

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G106990

LINDA MICHAEL, Employee	CLAIMANT
BOONEVILLE SCHOOL DISTRICT, Employer	RESPONDENT NO. 1
ARKANSAS SCHOOL BOARDS ASSN., Carrier	RESPONDENT NO. 1
DEATH & PERMANENT & TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED APRIL 25, 2023

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas, though not appearing at hearing.

STATEMENT OF THE CASE

On January 26, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on November 14, 2022, and a Pre-hearing Order was filed on November 15, 2022. 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. The relationship of employee-employer-carrier existed between the parties on June 28, 2011.
3. The claimant sustained a compensable injury to her lower back on June 28, 2011.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$252.00 for temporary total disability benefits and \$189.00 for permanent partial disability benefits.

5. All prior opinions are final and res judicata.

6. An Agreed Order was entered on September 2, 2014, indicating the claimant's entitlement to 42% wage loss disability above the 14% permanent impairment rating that she had at the time.

7. Respondents No. 1 accepted and paid an additional 1% permanent impairment rating by Dr. Johnson.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to permanent and total disability benefits.
2. Whether Claimant's attorney is entitled to an attorney's fee.

Claimant's contentions are:

"a. The Claimant contends that under the terms of the agreed Order the Claimant reserved the right to seek additional permanent disability benefits and allege permanent and total disability if a documentable change in her permanent condition occurred.

b. The Claimant contends that subsequent to the September 2, 2014, agreed Order, she has undergone additional surgery, received an additional permanent impairment rating and experienced a worsening in her condition such that she is now permanently and totally disabled."

Respondents No. 1's contentions are:

"Respondents contend that all appropriate benefits are being paid with regard to Claimant's compensable lower back injury sustained on 6/28/11. Since the agreed order was entered, Claimant had an additional surgery with Dr. Johnson and was given an additional 1% impairment rating. Both TTD and PPD were paid after the order was entered. Claimant has not had change in circumstance

such to warrant an increase in permanency beyond what has previously been paid.”

Respondent No. 2’s contentions are as follows:

“The Trust Fund defers to litigation on the extent of disability issue. It has not controverted benefits. The Trust Fund waives its appearance at the next hearing. The last report provided to the Trust Fund was the 5/9/2019 report of Dr. Danny Silver. The exhibits to be introduced by the Claimant show numerous additional reports from that date until 8/23/22. The Fund asks the Claimant to provide those documents at this time.”

The claimant in this matter is a 51-year-old female who sustained a compensable injury to her lower back on June 28, 2011, while employed by the respondent. The claimant first underwent surgical intervention for her compensable low back injury on April 10, 2013, at the hands of Dr. Arthur Johnson. Dr. Johnson performed a lumbar fusion on the claimant at that time.

Dr. Johnson authored a letter on February 28, 2014, regarding the claimant reaching maximum medical improvement and her anatomical impairment rating. The body of that letter follows:

Re: Linda G. Michael
To Whom It May Concern:

Due to medical reasons, Linda G. Michael has been given a rating.

The above captioned patient has been under my care and has been released from Neurosurgery as of 02/28/2014.

This patient has now reached his [sic] Maximum Medical Improvement. He [sic] was given a permanent impairment disability rating according to the 4th edition of the AMA Guidelines of 14% impairment to the body as a whole.

This is within a reasonable degree of medical certainty.

On September 2, 2014, the parties entered into an Agreed Order found at Claimant's Exhibit 1, pages 1-3 and Respondent's Exhibit 2, pages 1-3. In part, that Order determined the claimant to be entitled to 42% in wage loss disability above the 14% permanent partial impairment rating that was accepted by the respondent.

The Order also ended the claimant's right to additional wage loss; however, the Order allowed for the claimant to seek permanent total disability benefits given an increase in permanency. Following is paragraph 5 of that September 2, 2014, Order:

“The parties jointly agree that payment as outlined above fully and finally extinguishes any and all claims Claimant may have to wage loss disability benefits associated with the injury she suffered on or about 6/28/11, or at any other time while working for Booneville School District. However, if there is a change in circumstance such to warrant an increase in permanency, Claimant is not barred from seeking permanent total disability benefits.”

On October 5, 2017, the claimant was seen by Dr. Johnson with complaints of low back pain. Following is a portion of that progress note:

Chief Complaint

Patient presents with
*LOW BACK PAIN

Has lbp and bil, hip and legs with numbness. Any prolonged activity causes pain. Has had physical therapy and did not help. Dr. Silver gave her an injection.

Subjective

Linda G. Michael is a 45 y.o. year-old female seen status post lumbar spinal fusion L4-5, L5-S1, S1-S2. A diagnosis of Left-sided low back pain with sciatica, sciatica laterality unspecified was also pertinent to the visit, she is status post TLIF L4-5, L5-S1, S1-S2 that was done on March 10, 2013. She continues to have chronic low back pain that has not improved much since her last visit. She had a repeat CT scan performed that showed that the pedicle screw on the right in the S2 vertebral body was fractured almost at midshaft. She returns today to discuss whether she should have the screw removed. She has the stinging type pain in her lower back and right leg. Her pain is still a level where it is

unbearable at times. She is not able to continue to do her activities of daily living on a regular basis. Any type of activity increases her pain. She is also depressed and is seeing a counselor for depression. Part of her depression is secondary to her chronic pain syndrome. She is afraid to come off of pain medication because she has been on them for so long. She was sent for evaluation for spinal cord stimulator trial but was denied because she did not fit the psychological profile back is most likely to benefit from the implant. She still wants to have the hardware removed in hopes that it will improve her pain. She was informed that it is very unlikely that the pain will improve with removal of the hardware as she is already fused at all 3 levels.

X-ray of the lumbar spine:

The hardware is in good alignment and position from all 3 levels with the screws at the inferior level been fractured bilaterally.

Other Studies Reviewed:

I have reviewed the MRI of the lumbar spine from Prime Medical Imaging which shows mild disc degeneration at the L3 L4 (assuming lumbarization of the S1) level with no significant canal stenosis or neuroforaminal stenosis. No stenosis, disc herniations or neural foraminal stenosis is evident at any of the fused levels of the lumbar spine.

Assessment:

1. Hardware failure of the anterior column of spine, fractured screws at S1.
2. Status post lumbar spinal fusion L4-5, L5-S1, S1-S2.

Plan:

I have discussed the treatment options which I believe include surgery.

No orders of the defined types were placed in this encounter.

Based on that discussion we are going to proceed with:

Removal of hardware L3-S1. I'm very doubtful that this will improve the patient's clinical pain syndrome. She failed to respond to a 3 level lumbar fusion. She is completely fused at all 3 levels according to CT and therefore not having any movement around the areas where the fractured screws are at S1.

No orders of the defined types were placed in this encounter.

I have explained the surgery to the patient, removal of hardware L3-S1, along with the risk and benefits.

The claimant underwent surgical hardware removal at the hands of Dr. Johnson on December 5, 2017. On January 31, 2018, the claimant was seen by Dr. Johnson's APN, Janet Canada. Following is a portion of the progress note from that encounter:

Chief Complaint:

Patient presents with

*Follow up

She came in walking with guarded gait, using a quadcane. C/o lumbar and right leg leg pain. She has her lumbar dressing on with some skin excoriation on the left lateral aspect of the incision. Her wound vac was placed on Friday and came on Tuesday.

Subjective:

Ms. Michael is a 46 y.o. female s/p hwr at L3-S1 Dr. Johnson on 12/5/2017. Postoperative recovery has been complicated by a wound infection/wound dehiscence requiring a wound vac. She is being treated by Mercy wound clinic. The first two wound cultures had no growth. No antibiotics taken since 1/10/2018 per husband. I have been reviewing scanned pictures of the wound in EMR since referred to the wound clinic and appears to be healing well by secondary intention.

1/31/2018: She presents to the clinic for her scheduled visit with c/o increased low back, right leg pain. C/o left lateral low back and midline low back pain. She reports, "do not feel good." She reports fever and chills x5 days. Unable to report febrile temps though. I am told by pt, case manager and husband that the wound vac "was applied improperly" and caused excoriation of the skin left of midline lumbar open wound. The wound vac has been discontinued at this time. She is feeling "depressed." She has bursts of crying during this visit. Denies bowel or bladder changes. The wound culture sent by Ms. Davenport APN wound clinic is Positive, see below.

Assessment:

1. Staphylococcus aureus infection.
2. Surgical wound dehiscence, sequela.
3. Open wound of back, unspecified laterality, subsequent encounter.

Plan:

Dressing changed.

HH needs to be notified to replace dressing tomorrow and not wait until fri.

Sent patient for labs: Sed, Crp and cbc.

Cleocin restarted until Culture Sensitivity results available; change as needed.

Message sent to J. Davenport, wound clinic apn about patient.

On May 29, 2018, Dr. Johnson authored a letter regarding an increase in the claimant's impairment and maximum medical improvement. The body of that letter follows:

The above captioned patient has been under my care and has been released from Neurosurgery as of 5/23/2018.

This patient has now reached her Maximum Medical Improvement.

She was given a permanent impairment disability rating according to the 4th edition of the AMA guidelines of 1% impairment for the hardware removal surgery that was done 12/5/2017.

This is within a reasonable degree of medical certainty.

The claimant has asked the Commission to determine whether she is entitled to permanent total disability benefits. Given the September 2, 2014, Order, which is now the law of this case, the claimant must have “a change in circumstance such to warrant an increase in permanency” in order for the claimant to seek permanent total disability benefits.

The broken surgical screws referenced in Dr. Johnson's October 5, 2017, progress note, surgical intervention to remove the claimant's surgical hardware on December 5, 2017, by Dr. Johnson, and Dr. Johnson's May 29, 2018, letter in which he increased the claimant's impairment by 1% merit “a change in circumstance such to warrant an increase in permanency.” Given this change in circumstance and increase in permanency, the claimant is able to pursue permanent total disability benefits. The claimant has asked the Commission to determine if she is permanently totally disabled. Pursuant to A.C.A. § 11-9-519(e)(1), in order to prove that she is

permanently totally disabled, the claimant must prove that she is unable to earn any meaningful wages in the same or other employment due to her compensable injury.

The claimant certainly had significant physical difficulties prior to the September 2, 2014 Order, which determined she had 42% wage loss disability above her 14% anatomical impairment. On March 14, 2014, the claimant underwent a functional capacity evaluation at the Functional Testing Centers, Inc. That report is found Respondents' Exhibit 1, pages 31-47. Following is a portion of that evaluation.

RELIABILITY AND CONSISTENCY OF EFFORT

The results of this evaluation indicates that a reliable effort was put forth, with 53 of 54 consistency measures within expected limits. Analysis of the data collected during this evaluation indicates that she did put forth consistent effort. She produced normal and consistent grip and pinch strength with each hand with C.V.'s that indicate minimal variance with repeated trial resting.

FUNCTIONAL LIMITATIONS

Ms. Michael demonstrated limitations with material handling with a demonstrated occasional lift/carry of up to 20 lbs. Ms. Michael demonstrated poor tolerance to all activities that required her to work below knuckle level as she completed Stooping/Bending, Kneeling and Crouching all at the Occasional level. Ms. Michael also demonstrated climbing stairs and Reaching Overhead with the RUE at the Occasional level. She does require changes in postural position throughout the workday and benefits from changes from standing to sitting and vice versa at will. Ms. Michael performed all testing with while wearing her post-op back brace.

At the hearing in this matter two witnesses were called, the claimant and her husband of 33 years, Mr. Phillip Michael. Mr. Michael gave testimony on direct examination about the claimant's activities after the first surgery in 2013, and how those activities changed as follows:

Q So after the first surgery, what kinds of physical activities do you recall you and your wife engaging in? That would have been in 2014, 2015.

A I mean that was a long time back, but not a whole bunch, just to be honest. I mean she usually stayed at home most of the time. She got out more than what she does. We would go to Walmart or Sam's, you know.

Q So did there come a time when whatever activities she was engaging in became more limited?

A Yeah, I mean –

Q What happened?

A She got another bolt snapped in her back and I couldn't get her to hardly do nothing then. A lot of times she just stood up and she may fall.

Q So then did she undergo a second surgery by Dr. Johnson?

A Yes, sir.

Q How did she do after that?

A Her limitations just went downhill bad. I can't get her to hardly do anything.

Q Compared to her physical activities after the first surgery with her physical activities after the second surgery, tell us how you would compare those activities.

A After the first one she would at least try to take a bath and clean herself up, you know, at least every other day. Now I am lucky to get her to take a bath every six days. Some days it goes 12 days before she took a bath. It is just hard to get her out of her chair to do anything.

Mr. Michael also gave direct examination testimony about the claimant's daily activities as follows:

Q Are you around her on a regular basis now?

A I stay there with her constantly.

Q What is a typical day for her? Don't tell me what she tells you, but I mean you are around her constantly. Just give us an idea of what a typical day is now.

A She will wake up anywhere between 7:30 and 9:00. I will get up and I will try to fix her something to eat because she is hungry. I bring her food to her. She will take her medicine and the next thing I know she is asleep again in her chair. She may wake up, you know, 11:30 or 12:00 ready for lunch. I mean it's not every day, but most of the days that is the way it goes.

And then if I get her to go anywhere, it is usually between 1:00 and 5:00 if I can get her out of the house. And other than that, she may go back to bed at 6 o'clock, but it's sometimes between 6:00 and 8:30 she goes back to bed and stays in bed until the next morning.

Mr. Michael also gave testimony about the claimant falling and about his observations of her physical abilities after the 2017 surgery as follows:

Q And you said something about her falling. Was she rarely falling before 2005 [sic]? The surgery was in 2007 [sic]. He released her in 2014. So after he released her in 2014, was she falling at that point?

A No, sir.

Q So at what point did she start falling?

A I would say whenever the second screw busted around 2016.

Q And then he did the surgery in 2017?

A Correct.

Q So after the surgery in 2017, did she ever appear to be as active as she was before 2017?

A No, sir. It just got worse.

Q And when you say got worse, what do you mean by that?

A She just don't do nothing. I mean to get her to do anything, I mean even to take a bath is—

Q Well, now, you said she doesn't do anything. I mean she has got to do something in order to get through the day. I mean she is here today, so she obviously does some walking and stuff, so be more specific when you say – when you are trying to tell us what goes on.

A She will get up to go to the restroom. I have seen her make her a sandwich or something that was pretty simple to eat. I have seen her put maybe a plate in the dishwasher. She may throw something in the washing machine if she ain't got to bend over in a basket to get it out.

Q Have you seen her lift anything that appeared to weigh more than 10 pounds since 2017?

A No, sir.

Mr. Michael also testified about traveling with the claimant to see family in Texas. He stated that it was basically a 330-mile trip that takes them seven to seven- and one-half hours to make due to the number of breaks the claimant needs due to sitting in the vehicle. Mr. Michael did mention that in a time of emergency the trip could be made with the claimant in five to five- and one-half hours.

The claimant was called on direct examination and gave testimony about problems she had after her first surgery in 2013 and why she agreed to a second surgery in 2017 as follows:

Q Ms. Michael, do you remember the first surgery that Dr. Johnson performed on you?

A Yes.

Q Did you have any problems during the recovery from that surgery?

A Yes, sir.

Q What?

A I got an infection.

Q Would you have agreed to a second surgery if you didn't feel like you really needed it?

A No, I would not have.

Q So what caused you to agree to the second surgery that happened in December of 2017?

A Can you repeat that.

Q Why did you agree to have the second surgery that Dr. Johnson did on your back in 2017?

A Because I was falling. Those screws broke.

Q Do you remember how long before the December '17 surgery you started falling?

A No, sir.

Q Okay. So whatever the medical records show, you are good with that; is that right?

A Yes, sir.

Q So did the December '17 surgery fix you?

A No, sir.

Q So what kind of problems are you still having as far as your back is concerned?

A Sometimes I am weak in my legs and in my back. I fall sometimes.

Q Now, you are on some kind of a walker today.

A Yes, sir.

Q Why are you using that?

A Because I am weak in my back and my legs and I don't want to fall.

Q Now, you don't use it all the time, do you?

A No, sir. I use a cane sometimes.

Q Okay. But you had to come from your car into the courthouse and up the hallway and all that stuff today?

A Yes, sir.

The claimant was also questioned about her typical day on direct examination as follows:

Q Tell me what a typical day is for you, Ms. Michael. What time do you get up?

A It varies. Sometimes I get up early and then I will go back to bed. I will take my medicine and go to bed. Sometimes I get up between 7:00 and 8:00. It just depends.

Q And then what do you do?

A I take my medicine. I go in there and sit down in the chair. I will get me probably a little Twinkie or something, a cupcake or something until my husband gets up and fixes breakfast. And then sometimes I go back to bed. I will go to the restroom or something.

Q Do you know why you spend so much time laying down?

A Yeah, I am depressed and I hurt.

On cross examination the claimant was asked about her current out-of-home activities as follows:

Q Okay. All right. You told me in your recent deposition that if your husband goes to the grocery store or Walmart, you try to go; is that right?

A Yes, ma'am.

Q And that you do that maybe four times a week; is that correct?

A Yes, ma'am. I just ride with him wherever he goes. I don't know how many exact times.

Q Okay. And you also told us in the deposition that you guys go to the casino sometimes; is that right?

A Yes, ma'am.

Q Choctaw and one other in the local area?

A Yes.

Q You told me that you usually go three or four times a week; is that right?

A Yes, ma'am.

Q Usually if you are hitting, you would stay three to four hours, but you have stayed five hours before if you are getting a lot of money, is that right?

A Yes, ma'am.

Q Sometimes it's shorter; is that right?

A Yes, ma'am.

Q You also told me you stop at garage sales every once in a while; is that correct?

A Yes, ma'am.

Q And at times your eight-year-old granddaughter comes to visit you guys, is that right?

A Yes, ma'am.

Q Is that the one that lives down in Texas?

A Yes, ma'am.

Q Okay. And your husband was telling us earlier that you have gone down there to visit your family; is that right?

A Yes.

Q At the time of your deposition, you told us that you had gone down there to visit in August of '21 when your daughter got

married. You went again at Christmas and two other times in '22; is that correct?

A I think that's all.

Q You think what? I'm sorry.

A I think that is all.

Q Okay. And one of the times last year was your granddaughter's birthday in July and you said you guys went to Walmart and Claire's to get her something for her birthday; is that right?

A Yes.

Q You stayed about four or five days that trip?

A Yes.

On direct examination the claimant was asked about her ability to work including her former employment as a school janitor as follows:

Q How long did you work for the school system before you got hurt?

A Eighteen and a half years, but they only got seventeen and a half years down.

Q And what happened to your job there?

A I don't understand what you are asking me.

Q Well, you are not working there anymore, are you?

A No.

Q There is a document in the exhibits that I have submitted that says that the school district decided that you weren't able to work there anymore.

A Yes. They fired me.

Q After you got hurt?

A Yes.

Q Do you know of any job that you could do for four hours a day in your current physical condition?

A No.

Q Do you know of any job that you could do for two hours a day in your current physical condition?

A No. Cannot do it right.

Q If it wasn't for your back, would you have continued to work for the school district?

A Yes, sir.

Q Did you like that job?

A Yes, sir.

Q Do you wish you could work now?

A Yes, sir.

A document is found at Claimant's Exhibit 3, page 1, which is a letter to the claimant from the superintendent of the respondent's school district. The letter, in part, informs the claimant that the superintendent will be recommending her termination from employment and gives the following reason:

“You have been absent from work due to a workers' compensation injury. We are advised that you have made the maximum possible medical recovery from your injury, but due to your permanent medical restrictions, you are unable to perform the essential functions of the job of janitor, or any other position that you are qualified to fill.”

On cross examination the claimant was questioned about the letter from the superintendent and her short return to work in January of 2013, as follows:

Q You went back to work for a short time. This was January 23rd of '13 when Dr. Silver was wanting you to try working a few hours a day. Do you remember that?

A Maybe.

Q Okay.

A Are you talking about in between like when I was getting physical therapy a little bit and then – yes.

Q That could be. And at that time you had restrictions of no bending, no stooping, crawling, climbing, twisting, kneeling and you were to take breaks to elevate your feet and stretch at will. Does that sound right?

A Yes, ma'am. That's true.

Q And as we discussed today, the school district couldn't accommodate those permanent restrictions; could they?

A No, ma'am. That's why I laid on the couch sometimes.

Q Your attorney introduced a letter from the superintendent dated June 4th of '14. That is when they had to let you go because they couldn't accommodate those permanent restrictions. You understand that; correct?

A (The witness nods her head up and down.)

Q Is that a "yes"?

A Yes, ma'am. I am sorry.

Q And that was done before we entered the agreed order where you received a large sum of money from workers' comp. Does that sound correct?

A Yes, ma'am.

This permanent total disability case is different than most in that the parties entered into an agreement which became an Order on September 2, 2014, making it the law of this case. That Order set the claimant's wage loss disability at 42% and set the claimant's permanent partial

impairment rating at 14%. That same Order extinguished the claimant's ability to have any additional increase in wage loss disability but allowed for the claimant to seek permanent total disability "if there is a change in circumstance such to warrant an increase in permanency." At the time of the September 2, 2014 Order, the claimant's permanent partial impairment rating was 14%. By stipulation, the respondent has agreed that the claimant's permanent partial impairment rating has increased by 1% from 14% to 15% as seen in Stipulation #7 of the Pre-hearing Order found at Commission Exhibit 1, page 2. Thus, the claimant's permanency has increased, allowing the claimant to have the Commission determine whether she is entitled to permanent total disability benefits.

Whether the claimant is permanently totally disabled must be looked at in the totality of the testimony and evidence before the Commission, not just the change between the claimant's condition before and after the September 2, 2014 Order. It is clear that the claimant was not permanently totally disabled at that time. The central question is whether she is now permanently totally disabled after considering everything both before and after the September 2, 2014 Order.

The claimant has a ninth-grade level education and participated in special education classes when she was in enrolled in school. A progress report dated July 10, 2014, authored by Tanya Rutherford Owen, Ph.D. at Rehabilitation Services found at Claimant's Exhibit 3, pages 3-7 states, "she took a GED test and scored at the 'third-grade level' and does not plan to enroll in the GED class at this time."

The claimant's work history includes working for a year at Kentucky Fried Chicken in high school, working as a housekeeper at a nursing home, working in a chicken processing plant, and for the respondent as a school janitor or custodian. The claimant credibly testified that she could no longer perform those jobs. I believe the claimant's testimony to be credible. I base that

opinion on her demeanor at the in-person hearing, the compatibility of her testimony with medical records, and a high level of reliability and consistency of effort given at her March 14, 2014, functional capacity evaluation.

In addition to all of the significant physical difficulties the claimant had prior to the September 2, 2014 Order, she had hardware failure that caused her to become unsteady on her feet and fall often. The claimant did appear to sincerely have difficulty ambulating at the in-person hearing in this matter. The claimant's condition has substantially worsened since the September 2, 2014 Order. I find that in the totality of the testimony and evidence before the Commission, that the claimant is able to prove that she is permanently totally disabled. The claimant has proven by a preponderance of the evidence that she is unable to earn any meaningful wages in the same or other employment due to her compensable low back injury.

Given the September 2, 2014 Order, the claimant was not able to seek permanent total disability benefits until there had been "a change in circumstance such to warrant an increase in permanency." That increase in permanency occurred on May 29, 2018, when Dr. Johnson increased the claimant's impairment rating by 1%. Given the claimant's inability to claim permanent total disability prior to this increase in permanency, I find that permanent total disability benefits shall begin as of May 29, 2018, the date of the increase of the claimant's permanency.

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 14, 2022, and contained in a Pre-hearing Order filed November 15, 2022, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled to permanent total disability benefits.

3. The claimant has proven by a preponderance of the evidence that her attorney is entitled to an attorney's fee in this matter.

ORDER

Respondents No. 1 and Respondent No. 2 shall pay the claimant permanent total disability benefits as set forth in the Arkansas Workers' Compensation Act and at the rate set forth in the Pre-hearing Order filed November 15, 2022, more specifically Stipulation #4. Permanent total disability benefits shall begin as of May 29, 2018.

Respondent No. 1 shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one-half of said attorney's fee to be paid by the respondent in addition to such benefits and one-half of said attorney's fee to be withheld by the respondent from such benefits pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).

All sums herein accrued are payable in a lump sum and without discount and shall earn interest at the legal rate until paid.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**