have any medical professionals saying she could not drive at that point and time. She confirmed that management was trying to bring her back to her job per her doctor's release. Ms. Long testified during her deposition that there were full time jobs at the school that she had identified that she thought she could do from a physical standpoint. She denied having stated there were no jobs she could perform. Ms. Long essentially testified that she was not changing her deposition testimony, but she could perform work as a "parapro"<sup>2</sup> at the school, and she maintained that she never said she could not do that job. Ms. Long testified she was having back problems and going to physical therapy at that time. She confirmed that her back problems have nothing to do with her neck issues. Ms. Long admitted that her low back is not a compensable injury in this claim. However, she was shown her deposition testimony on page 61 where she testified that there were no jobs, she had identified that she thought she could do physically. Ms. Long's reply to this question during her deposition was, "I don't think so because I'm having back problems. I don't think I can." The aforementioned timeframe involved her ability to work as of November 16, 2021.

Ms. Long confirmed she worked for Baseline, during the summer, until school started. She denied having worked any other place besides Baseline. She denied having applied for work anywhere else. Ms. Long agreed that she considers herself retired. Ms. Long was asked if she has

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<sup>2</sup>A "parapro," is a paraprofessional, also known as teacher assistant, teacher aide, or a paraeducator. They are educational workers who are not licensed to teach.

any active plans to look for work or try to work right now. Her response was: “Uh, I’m no gonna say that because right now my husband is -- is he’s real ill and I have to be there for him.”

During her deposition, she testified that as for going back to a bus-driving job or an aide job, she was kind of ‘burnt out’ on being around kids and handling kids. Ms. Long admitted having testified that as for as being a parapro, “yes,” she was “burnt out” handling kids, but not as far as the bus driving job.

Regarding her daily activity, Ms. Long confirmed that she is not only responsible for getting her husband to doctor’s appointments and treatments, but also for her grandchildren. Ms. Long has to get them to and from schools and babysit them until their mother gets off work.

Ms. Long confirmed that Dr. O gave her a full duty release. She agreed that Ms. Eason and Ms. Kirklin offered her a bus-driving job, in the beginning of 2021.

On recross examination, Ms. Long agreed that the school district requested that she return to work at least two different times since her injury of November 3, 2020. She maintained that there was a reason she was not able to attend the orientation/seminar. However, Ms. Long admitted that she did not show up for the seminar. She further admitted that school officials were asking her to come back to work and she resisted by say, “No.”

#### Theresa Kirklin

Ms. Kirklin was called as a witness on behalf of the Respondents. She is the Little Rock School District Transportation Director. Mr. Kirklin verified she held this position in late 2020, early 2021. She confirmed that she is familiar with Ms. Long. She verified that she does not dislike or have a personal vendetta against Ms. Long.

She testified that it is her understanding that Ms. Long was offered work as an aide on the bus. She confirmed that Ms. Long did not show up for work as an aide. However, Ms. Kirklin

admitted that Ms. Long did show up for work one day, which was during the p.m., on November 3, 2020. Following this, they offered Ms. Long the opportunity to come ride as an aide on a bus, but she did not show up. She testified that this occurred after Ms. Long's first doctor's release. Ms. Kirklin testified that she was asked to report to an in-service for all drivers because they are required to have sixty hours of training per year. She denied that the in-service involved any significant physical activity that would involve her neck or head. Ms. Kirklin testified, "... It's sitting in a classroom or an auditorium listening." She agreed Ms. Long was required to maintain her CDL to drive for the school, but she refused to show up for the seminar in November (2020).

According to Ms. Kirklin, although Ms. Long was released to full-duty work by December 29, 2020, she declined an offer from the school district to return to her old job. As a result, at that point, retirement was mentioned. Ms. Kirklin admitted that she did not have any medical restriction beyond Dr. O's full-duty release. She confirmed that they called Ms. Long over the summer of 2021 and asked her to come back and drive, but she did not accept that offer. However, Ms. Long informed Mr. Hobbs, she was working a summer program at Baseline. Ms. Kirklin denied that Ms. Long ever contacted her to say she was ready to get back on a bus or go to work. She further denied that in January or February when they were asking Ms. Long to return to her bus driving job, did she ever present her with a medical note saying she was not able to go back to work on a bus.

On cross examination, Ms. Kirklin denied that when she began contacting Ms. Long in January 2021, she was aware Ms. Long was in physical therapy at that time.

Ms. Kirklin confirmed on redirect examination that even after Ms. Long retired, they made her another offer to return to work in the summer, but she declined that offer as well.

### **Medical Evidence**

My review of the medical record shows on November 20, 2020 Ms. Long underwent a CT of the head, with an impression of “Unremarkable CT of the head.”

Dr. Ikemefuna Onyekwelu saw Ms. Long for an office visit on December 10, 2020 for her work-related accident of November 3, 2020. He noted that Ms. Long was hit by the hood of a car [sic]. Since that time, Ms. Long had complained of severe neck pain, including left upper extremity pain which she had never experienced prior to that event. Specifically, Dr. Onyekwelu opined in relevant part: “Is very likely that this event aggravated a pre-existing condition. Her pre-existing condition being cervical degeneration disc disease and cervical spondylosis with likely associated stenosis.” Dr. Onyekwelu noted that Ms. Long had already tried physical therapy at that point and had not had successful sustained relief.

On December 29, 2020, Ms. Long returned to Dr. Onyekwelu for a follow-up evaluation. Ms. Long presented with concerns of neck pain since her last visit. She stated she was feeling worse. Dr. Onyekwelu opined that the MRI imaging of the cervical spine obtained on November 20, 2020 showed no evidence of spinal cord compression. There was evidence of multilevel disc degeneration from C3-C7. Also, mild to moderate varying degrees of foraminal stenosis was noted at C5-C6. Dr. Onyekwelu diagnosed Ms. Long with “Cervical spondylosis without neurologic sequelae.” Per this clinic note, Dr. Onyekwelu opined that was no evidence of obvious acute osseous injury such as a fracture or subluxation. As such, he recommended a spine specific rehab program. At that time, Dr. Onyekwelu released her to return to full duty work that day, without any physical limitations.

## Adjudication

### Ark. Code Ann. §11-9-505(a)

In the case at bar, the central analysis involves a determination of the Claimant's entitlement to indemnity benefits under Ark. Code Ann. §11-9-505(a) (Repl. 2012), which provides:

(1) Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wage lost during the period of the refusal, for a period not exceeding one (1) year.

In order to prove entitlement to benefits pursuant to Ark. Code Ann. § 11-9-505 (a), the employee must establish by a preponderance of the evidence that (1) the employee sustained a compensable injury; (2) suitable employment which is within the employee's physical and mental limitations was available with the employer; (3) the employer has refused to return the employee to work; and (4) that the employer's refusal to return the employee to work was without reasonable cause. Torrey v. City of Fort Smith, 55 Ark. App. 226, 934 S.W.2d 237 (1996).

The Claimant, Ms. Long, has asserted her entitlement to section 11-9-505(a) benefits from December 29, 2020 until December 2021. Based on my review of the evidence as a whole, without giving the benefit of the doubt to either party, I find that the Claimant failed to prove by a preponderance of the credible evidence each of the requirements necessary to establish she is entitled to an award of benefits under Ark. Code Ann. §11-9-505(a).

In the case at bar, Ms. Long worked principally as a bus driver for the Little Rock School District Transportation Department for thirty-four years. The parties stipulated that Ms. Long sustained compensable injuries to her neck and head on November 3, 2020, when the hood of a bus fell on her. The Respondents accepted the claim as compensable and paid for conservative

medical treatment. She was sent to Concentra for initial evaluation. An MRI of Ms. Long's cervical spine was performed in November 2020. This diagnostic testing revealed on pre-existing multilevel degeneration disc disease.

Ultimately, Ms. Long came under the care of Dr. Onyekwelu. On December 29, 2020, the Claimant's treating physician, Dr. Onyekwelu, released her to full-duty work, without any physical restrictions. He also ordered physical therapy treatment, which she underwent. However, since this time, no physician has placed any physical limitations on Ms. Long or directed her not to return to work at regular duty. Nevertheless, the school district was provided a copy of Dr. Onyekwelu's full-duty release of Ms. Long back to her regular work duties. Ms. Kirklin confirmed that no evidence to the contrary was ever provided to the school district. Therefore, the school district contacted Ms. Long and offered her bus driving job back to her. This was established by the testimony of both Ms. Long and Ms. Kirklin. However, Ms. Long readily admitted that she declined to return to work as a bus driver. Instead, Ms. Long chose to retire. Her testimony demonstrates that she did not feel she was able to return to work due to her back. However, most importantly is the fact that Ms. Long's back complaints are not part of this claim.

Here, no doctor or medical personnel placed any physical restrictions or limitations on Ms. Long following her release to full duty, which was provided by her treating physician, Dr. Onyekwelu, on December 29, 2020. Although Ms. Long testified during her deposition, she had not worked any place since her work accident, she admitted on cross examination that during the summer of 2021, she worked at Baseline for Parks and Recreation. Ms. Long verified that the school district contacted her to return to work during the summer, but she told them she was working for someone else. Hence, the record in the present matter proves that the school district

tried on at least two separate occasions, but to no avail to facilitate Ms. Long's re-entry into the labor force after her compensable work injury of November 3, 2020.

Considering all the foregoing, the record clearly proves that the Claimant was physically able to return to her position as a bus driver; was offered that position by the school district, but she refused to return to work due to reasons unrelated(back issues) to her compensable injury of November 3, 2020. In other words, the evidence proves that the school district stood ready and willing to return Ms. Long to suitable employment within her physical and mental limitations as a bus driver, at all relevant times, but she declined/refused to return to work as a bus driver primarily due to problems with her back, a condition which is not part of this claim. Under these circumstances, I find that the Claimant failed to prove by a preponderance of the evidence her entitlement to an award of benefits under Ark. Code Ann. §11-9-505(a). Because the Claimant did not prove her entitlement to any indemnity compensation, the issue of an attorney's fee has been rendered moot and not discussed herein this Opinion.

**ORDER**

Due to the foregoing findings, I am compelled to respectfully deny and dismiss this claim for benefits under Ark. Code Ann. §11-9-505(a) in its entirety. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**

