

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H203260

LIBRADO MARTINEZ, Employee	CLAIMANT
RUSSELLVILLE SCHOOL DISTRICT, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., Carrier	RESPONDENT

OPINION FILED JULY 14, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Russellville, Pope County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 22, 2025, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on November 13, 2024, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant sustained compensable injuries to his right hand, right knee, low back and left ankle on July 21, 2022.

At the time of the hearing, the parties agreed to stipulate that claimant earned an average weekly wage of \$543.12 which would entitle him to compensation at the rates of \$362.00 for temporary total disability benefits and \$272.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to medical treatment from Dr. Ahmad Rafi and Dr. Gautam Ghandi.
2. Temporary total disability benefits from date of last payment through a date yet to be determined.
3. Attorney fee.

The claimant contends he sustained compensable injuries to his low back, right hand, left foot/ankle as well as his right knee in the employment related accident of July 21, 2022. He further contends that he has continued to require medical services for his back injury, from which Dr. Rofi and Dr. Ghandi directed. He has continued to be temporarily totally disabled by this back injury. Finally, he contends that the respondents have controverted his entitlement to any benefits for these injuries.

The respondents contend that all appropriate benefits have been paid with regard to this matter. The claimant has sought and received unauthorized medical care unbeknownst to respondents. It is respondents' position that they are not liable for medical care that was not approved.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to

hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 13, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly of \$543.12 which would entitle him to compensation at the rates of \$362.00 for temporary total disability benefits and \$272.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he is entitled to payment of medical treatment provided by Dr. Rafi and Dr. Gandhi. The medical treatment provided by those physicians was unauthorized; therefore, respondent is not liable for payment.

4. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for his compensable low back injury.

### FACTUAL BACKGROUND

Claimant is a 50-year-old man with one year of college education. He was employed by respondent to perform janitorial work at various schools in respondent's district. He testified that on July 21, 2022, he opened the door on a truck to remove an

industrial floor machine. The machine had not been strapped down, and when he opened the door, the machine rolled down the ramp; clipping his foot and knocking him over. The machine then ran over a portion of his body.

Claimant immediately reported the accident to his supervisor and was instructed to call a hotline number and an appointment was made for medical treatment. The parties have stipulated that as a result of the accident, claimant suffered compensable injuries to his right hand, right knee, low back, and left ankle.

After some initial medical treatment, claimant filed a Change of Physician request with the Commission. A Change of Physician Order was filed by Jay O. Howe on October 26, 2022, approving a change of physician from the Millard-Henry Clinic to Dr. Victor Vargas, an orthopedic surgeon in Little Rock.

Claimant's initial evaluation with Dr. Vargas occurred on December 13, 2022. With respect to claimant's low back complaints, Dr. Vargas noted that claimant stated that his back pain was exacerbated by physical therapy. Dr. Vargas ordered an MRI scan and prescribed medication. The lumbar MRI scan was performed on January 18, 2023, and indicates a disc protrusion at L5-S1. This protrusion is interpreted as a degenerative change according to the MRI report.

Claimant returned to Dr. Vargas on February 6, 2023, and in his report of that date, Dr. Vargas stated that he discussed the MRI findings with claimant and his wife:

I explained the findings are considered a chronic pathology at L5-S1 but there is no evidence of acute events or relationship with the patient accident that he sustained on 7/21/2022.

Nevertheless, Dr. Vargas prescribed lumbar spine physical therapy with core muscle strengthening and trunk stabilization. This therapy was to be performed at River Valley Therapy and Sports Medicine. The documentary evidence contains a letter to Dr. Vargas from River Valley stating:

I attempted to schedule Mr. Martinez several times with no success.

Claimant returned to Dr. Vargas on March 7, 2023, and Dr. Vargas again noted that there was no evidence of acute events or fractures of the lumbar spine. He stated that since there were no objective findings he had recommended symptomatic treatment in the form of physical therapy. He noted that claimant reported physical therapy was not helping but that according to the physical therapist, claimant was not attending physical therapy sessions. He also noted:

The patient also was recommended to take NSAIDS that he has declined to take.

Dr. Vargas agreed to limit claimant to sedentary work but stated that he would eventually be releasing claimant to work without restrictions.

Before he was released by Dr. Vargas, claimant sought medical treatment from Savannah Bradbury, PA-C for Dr. Gallaher on March 9, 2023, for his low back complaints. She noted that the MRI scan revealed degenerative changes that could have been exacerbated by an acute accident. She also prescribed physical therapy.

On April 10, 2023, Dr. Vargas indicated claimant had reached maximum medical improvement and no further treatment would be necessary. He released claimant to return to work with no restrictions and 0% impairment. Claimant did, in fact, return to

work for respondent for approximately a month before terminating his employment with respondent.

Thereafter, for his low back, claimant sought medical treatment from Dr. Ahmad Rafi and Dr. Gandhi. Dr. Rafi provided a lumbar epidural steroid injection along with pain medication. Dr. Gandhi performed a laminectomy infusion procedure at L5-S1 on April 22, 2024.

Respondent has not accepted liability for payment of the medical treatment provided by Drs. Rafi or Gandhi. As a result, claimant has filed this claim requesting payment for medical treatment provided by Drs. Rafi and Gandhi and requesting payment of additional temporary total disability benefits for his low back injury.

### ADJUDICATION

Initially, it should be noted that although the parties have stipulated that claimant suffered compensable injuries to his right hand, right knee, left ankle, and low back; only medical treatment for claimant's low back from Drs. Rafi and Gandhi and temporary total disability benefits related to the back injury are being litigated. In addition, I note that after the laminectomy infusion procedure on April 22, 2024, claimant was diagnosed with sacroiliac dysfunction and underwent a second procedure by Dr. Gandhi. In his post-hearing brief, claimant notes that he is not alleging that the sacroiliac issues are related to his accident. Because the issue being litigated involves claimant's compensable low back injury, medical reports addressing other conditions are not discussed unless they are deemed relevant to the low back issue.

Pursuant to Arkansas Workers' Compensation law, an employer is to promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). The employer has the right to select the initial treating physician; however, an employee may request a one-time change of physician. A.C.A. §11-9-514. Treatment or services furnished or prescribed by any physician other than the one selected according to the change of physician rules, except emergency treatment, shall be at the claimant's expense. A.C.A. §11-9-514(b).

A.C.A. §11-9-514 provides in pertinent part:

(c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expenses incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

In this case, respondents submitted into evidence a copy of Commission Form AR-N dated July 21, 2022, signed by the claimant acknowledging that he had received a copy of the front and back of the form. In addition, at the hearing claimant acknowledged that his signature appeared on Form AR-N. Based upon this evidence, I find that notice of the change of physician rules was provided to claimant as required by A.C.A. §11-9-514 and any unauthorized medical expenses after that date are not the responsibility of the respondent.

As previously noted, after some initial medical treatment, claimant filed a Change of Physician request with the Commission. A Change of Physician Order was filed on October 26, 2022, approving a change of physician to Dr. Victor Vargas, an orthopedic surgeon. Dr. Vargas ordered an MRI scan which interpreted as showing degenerative changes only. Based upon claimant's complaint, Dr. Vargas referred claimant to physical therapy at River Valley Therapy. Although claimant had informed Dr. Vargas that physical therapy did not help his condition, there is no indication that claimant actually received physical therapy from River Valley based upon the recommendation by Dr. Vargas. There is evidence that claimant had received physical therapy at River Valley prior to his accident on July 21, 2022.

As noted, the documentary evidence contains a letter to Dr. Vargas from River Valley Therapy indicating that the therapist had attempted to schedule claimant for physical therapy several times "with no success". In addition, Dr. Vargas in his report of March 7, 2023, indicated that he had recommended that claimant take NSAIDS but claimant had declined to take that medication.

Thus, while claimant stated that in his opinion Dr. Vargas' medical treatment was "worthless", the evidence indicates that Dr. Vargas prescribed claimant physical therapy and recommended that claimant take NSAIDS. However, claimant did not attend the recommended physical therapy and declined to take the NSAIDS recommended by Dr. Vargas. Based upon this evidence, I do not find that Dr. Vargas refused to treat the claimant.

Based upon the findings and claimant's refusal to attend physical therapy or take the NSAIDS, Dr. Vargas did eventually release claimant to return to work with no

restrictions. Significantly, Dr. Vargas did not indicate to claimant that he could not return for further treatment if his symptoms warranted and there is no indication that claimant made any effort to return to Dr. Vargas for additional medical treatment. In addition, at no point did claimant make any attempt to file a claim with the Commission requesting additional medical treatment for his compensable low back injury. While claimant stated that respondent did not offer an additional medical treatment for his low back complaints, claimant did not testify that he ever requested any additional medical treatment for his low back complaints from the respondent. Instead, claimant chose to seek medical treatment for his low back complaints on his own. Claimant testified that he went to his primary care physician who, in turn, referred him to Dr. Rafi for pain management. Dr. Rafi gave claimant an injection and eventually referred claimant to Dr. Gandhi who eventually performed surgery.

Claimant acknowledged that he sought medical treatment on his own from these physicians.

Q Now, after you initially saw Dr. Vargas and got some treatment, did you seek a second opinion on your own?

A Yes.

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Q And have you sought and obtained medical treatment on your own?

A Yes, I have.

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Q You agree Dr. Rafi and Dr. Gandhi were doctors that you branched off and saw on your own, right?

A That's correct.

Q No referral for either of them from Vargas, Edwards, or anybody else that was approved by the Comp, right?

A No.

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Q These are doctors that you went out and found and went and saw on your own outside of the Workers' Comp system, right?

A That isn't correct because I disagreed with what Dr. Vargas had to say.

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Q Dr. Edwards did not refer you to your primary care doctors; did he?

A No.

Q He didn't refer you to any other doctors; did he?

A No.

Q You went entirely on you own, and you agree you knew you were going outside of the Comp claim to try to get a different or separate opinion?

A That's correct.

Q Now –

A Because their second opinion was not good.

Claimant contends that by refusing to provide any additional medical treatment for his low back complaints, he was free to seek medical treatment on his own from Drs. Rafi and Gandhi. However, the evidence indicates that claimant was not happy with Dr. Vargas' treatment and claimant considered it to be "worthless". According to the medical records, even before Dr. Vargas stated that claimant had reached maximum medical improvement and released him from his care, claimant sought a second opinion from Savannah Bradbury, in Dr. Gallaher's office for his low back complaints. Notably,

Bradbury also indicated that the MRI scans showed degenerative changes and also prescribed physical therapy, just as Dr. Vargas had prescribed.

There is no indication that claimant filed a claim with the Commission requesting a hearing on his entitlement to additional medical treatment for his low back or that he even asked respondent to provide additional medical treatment for his low back injury. Instead, claimant simply chose on his own to seek medical treatment from Drs. Rafi and Gandhi. Claimant had been provided notice of the procedures to follow in order to change physicians by the respondent. In fact, claimant had filed a Change of Physician request and was granted a change of physician to Dr. Vargas by the Commission. Claimant was unhappy with Dr. Vargas' treatment and did not attend physical therapy sessions or take the NSAIDS recommended by Dr. Vargas. Once Dr. Vargas released claimant, claimant simply sought medical treatment on his own from Drs. Rafi and Gandhi.

I find based upon the evidence presented that the treatment provided by Drs. Rafi and Gandhi was unauthorized; therefore, pursuant to A.C.A. §11-9-514, respondent is not liable for payment of their medical treatment.

The next issue for consideration involves claimant's request for additional temporary total disability benefits for his compensable low back injury. Even though the medical treatment by Dr. Rafi and Dr. Gandhi has been determined to be unauthorized, claimant may still be entitled to payment of temporary total disability benefits. In order to be entitled to temporary total disability benefits claimant must prove by a preponderance of the evidence that he remains within his healing period and that he suffered a total

incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

After reviewing the evidence, I find that claimant has failed to meet his burden of proof.

Initially, I note that claimant has acknowledged in his post-hearing brief that he was released to return to work at regular duty on April 10, 2023, by Dr. Vargas and he did return to work for the respondent. Claimant's brief also acknowledges:

The claimant's testimony is somewhat vague about the last day of employment, or was the reason for the ending of the employment.

The brief also acknowledges that when he saw Dr. Rafi on August 3, 2023, Dr. Rafi noted that claimant was not presently working but he did not take claimant off work or restrict his activities. Instead, claimant contends that the surgery performed by Dr. Gandhi on April 22, 2024, would have rendered him incapable of working.

Based upon the evidence presented, I find that claimant has failed to prove that he remained within his healing period for his compensable injury as opposed to a pre-existing condition. First, it should be noted that claimant had a history of low back pain prior to his accident with the respondent. At the hearing, claimant at times denied having any prior low back pain and at other times indicated that he did not recall that back pain. With respect to this testimony, even claimant's brief admits that contrary to his testimony he had periodic bouts of back pain and aches. However, claimant contends that although x-rays were taken, no further testing or treatment was provided or recommended for those low back complaints. I would disagree. The documentary evidence contains a report from Dr. Stanley Teeter dated November 14, 2017, at which

time claimant was seen for various complaints including “lumbar radiculopathy”. Dr. Teeter’s medical report states:

He also wants to talk about his legs. He says that about June his right lower leg especially has episodes in which it feels numb and tingly below the knee and then the whole leg gets numb and tingly and then it gives way or “goes out” on him. The tingly sensation sometimes radiates up into the right buttocks. He remembers no previous back injury.

Based upon claimant’s symptoms, Dr. Teeter recommended an MRI scan of claimant’s lumbar spine and sacrum. The lumbar MRI scan was performed on November 29, 2017, and revealed a disc protrusion at the L5-S1 level. Notably, this is the same level at which Dr. Gandhi performed claimant’s surgery in April 2024.

Medical records after the lumbar MRI scan reveal that claimant continued to complain of neuropathy and lumbar back pain. The medical report from Dr. Jackson dated August 17, 2018, indicates that claimant has a decreased range of motion in his lumbar spine and lumbar pain. Likewise, the report from Dr. Jackson dated November 19, 2018, also notes back pain and a decreased range of motion. Back pain and a decreased range of motion is also reflected in Dr. Jackson’s report of June 13, 2019. Claimant was eventually referred to River Valley Therapy for a neuromuscular disorder and claimant indicated that he was suffering from back pain at this time. Claimant also completed a form indicating that other health problems included back pain. A review of the physical therapy notes indicates that claimant was making no progress with his physical therapy and that he was describing his pain as a 10 on a 10-point scale. The therapist note of March 3, 2022, indicates that claimant was demonstrating an inconsistent pain report from visit to visit. The physical therapist’s report of March 8,

2022, indicates that claimant did not feel like therapy was helping him but was causing additional pain. According to that report:

He reports he is only doing it because it is required by insurance to get an MRI although now he doesn't feel like an MRI is going help any. He states he can tell he is already partially disabled.

Claimant was discharged from physical therapy on March 17, 2022, and the discharge summary indicates that claimant did not have any relief from his symptoms or make progress toward his goals.

All of this medical existed prior to claimant's injury with the respondent. As previously noted, Dr. Vargas was of the opinion that the changes shown on claimant's MRI scan were degenerative in nature and did not show an acute injury. As a result, he recommended physical therapy and the use of NSAIDS. Claimant did not appear for the physical therapy sessions and declined to take the recommended medication. As a result, Dr. Vargas eventually released claimant to return to full duty work.

Although claimant subsequently came under the care of Dr. Rafi and Dr. Gandhi, I do not find that claimant has proven by a preponderance of the evidence that his low back complaints at that time are causally related to the injury which occurred on July 21, 2022. Therefore, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for his low back injury subsequent to his release by Dr. Vargas on April 10, 2023.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to payment for medical treatment for his low back he received from Drs. Rafi and Gandhi. Treatment by those two physicians was unauthorized and is not the responsibility of the respondent.

I also find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for his compensable low back injury. Claimant has failed to prove that treatment by Drs. Rafi and Gandhi is causally related to his original compensable injury. Therefore, claimant's claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$850.50.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE