

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G409071

RUBY MOODY, EMPLOYEE

CLAIMANT

**ARKANSAS DEPARTMENT OF COMMUNITY
CORRECTION, EMPLOYER**

RESPONDENT

**PUBLIC EMPLOYEE CLAIMS DIVISION,
CARRIER/THIRD PARTY ADMINSTRATOR (TPA)**

RESPONDENT

OPINION FILED JUNE 23, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

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

Respondents represented by the Honorable Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On March 29, 2023, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing telephone conference was conducted on January 26, 2023, from which a Pre-hearing Order was filed on that same day. A copy of the said order and the parties' responsive filings have been marked as Commission's Exhibit No. 1 and made a part of the record without objection.

Stipulations

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That the employee-employer-carrier relationship existed at all relevant times including on or about October 30, 2014, when the Claimant sustained compensable injuries to her cervical and lumbar spine.
3. That the Claimant's average weekly wage (AWW) on the date of her accidental injury was \$695.84, with corresponding compensation rates of \$464.00 per week for temporary total disability (TTD) compensation, and \$274.00 each week for permanent partial disability (PPD) benefits.
4. That Respondents accepted and are paying a combined value rating of 19% for the Claimant's lumbar and cervical injuries.
5. That Respondents have controverted this claim for wage-loss disability benefits.
6. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant is entitled to wage loss disability for the combined rating of 19% for her compensable neck and back injuries.
2. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The respective contentions of the parties are as follows:

Claimant: The Claimant was involved in a compensable motor vehicle accident. The Claimant sustained back and neck injuries. For her cervical injury, she was treated by Dr. Shahim and Dr. Roman. Dr. Shahim performed a cervical fusion. Dr. Barry Baskin assigned a rating of 10% to the body as a whole. The Claimant also sustained injuries to the lumbar spine. She was followed by Dr. Rosenzweig for what he termed a disc herniation of L3-4. The Claimant underwent another MRI, which showed a disc herniation at L5-S1. The Claimant has been followed for this by Dr. Roman, who has performed steroid injections. Dr. Roman placed the Claimant at maximum medical improvement on May 2, 2022, and issued an impairment rating of 5%, pursuant to the A.M.A. Guidelines, Fourth Edition, Table 75, Page 113.

All of the Claimant's treating physicians have opined that the Claimant cannot return to work in law enforcement. Therefore, the Claimant is entitled to wage loss disability. The Claimant is willing to undergo a vocational rehabilitation assessment at the expense of the Respondents.

Respondents: The Respondents contend that the Claimant reported having an injury to her neck and low back on October 30, 2014 which Respondents accepted as compensable. The Respondents contend that the Claimant has been provided reasonable and necessary medical treatment for the compensable injuries to her cervical and lumbar spine, including ongoing pain management treatment with Dr. Carlos Roman, and treatment with Dr. Reza Shahim who performed cervical fusion at C6-7 and partial corpectomy at C5 surgery on October 26, 2021. Dr. Shahim did not find the Claimant to be a surgical candidate for her lumbar spine, recommending conservative treatment instead when he released the Claimant on April 4, 2022. The Claimant has also been seen by Dr. Barry Baskin, who on April 11, 2022 determined the Claimant to be at Maximum Medical Improvement and assigned the Claimant a 10% anatomical impairment rating to the body as a whole for her cervical spine. Dr. Baskin found the Claimant did not have any

permanent impairment to her lumbar spine because he specifically found her lumbar spine to be a degenerative process, not the result of a work injury from October 31, 2014.¹ Dr. Baskin wrote that the Claimant cannot return to all the duties of a correctional officer, including self-defense tactics, however, the Claimant, who has two college degrees, was not found to be completely unable to work by Dr. Baskin. Respondents have agreed to provide this Claimant with vocational rehabilitation.

The Respondents have paid the Claimant temporary total disability benefits during her healing period, and Respondents have accepted the 10% anatomical impairment assigned for her cervical spine. The Claimant continues to be provided medical treatment by the Respondents, which is in the form of pain management. The Respondents contend that the Claimant cannot sustain her burden of proving that she is entitled to permanent disability benefits in excess of the anatomical impairment rating.

The Respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

¹ The correct date of the Claimant's accidental work injury is October 30, 2014.

2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant proved by a preponderance of the evidence that she sustained wage-loss disability benefits in the amount of 24% over and above her combined value rating of a 19% impairment for her neck and back injuries of July 19, 2022.
4. The Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.
5. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

During the hearing, the only witness to testify was the Claimant, Ms. Ruby Moody.

The record consists of the March 29, 2023 hearing transcript, comprising the following exhibits: Specifically, Commission's Exhibit No. 1 includes the Commission's Prehearing Order filed on January 26, 2023 and the parties' responsive filings; Respondents' Exhibit No. 1 is a Medical Exhibit, consisting of seventy-one pages; Respondents' Exhibit No. 2 encompasses a Non-Medical Packet, consisting of twenty-five pages.

Testimony

The Claimant, age 57, lives in Arkadelphia, Arkansas. She has confirmed that she takes various prescription medications for her compensable injuries. Her injury medications are prescribed by Dr. Carlos Roman, and her primary care physician, Dr. Robert Durham. The Claimant testified that she takes Flexeril, Gabapentin, Hydrocodone, Duloxetine, Metformin, and Cymbalta. She confirmed that her medications have side effects of memory loss, particularly with the Gabapentin. According to the Claimant, she forgets things during conversations and has a challenging time with finding the right words.

She confirmed she has been in law enforcement for fifteen years. The Claimant confirmed she has a Bachelor of Science degree. She previously worked at a jail/sheriff's department. The Claimant has past work experience at a sewing factory. The Claimant obtained an associate degree in respiratory therapy in 1999, but she never obtained a license. She worked in this field at a hospital for about a year.

According to the Claimant, she next went to work in law enforcement at Benton Work Release Program. The Claimant supervised inmates, conducted pat-downs, and she had to be able to fire a gun, if needed. If an inmate became unruly, they had to be able to do a takedown. The Claimant is not allowed to go back to this kind of work due to her compensable injuries.

The Claimant testified that she is unable to return to Correctional Officer or Parole Officer work because she has to be a 100% to work in law enforcement. She must be able to qualify for firearms, which she is unable to do. They have to be able to do defensive tactics courses, transport inmates, and do pat-downs searches. The Claimant went to work in February 2002 as a correctional officer at Clark County Sheriff's Department. She gave a brief overview of her employment duties while working for the sheriff's department. (TR p. 21)

The Claimant went back to college and earned a Bachelor of Science in Psychology and a minor in Criminal Justice. She graduated from Henderson State University. Shortly thereafter, the Claimant went to work for the Arkansas Department of Community Correction (ADCC), as a Parole/Probation Officer. The Claimant is also prevented from working as a Parole Officer due to her not being able to qualify for firearms. She gave an overview of her employment duties for that position. (TR p. 22)

However, the Claimant testified that is unable to turn her neck since the surgery. According to the Claimant, her neck is restricted, and this affects her ability to turn while driving. The

Claimant confirmed she can drive to Arkadelphia sometimes, which is seven minutes from her home. She explained that she unable to do all the bending and turning required for driving. According to the Claimant, the medications she takes prevent her from carrying a gun. She testified that she has numbness in her right hand and neck. The Claimant testified that she had to carry a .9 mm Glock, which is a heavy gun, and she does not think she would be able to carry that type of gun on her hip all day. Under further questioning, the Claimant confirmed she had to input data into the computer throughout her workday. However, she testified that she is able to spend only ten minutes at a computer before she starts tensing up and hurting.

The Claimant gave an overview of her accidental injury. She essentially testified that on October 30, 2014, they had training in Hot Springs, and were on their way home. Per the Claimant, when they got to the red light, one of her coworkers ran a red light and hit a car, that car hit another care, and then a car hit them. The Claimant confirmed she was riding in the back seat. She was transported to the hospital. The Claimant admitted she underwent her first surgery on October 26, 2021. Dr. Shahim did a cervical fusion. According to the Claimant, she thought the first surgery was an answer to her prayers, but after three weeks she had to undergo another surgery. She admitted that eventually they sent her to Dr. Roman for pain management. He did some injections in her back, which provided her a little relief of her symptoms. After the Claimant's third injection, she did not get any relief. As a result, he performed a rhizotomy, and it worked for a little while, but the pain came back. The Claimant admitted she had back surgery at L5-S1 in September of 2022. According to the Claimant, the back surgery provided her with some relief. She tried to walk but the next day she would be in bed with her hips hurting all the way down her leg.

She confirmed that she has undergone two functional capacity evaluations (FCEs). The last evaluation was performed in January 2023. The Claimant agreed that she can occasionally

squat, crouch, kneel, bend, climb stairs, and stoop. She testified that she gets only four to five hours of sleep each night. Her husband does all the cooking. The Claimant testified that prior to her injury, she always stayed active by walking, riding bikes, and playing basketball. Also, the Claimant testified that she and her husband always traveled, but she is unable to do so now.

According to the Claimant she gets up late because she is unable to sleep at night. After taking a shower, she is back on the couch. She testified that she is able to sit for an hour before having to move around or lie down. Her day entails walking through the house picking up stuff, trying to help with the cleaning and watering her flowers.

The Claimant testified that she was fired because she was not at 100% and they do not have any light duty work. According to the Claimant, after Dr. Baskin gave her limitations, they sent her a letter of termination. She confirmed meeting with someone from Systemedic. However, after her meeting with the consultant she had surgery on her back, which caused her vocational rehabilitation to be put on hold. She denied that the consultant provided her with any jobs that she needed to apply for before her back surgery in the Arkadelphia/Hot Spring/Malvern area. Nor did the consultant provide the Claimant with a list of jobs that she needed to apply for after their second meeting. The Claimant confirmed that she has looked for work online. The Claimant looked for work at DHS as a family service worker. The pay for that position ranges from \$9.00 to \$11.00 an hour. However, the Claimant has not heard from anyone since putting in her application. She confirmed that this range of pay is significantly lower than what she was making at the Arkansas Department of Community Correction, which was \$22.50 an hour. The Claimant confirmed that if the Department of Correction contacts her with accommodations for her previous job, she would go back to work for them if she could.

She confirmed that she worked for ADCC seven years after her accident. The Claimant verified that she last worked for ADCC in 2021. The Claimant agreed that it was not until after her surgeries that she was no longer able to perform her job duties. She stated that she worked through all of her pain and everything because she did not want to get fired. According to the Claimant, she did not let them know how much pain she was in or how bad she was hurting for fear of being fired. However, the Claimant was eventually fired.

On cross-examination, the Claimant confirmed her accident date was October 30, 2014. At that point, she began missing work, but she returned to work on November 17, 2014. The Claimant confirmed her signature on the Form S. It is dated December 9, 2014. She also confirmed the Form AR-N. Her signature is on this Form and is dated August 21, 2015.

The Claimant confirmed her medications. She admitted to taking Duloxetine (Cymbalta), which is an anxiety and depression, while working. The Claimant began taking this medication in 2019. She was started on it by Dr. Roman after one of her surgeries. She confirmed that she cooperated and did what was asked of her when she underwent the FCE.

Under further questioning, the Claimant testified that she had to physically take down an inmate probably once a week. She had to call for help if the inmate was in her office.

The Claimant provided the following explanation of her employment duties as a Parole/Probation Officer at the Department of Community Correction:

Q How much time did you spend handling these inmates?

A Every day, all day. That's my job. They come in the office and whatever needed to be done: home visits, you're seeing inmates, you're going to court, you see inmates at the jail, you may take 'em to the jail. So I worked eight hours and on-call so I saw inmates all the day -- all -- every day, all day.

The Claimant admitted that she also uses a computer every day. She testified that there was no set thing she had to do as a Parole Officer. According to the Claimant, she had to be able to multitask. The Claimant testified that she had to use a computer all day, every day. She also had a laptop that she used to take notes at home. Her caseload was increased, and they had to perform drug tests and check to see if they were making payment on their fees.

She admitted that during her deposition, she testified that she had taken trips to Texas. However, the Claimant explained that this was probably before she had her surgeries. She testified that she does not take long trips since her surgeries. The Claimant testified that Little Rock is too far for her to travel, unless she is able to sit in the back seat, but that makes her nauseated.

The Claimant was asked if during her January 18 meeting with vocational consultant that she was not looking for work and nor was she interested in back to work. Her reply was: “I don’t remember telling like that, no.” The Claimant essentially testified that she was not sure if she could do some kind of work until she attempts to do so. She confirmed that the splints worn on her wrists were not prescribed by a medical doctor.

Medical Evidence

On April 7, 2016, the Claimant returned to Dr. Kenneth M. Rosenzweig for her back pain. She had been doing well with her medication as long as she did not over-exert herself. At that time, the Claimant was in no real pain to speak of, and she was limiting her activities. His impression was “Satisfactory function status post motor vehicle accident with chronic pain.” Dr. Rosenzweig opined the Claimant was functionally at MMI (maximum medical improvement). In fact, the Claimant had been back at work and doing her job without restrictions, but she was requiring some continued medical management to keep her functional.

The Claimant underwent an independent medical evaluation by Dr. Carlos Roman, September 4, 2018, for an injury that occurred in October 2014. Her injury occurred while working for the Department of Correction. She reported having injured her back in a car wreck. Since that time, the Claimant had been in treatment. At time, the Claimant had increasing radicular pain down her right leg, which had been her ongoing complaint since her injury. The MRI of her lumbar spine was basically normal, except at the L5-S1 where that was broad-based, right paracentral disc protrusion, which Dr. Roman related to her car accident. At that time, Dr. Roman recommended that the Claimant take Cymbalta for her injury symptoms and an epidural steroid injection per her request.

On March 11, 2020, The Claimant returned to Dr. Roman for follow-up care of her chronic neck pain. She was still having pain running down her arms and hands. Dr. Roman looked at the Claimant's MRI from a year ago. She had a disc osteophyte, C6-C7 with some correlation to her arm pain. Dr. Roman also noted that the Claimant had a disc bulge at L5-S1 on the right side. She also had some radicular pain down her hip and leg that was amenable to an epidural injection about eight to nine months ago. Dr. Roman reported that they performed a cervical injection on January 20, but it did not affect her symptoms even on a temporary basis. At that time, the Claimant was still up at night due to her arms and hands. He did a Tinel's test, and she had some mild tingling in the hand. However, Dr. Roman sensed that the Claimant possibly had carpal tunnel syndrome. Therefore, he did want to do a second epidural injection. Dr. Roman said that he would have expected more response had her symptoms been coming from her cervical. He told the Claimant that he believed her complaint of numbness in the arm was predominantly coming from her median nerve in her hands. Therefore, Dr. Roman ordered an EMG study to assess these complaints.

Dr. Brent Sprinkle performed an EMG with NCV on April 8, 2020. At that time, Dr. Sprinkle assessed the Claimant with carpal tunnel syndrome, bilateral upper limbs.

On that same day, Dr. Roman saw the Claimant in follow-up care of her back and neck pain. He noted that the Claimant had complaints of lumbar spine. Per this clinic note, Dr. Roman stated that the EMG summary did not show any diagnostic evidence of cervical radiculopathy, branchial plexopathy, branchial plexopathy, peripheral neuropathy, or focal ulnar nerve entrapment. However, Dr. Roman opined that her symptoms correlated to carpal tunnel syndrome, for which he performed carpal tunnel injections. Dr. Roman's Final Diagnoses were: "1. Chronic low back pain. 2. Lumbar disc disease. 3. Cervical disc disease, C6-C7. 4. Lumbar radiculopathy, right L5 and S1. 5. Low back pain. 6. Lumbar spondylosis. 7. Long-term opiate use by way of tramadol. 8. opiate use by way of tramadol. 9. Carpal tunnel syndrome left and right sides. 10. Neck pain."

On August 5, 2020, the Claimant presented to Dr. Roman for continued neck and back pain. She had increasing sciatic pain going down both hips and legs, which was greater on the right at this time, but it tended to vary. Dr. Roman stated that the Claimant had "classic sciatica." She missed an appointment for an injection because she thought pain was getting better. However, at that time it was worse, and she wanted to reschedule.

Dr. Reza Shahim authored an Operative Report on October 26, 2021:

PREOPERATIVE DIAGNOSIS:
Cervical stenosis at C6-C7.

POSTOPERATIVE DIAGNOSIS:
Severe foraminal stenosis, bilateral C6-C7 with chronic radiculopathy.

OPERATIVE PROCEDURES:

1. Anterior cervical fusion, C6-C7, partial corpectomy of C5, resection of osteophytes, anterior fusion with structural allograft, bone marrow aspirate from right iliac crest,

- anterior instrumentation with a K2, Stryker cervical plating at C6-C7.
2. Interpretation of localizing fluoroscopy and operation microscopy.

On January 20, 2022 the Claimant was evaluated by Dr. Barry Baskins for an impairment rating. The Claimant's chief complaints were neck pain, low back pain, occasional left big toe numbness, and occasional numbness in the right hand. Specifically, Dr. Baskins wrote, in relevant part:

REVIEW OF MEDICAL RECORDS: ... Recent imaging in November 2021 revealed her to have postop changes at C6-C7 without radiographic evidence of hardware fracture, mild to moderate degenerative change at C5-C6.

PHYSICAL EXAMINATION: This is a pleasant 5 feet 3 inches, 180-pound lady in no apparent distress. Vital signs stable, afebrile. Her neuromuscular exam, cranial nerves are otherwise negative. She has Patrick's test on the right, negative on the left. Her strength is 5/5 throughout. Examination of the cervical spine reveals a well-healed surgical scar anteriorly. She has good range of motion in the cervical spine. Lumbar imaging studies revealed lumbar degenerative changes primarily with moderate facet arthropathy at L3-L4, L4-L5 and L5-S1. Straight leg raise is negative. Patrick's test is negative. Strength is good. Motor function is grossly intact. Sensation is intact.

IMPRESSION: Ms. Moody [the Claimant] is a nice lady referred for impairment rating based on an October 31, 2014, motor vehicle accident. She underwent an anterior cervical discectomy and fusion with Dr. Shahim. She does have some degenerative facet disease in the lumbar spine. Imaging studies today ordered by me indicate multilevel degenerative disc disease. This was a lumbar spine x-ray and x-rays of her pelvis. She has a right greater than left sacroiliac degenerative changes. Mild bilateral hip osteoarthritis. I think Ms. Moody is doing overall fairly well. She is still having back pain and is under treatment with Dr. Roman. She has had a cervical fusion. She is currently on FMLA.

PLAN: She does have an impairment rating. The AMA Guides to the Evaluation of Permanent Impairment 4th Edition page 113 table 75 would give her an impairment rating of 9% to the whole person based on category IIe. She does have degenerative facet disease in the lumbar spine which is probably exacerbated by her accident. She is still under treatment for that. I will see her in follow-up in about six weeks. She has normal neuro exam. She has some subjective left big toe numbness and Positive Patrick's on the right side of uncertain etiology. She does have some hip arthritis which is unclear as to the etiology. I will go ahead and give her an impairment rating. I look forward to seeing her back and appreciate the opportunity to assist in this nice lady's care.

An MRI of the Claimant's cervical spine without contrast was performed on February 10, 2022. Dr. Samuel E. Edwards opined the following:

IMPRESSION:

1. ACDF at C6-7.
2. Multilevel degenerative disc disease and facet arthropathy.
3. Moderate to severe narrowing of the right neural foramen at C3-4.
4. Moderate of severe narrowing of the left neural foramen at C5-6.
5. Severe narrowing of the left neural foramen at C6-7.

On that same day, the Claimant underwent an MRI of the lumbar spine without contrast.

Dr. Edwards rendered the following IMPRESSION: “1. Multilevel degenerative disc disease and facet arthropathy. 2. Central/right paracentral disc protrusion at L5-S1 contacts and slightly displaces the traversing right S1 nerve root.”

The Claimant presented to Dr. Shahim on April 4, 2022, for follow-up evaluation of her spondylosis. Cervical (spondylosis without myelopathy, cervical region) of the cervical spine. Dr. Shamin noted that he saw the Claimant on February 10, 2022, at which time she was prescribed Mobic 7.5 mg tablets BID and was to take one tablet twice daily as needed. Per this visit note, Dr. Shahim referred the Claimant to a specialist. Her pain intensity was: 5.0 5/10 pain. Dr. Shamin noted that the Claimant had undergone cervical fusion approximately six months ago. He opined that at that point, the Claimant was at maximum medical improvement (MMI) with regard to her cervical disc herniation.

On April 11, 2022, the Claimant underwent an evaluation by Dr. Baskin. At that time, the Claimant complained of pain in her neck. Dr. Baskin wrote that he had looked at the Claimant’s job description, but he did not think she could resume her work. He opined that the Claimant is not able to do some of the essential job functions of a correctional officer. Specifically, she would not be able to use physical force sufficient to restrain when encountering life threatening situations or able to use force safely and appropriately for self-protection and to protect other officers and citizens when necessary. He also stated that the Claimant would not be able to do all aspects of conducting a search and seizure procedure. This included subduing and placing offenders in

handcuffs and restraints. He also stated that the Claimant is able to drive her own car, but she has limited range of motion in her cervical spine on physical exam that day and on previous exams in all planes and in particular rotation. This would place the Claimant at risk of having an accident. Dr. Baskin also believed the Claimant would be able to qualify for use of a full-sized handgun. His impression was that the Claimant was at maximum medical improvement. Based on his review of the first rating, he wanted to clarify the rating for the cervical spine. Dr. Baskin stated, “It was initially 9% to the whole person, and in fact, I did not notice she had a corpectomy as well as a single-level fusion, which would give her an additional 1% whole person impairment for a total of 10%.” He released the Claimant from his care.

Dr. Roman authored a clinic note on May 2, 2022. The Claimant presented to Dr. Roman a chief complaint of chronic low back pain. The Claimant had earlier epidural injections in the past with good relief. She reported some occasional pain in the left hip and left leg. However, the Claimant stated that the rhizotomy done in February at L4-L5 and L5-S1 levels provided her with the best pain relief she has had in many years. The Claimant got 50 to 60% sustained relief, which made a significant impact on her daily activities. She was still having some pain going down the right shoulder and arm, but she did receive some relief with her surgery by Dr. Shahim in October 2022. The Claimant was tolerating things at that point. Dr. Roman did not recommend any interventional procedures. He continued the Claimant’s medication regimen.

Per a clinic note dated May 31, 2022, Dr. Roman opined:

She is a Workers’ Compensation patient. She injured her back. She was given an impairment rating for single level disc protrusion at the L5-S1 level, which works out to a 5% whole person rating per page 113, Table 75 of the AMA Guidelines of Disability, the Fourth Edition as utilized by the State of Arkansas. I would agree with that assessment. It is correlative with her pain and the impairment rating is correct.

On July 21, 2020, the Claimant underwent evaluation for her continued chronic back pain

by Dr. Shahim. The Claimant had worsening acute chronic back pain with intermittent hip and leg pain. Her hip and leg pain were progressively worsening, and unresponsive to conservative management. Dr. Shahim gave the Claimant the option of right L5-S1 spinal decompression surgery with risk of residual weakness and numbness that may not improve. Alternative to surgery included continuing with spinal injections, medications, and physical therapy. He suggested the right L5-S1 discectomy since the Claimant recently failed medication activity modification and radiofrequency. Dr. Shahim diagnosed the Claimant “low back pain.”

The Claimant underwent a second lumbar spine surgery on September 6, 2022. Dr. Shahim authored a surgical report:

PREOPERATIVE DIAGNOSIS:

Right L5-S1 disc herniation with radiculopathy, unresponsive to conservative management.

POSTPERATIVE DIAGNOSIS:

Right L5-S1 disc herniation with radiculopathy, unresponsive to conservative management.

OPERATIVE PROCEDURES:

Lumbar microdiscectomy right L5-S1.

The Claimant underwent follow-up evaluation on September 22, 2022, with Dr. Shahim due to her recent lumbar spine surgery. His impression was “Status post lumbar decompression surgery.” The Claimant had moderate disc herniation at L5-S1, but she was doing better. He had a discussion with her of the possibility of taking non-steroids, but if her symptoms continued, she would need to take oral steroids.

On September 26, 2022, the Claimant saw Dr. Roman stated that the Claimant was healing well from her surgery. However, the Claimant continued with leg pain that usually disappeared, but her back pain was a little persistent. It appears that Dr. Roman continued the Claimant’s medication regimen.

The Claimant continued to follow-up with Dr. Roman for pain management of her compensable back and neck injuries.

On December 19, 2022 Dr. Shahim evaluated the Claimant due to her neck and back surgeries. At that time, he discussed with the Claimant, her lumbar spondylosis degenerative disc disease and potential need for further treatment including physical therapy, nonsteroid/spinal injections in the future. His impression was:

Patient has a worked related injury resulting in cervical and lumbar disc disease she has had treatments at both levels and is doing failure well but she still has residual symptoms. I have suggested she get assessed by rehab medicine for functional capacity long-term restrictions and permanent impairment. She is at MMI with regard to her cervical and lumbar spine at this point, but she probably not quite ready to return to work because of persistent residual symptoms. I suspect she will need to have therapy rehabilitation for returning to work and is likely she will have residual symptoms and may require further treatment in the future...

The Claimant saw Dr. Baskin on December 19, 2022. He stated that the Claimant had been rated by him at 10% for the cervical surgery and additional level. Per Dr. Baskin, for impairment purposes the Claimant was rated using the AMA Guides to the Evaluation of Permanent Impairment 4th Edition page 113, table 75. She was rated under II category E. This would give her a 10% whole person impairment based on her lumbar spine injury and subsequent surgery. Dr. Baskin specifically noted that this was for a surgically treated disc lesion with residual medically documented pain and rigidity. Using the combined values chart on page 322 of the Guides, 10% rating to the cervical spine combined with 10% to her lumbar spine would yield a 19% whole person impairment rating. Her total impairment was 19%. Dr. Baskin declared the Claimant to be at MMI but stated that it was unlikely she would be able to go back to work. He released the Claimant to a light duty physical demand category of work with a lifting up to thirty pounds. Dr. Baskin also noted that the Claimant did believe she could do that. He documented ongoing complaints of stiffness in the neck and lumbar spine, and palpable muscle spasm.

The Claimant underwent a Functional Capacity Evaluation (FCE) on January 10, 2023. Her results from this evaluation indicated that she put forth a reliable effort, with 50 of 52 consistency measures with expected limits. The Claimant demonstrated the ability to perform work with functional limitations of only occasionally lifting up to 25 pounds and lifting and carrying of 10 pounds on a frequent basis.

On February 21, 2023, the Claimant saw Dr. Roman for follow-up pain management of her compensable injuries. He specified that her back surgeries did well overall. The back surgery resolved the radicular component. However, the Claimant was having some facet mediated pain across the back, but it was tolerable. The Claimant had increased her activities as far as her home exercise program, which included proper stretching protocol. She was having a little radicular pain in her trapezial muscle line in her neck. Dr. Roman noted that the Claimant's last epidural injection for her neck was in 2020, but he would reinject her if and when the intensity gets too severe, but at that time Claimant was tolerating with medications. Her average pain was about five out of 10. Dr. Roman continued the Claimant's medication regimen. His final diagnoses were "1. Cervical radiculopathy, C6-7. 2. Low back pain. 3. Lumbar disc disease. 4. Lumbar disc disease. 5. Cervical disc disease. 6. Lumbar spondylosis. 7. Lumbar decompressive surgery, L5-S1. 8. Cervical spondylosis."

The Respondents submitted documentary evidence, which included a Form AR-N. It was on August 21, 2015. Per this report, the Claimant reported having injured her neck and lumbar spine on October 30, 2014. She was a passenger in the back seat of a car when they were struck from behind.

On May 26, 2022, the Respondents wrote a letter to the Claimant's attorney informing them that they were accepting the 10% rating.

The Claimant underwent a Vocational Rehabilitation Initial Evaluation on July 19, 2022. The vocational rehabilitation consultant performing this evaluation was Keondra Hampton, MS, CRC. Ms. Hampton authored a report summary on July 20, 2022. The consultant noted that the Claimant was not sure she could perform any tasks required of a job. However, the Claimant was agreeable to collaborating with Ms. Hampton in the job search/return-to-work process and was open to exploring any and all opportunities available. During the meeting, Ms. Hampton noted that she observed the Claimant using a brace for her right and left wrists. The Claimant reported using a compression sleeve for her right arm. Both devices were purchased at Walmart. The Claimant alternated between sitting, standing, and walking. The Claimant reported to Ms. Hampton that when she is in pain, she must adjust to different positions for relief. Her level of daily activity was low due to pain. The Claimant declined retraining because she is close to retirement and does not wish to deepen her financial debt. However, the Claimant did express an interest in seeing what sedentary jobs are available in her area to pursue. The vocational specialist told the Claimant that she would move forward with the process for finding a job within the Claimant's restrictions and help with any online job applications.

Per a report dated February 27, 2023, the Claimant visited Ms. Hampton's office on January 18, 2023, for further evaluation and help in the job search process. Ms. Hampton stated that the Claimant was cooperative with the return-to-work efforts. The Claimant reported that she did not want to waste Ms. Hampton's time because she believed she was not capable of returning to work due to the constant pain and discomfort. At that time, the vocational consultant recommended that the Claimant's case be closed because she had chosen to discontinue vocational rehabilitation services at that time.

Adjudication

A. Wage Loss Disability

Here, the Claimant has asserted her entitlement to wage loss disability over and above her combined 19% impairment rating for her compensable back and neck injuries of October 30, 2014.

When considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect her future earning capacity. Ark. Code Ann. § 11-9-522(b)(1). In considering factors that may affect an employee's future earning capacity, the appellate court considers the Claimant's motivation to return to work, since a lack of interest or a negative attitude impedes an assessment of the Claimant's loss of earning capacity. *Ellison v. Therma Tru*, 71 Ark. App. 410, 30 S.W.3d 769 (2000).

The Claimant is 57 years of age. She worked as a Parole/Probation Officer for ADCC for over fifteen years. All her primary work experience is in law enforcement. The Claimant has a college degree. On October 30, 2014, the Claimant sustained significant injuries to her neck and back in a work-related MVA. She was a passenger in the back seat of a vehicle when they were rear-ended by another vehicle. Subsequently, the Claimant underwent substantial conservative medical treatment for her injuries, including various medications, physical therapy, and epidural steroid injections. The Claimant has treated and been evaluated by several specialists, including Drs. Rosenzweig, Shahim, Baskin, and Roman.

On October 26, 2021, the Claimant underwent a C6-C7 anterior cervical discectomy and fusion, with partial C5 corpectomy. Dr. Shahim performed this surgery. Following her surgery, the Claimant underwent physical therapy and continues on a pain medication regimen. She has

medically documented problems with her right arm and wears a brace occasionally. The Claimant also has restricted range of motion in her neck that affects her ability to drive.

For her back injury, the Claimant underwent physical therapy and injections with little relief of her symptoms. On September 6, 2022, Dr. Shahim performed decompressive surgery at the L5-S1 level. The Claimant did well with her surgery but continued to have leg pain.

On December 19, 2022 Dr. Baskin assessed the Claimant with a combined value rating of 19% for neck and back injuries of October 2014. The Respondents have accepted this rating. Dr. Baskin placed the Claimant to be at MMI for her cervical spine and lumbar spine injuries. The Claimant continues to see Dr. Roman for pain management of her injuries.

The Claimant testified that she is significantly limited in her daily activities of living due to her neck and back injuries of October 30, 2014. I found the Claimant to be very credible. Her husband does all of the cooking. She is no longer able to engage in her prior hobbies, including walking, bike riding, and basketball. The Claimant takes several medications for her compensable injuries as outlined above. One of her medications causes her to have some memory loss. The Claimant underwent an FCE with reliable results on January 10, 2023. She has the physical ability to perform light duty work. She can no longer work in law enforcement due to her physical restrictions and limitations.

The Claimant worked for the Arkansas Department of Community Correction seven years after her accident in October 2014. However, ADCC ultimately had to fire the Claimant due to her physical restrictions resulting from her October 2014 work injury. Her hourly rate of pay was \$22.50. She has looked for work within her restrictions at DHS, with the Division of Children and Family Services. These positions have a salary range of \$9.00 to \$11.00 an hour.

Based on my review of the evidence, including the Claimant's credible testimony, and when considering her advanced age, education, prior work experience primarily in law enforcement, the nature and extent of her injuries, the combined value of a 19% permanent anatomical impairment to the body as a whole for her back and neck injuries, her restricted activities of daily living, her ability to perform only light duty work, considering the fact that she will not be able to return to work in law enforcement, and all other relevant matters reasonably expected to affect her future earning capacity, I find that the Claimant has proven by a preponderance of the evidence that she sustained a 24% wage-loss earning capacity in excess of her combined 19% permanent anatomical impairment to the body as a whole for her compensable back and neck injuries of October 30, 2014.

B. Controverted Attorney's Fee

It is undisputed that the Respondents have controverted this claim for additional benefits as evidenced by their stipulation to conversion. Therefore, pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein.

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W. 2d 57 (1995).

Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

All issues not addressed herein are expressly reserved under the Arkansas Workers' Compensation Act.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE