BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NOS. G704530 & G800411

BRANDON B. McMURTRY, EMPLOYEE **CLAIMANT**

VILONIA WATERWORKS ASSN., INC.,
SELF-INSURED EMPLOYER **RESPONDENT**

ARK. MUNICIPAL LEAGUE,
THIRD-PARTY ADMINISTRATOR **RESPONDENT**

OPINION FILED NOVEMBER 1, 2022

Hearing before Administrative Law Judge O. Milton Fine II on August 11, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. George Bailey, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

On August 11, 2022, the above-captioned claim was heard in Little Rock, Arkansas. A pre-hearing conference took place on April 18, 2022. The Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulation, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulation

At the hearing, the parties discussed the stipulation set forth in Commission Exhibit 1. It is the following, which I accept:

1. The administrative law judge opinion filed October 28, 2019, and the Full Commission opinion filed June 11, 2020, are binding on this proceeding under the Law of the Case Doctrine.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. After an amendment of first issue, they read:

1. Whether Respondents have complied with the previous opinions in this matter; and if not, what penalties, if any, should attach?
2. Whether Claimant is entitled to additional medical treatment of his compensable back injury.
3. Whether Claimant is entitled to additional medical treatment of his compensable left hip injury.
4. Whether Claimant is entitled to temporary total disability benefits.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments at the hearing, read as follows:

Claimant:

1. Claimant contends that that he sustained compensable injuries as set out in the opinion filed October 28, 2019, and that he was in the

course of and within the scope of his employment with the respondent/employer as set out in that opinion.

2. Claimant contends that he is entitled to additional reasonable and necessary medical treatment and unpaid medically related travel expenses; and in particular, he was scheduled for hip surgery by James Tucker, M.D., on November 17, 2021, and pre-certification of that was denied by Respondents. They are responsible for the expense of the surgery, and treatment by Dr. Tucker and other providers treating the compensable injuries. Lack of authorization is not a valid defense here because this was a fully controverted claim.

3. Medically related travel expenses are claimed and will be submitted in a timely manner in relation to any hearing.[1]

4. Claimant contends that he is entitled to temporary total disability benefits from February 28, 2020, to a date yet to be determined.

5. Claimant contends that he is entitled to the relief as set out above, and that he should be awarded penalties under Ark. Code Ann. § 11-9-802(e) (Repl. 2012), or in the alternative, § 11-9-802(c), for non-payment of awarded medical expenses.

[1]Claimant did not include any documentation regarding this as part of his hearing exhibits. *See generally* Ark. Code Ann. § 11-9-508 (Repl. 2012); AWCC Advisory 89-2 (Updated).

6. Statutory attorney's fees based upon all controverted amounts are claimed.

7. Claimant reserves all issues of permanent injury, anatomical permanent impairment, and wage loss at this time.

Respondents:

1. Respondents contend that Claimant is not entitled to any additional indemnity benefits for his back. He was placed at maximum medical improvement by Dr. Justin Seale on October 23, 2017, and was not assigned an impairment rating. After a change of physician with the Commission, Dr. Mark Miedema determined that Claimant reached maximum medical improvement on February 13, 2018. He assigned no impairment rating. The date of maximum medical improvement for Claimant's back injury is February 13, 2018. Respondents contend that Claimant has not re-entered a healing period; therefore, he is not entitled to additional temporary total disability benefits. Respondents are not aware of any additional medical treatment for Claimant's back. If he has continued seeking medical treatment on his own, then it is Respondent's position that it is unauthorized medical treatment under the Arkansas Workers' Compensation Act (the "Act"); therefore, they should not be responsible for such.

2. Regarding Claimant's left hip injury, Respondents paid temporary partial disability benefits, per the opinions, from the periods of March 5, 2018, to July 22, 2018, and November 19, 2018, to January 17, 2019, while he was still within his healing period following his two prior hip surgeries. Respondents have not received a permanent impairment rating from Dr. Tucker for these two hip surgeries. Dr. Tucker performed a third hip surgery on December 30, 2021. Respondents were notified of the surgery on December 16, 2021. While it is correct that Respondents did not give pre-authorization for said surgery, they were not aware Claimant was still treating with Dr. Tucker. As for Claimant's compensable left hip injury, he reached maximum medical improvement, per Tucker's April 6, 2022, opinion, as of December 2020. Additionally, Respondents contend that medical treatment by Dr. Tucker following the date of the administrative law judge opinion in this matter was unauthorized medical treatment under the Act; therefore, they should not be liable for it. They further assert that any hip treatment after December 2020 was not reasonable and necessary. That said, Respondents will pay for any hip treatment prior to December 2020.

3. With regard to Claimant's compensable back injury, Respondents contend that he reached maximum medical improvement on

February 13, 2018. The previous administrative law judge opinion provided that they were responsible to additional treatment in the form of pain management. Respondents paid for Claimant's treatment with Arkansas Spine and Pain Clinic. However, after that opinion, he sought out treatment on his own from the University of Arkansas for Medical Sciences ("UAMS") and Bryant Chiropractic Clinic. Respondents contend that this treatment was unauthorized and, as such, not their responsibility.

4. Respondents have made and will continue to make diligent efforts regarding payment of past medical treatment owed per the opinions entered in this matter. Numerous correspondence and telephone communications with medical providers have occurred. Respondents even requested subpoenas for the outstanding medical bills and records from the Commission; the subpoenas were timely served to the providers. As far as the process goes towards payment of the outstanding medical expenses, Respondents need both the bills and the records to support those bills to submit to the third party for processing payment per the fee schedule. The bills need to be provided in a certain format (HCFA) to be processed by the third party. Because there are quite a few bills outstanding, and medical providers do not always provide timely and accurate responses to requests, it has taken

Respondents a bit of time to make sure the outstanding medical per the opinion is paid. However, Respondents have paid the majority of the outstanding medical bills owed per the opinions. Respondents are not controverting that they owe these bills. As soon as Respondents receive the outstanding bills and supporting records, they will be submitted to the third party for processing payment. It is the position of Respondents that they have paid everything evidenced at the time of the last administrative law judge opinion, and that this is referenced in their medical payment exhibit.

5. Respondents reserve the right to file a response to prehearing questionnaire or other appropriate pleading and to allege any further affirmative defense(s) that might be available upon further discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, 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.

2. The stipulation set forth above is reasonable and is hereby accepted.

3. The evidence does not preponderate that Respondents have abridged Ark. Code Ann. § 11-9-802(c) & (e) (Repl. 2012) concerning their payment or (thus far) non-payment of any medical bills covered under the previous decision in this matter.

4. Notwithstanding Finding/Conclusion No. 3 *supra*, Respondents are hereby directed to reimburse Claimant forthwith for all of his out-of-pocket expenditures made in connection with treatment that was found in the previous hearing to be reasonable and necessary—and, consequently, their responsibility.

5. Claimant has proven by a preponderance of the evidence that all of the treatment of his compensable back injuries that is in evidence was reasonable and necessary. As part of this, he has established his entitlement to the ReActiv8 treatment recommended by Dr. Johnathan Goree.

6. Claimant has proven by a preponderance of the evidence that all of the treatment of his left hip that is in evidence and that occurred prior to October 8, 2021, was reasonable and necessary.

7. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from February 26, 2020, to December 17, 2020.

8. Claimant has proven by a preponderance of the evidence that his counsel is entitled to a controverted attorney's fee on the additional indemnity benefits awarded herein under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CASE IN CHIEF

Summary of Evidence

Claimant and his father, Cecil McMurtry, were the hearing witnesses.

In addition to the prehearing order discussed above, admitted into evidence were the following: Claimant's Exhibit 1, a compilation of his medical records, consisting of two index pages and 193 numbered pages thereafter; Claimant's non-medical exhibit, consisting of a job description and a termination letter addressed to him and dated February 25, 2020, consisting of one index page and three pages thereafter; Respondents' Exhibit 1, a letter to Respondent Arkansas Municipal League from Dr. Tucker dated April 6, 2022, consisting of one index page and two numbered pages thereafter; Respondents' Exhibit 2, non-medical records including forms and indemnity payment logs, consisting of one index page and nine numbered pages thereafter; and Respondents' Exhibit 3, the medical payment log, consisting of one index page and 181 numbered pages thereafter.

Without objection, the post-hearing briefs of Claimant and Respondents that were filed on August 25, 2022, and which consist of ten and four pages, respectively, have been blue-backed to the record. The transcript of the August

15, 2019, hearing on this claim, along with its blue-backed exhibits, have been incorporated herein by reference.

Adjudication

A. Introduction

An assessment of the issues at bar first requires a recounting of the procedural history of these claims. On August 15, 2019, the first hearing was held on these claims before the undersigned administrative law judge. The October 28, 2019, opinion contains the following findings of fact and conclusions of law:

> 1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
>
> 2. The stipulations set forth [below] are reasonable and are hereby accepted[:]
>
> A. The employee/self-insured employer/third-party administrator relationship existed on June 26, 2017, when Claimant was involved in a motor vehicle collision and sustained compensable injuries to his back and left shoulder.
>
> B. The employee/self-insured employer/third-party administrator relationship existed on January 11, 2018, when Claimant sustained a compensable injury to his back.
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> C. Respondents accepted the above injuries as compensable and paid benefits pursuant thereto.
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> D. Claimant's average weekly wage with respect to Claim No. G704530 and concerning the date of injury of June 26, 2017, $774,00, entitles him to compensation rates of $516.00/$387.00.
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> E. Claimant's average weekly wage with respect to Claim No. G800411 and concerning the date of injury of January 11,

2018, $749.00, entitles him to compensation rates of $499.00/$374.00.

3. Claimant has proven by a preponderance of the evidence that he sustained a compensable left hip injury by specific incident on June 26, 2017.

4. Claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary treatment of his compensable left hip injury.

5. Claimant has proven by a preponderance of the evidence that all of the treatment of his compensable left hip injury that is in evidence was reasonable and necessary.

6. Claimant has proven by a preponderance of the evidence that all of the treatment of his compensable back injury that is in evidence was reasonable and necessary.

7. Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment of his compensable back injury in the form of pain management.

8. Claimant has proven by a preponderance of the evidence that he is entitled to temporary partial disability benefits during the periods of time that he was on sick and/or catastrophic leave in connection with his compensable left hip injury from March 5, 2018, to July 22, 2018, and from November 19, 2018, to January 17, 2019.

9. Claimant has proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012) on all indemnity benefits awarded herein.

Respondents appealed this decision. On June 11, 2020, the Full Commission affirmed and adopted the administrative law judge's decision. *Brandon McMurtry v. Vilonia Waterworks Assn., Inc.*, Claim Nos. G704530 & G800411 (Full Commission Opinion filed June 11, 2020)(unpublished).

B. Penalty

Introduction. Claimant has alleged that he should be awarded penalties under Ark. Code Ann. §11-9-802(e) (Repl. 2012), or in the alternative, Subsection (c) of that statute, for non-payment of awarded medical expenses. Respondents have denied this.

Standards. According to § 11-9-802(c) and (e):

> (c) If any installment payable under the terms of an award Is not paid within fifteen (15) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, the installment unless review of the compensation order make the award is had as provided in §§ 11-9-711 and 11-9-712.
>
> . . .
>
> (e) In the event that the commission finds the failure to pay any benefit is willful and intentional, the penalty shall be up to thirty-six percent (36%), payable to the claimant.

As the party requesting these sanctions, Claimant must prove by a preponderance of the evidence that such are warranted. *See* Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Discussion. With respect to Subsection (c), which pre-existed Act 796 of 1993, the courts have held that it does not apply to the payment (or perhaps non-payment) of medical bills. *See, e.g., Model Laundry & Dry Cleaning v. Simmons*,

268 Ark. 770, 596 S.W.2d 340 (1980); *Smith's Store v. Kirker*, 6 Ark. App. 222, 639 S.W.2d 751 (1982).

As for Subsection (e), assuming only for the sake of argument that it applies to the payment of medical bills, the evidence at bar does not preponderate that Respondents' failure to pay any such bill was "willful and intentional." To the contrary, as documented in their Exhibit 3, Respondents undertook to pay outstanding medical bills[2] covered by the previous decision, once that decision became final. Any that remain unpaid have this status because of Respondents' ongoing efforts to investigate them and/or ensure that they are in proper form to be processed. Thus, Claimant's allegations regarding this matter are without merit.

That said, I credit Claimant's testimony that while he is unaware of any treatment found in the last hearing to be reasonable and necessary that remains unpaid, he did pay for much of it out-of-pocket. This includes $1,200.00 that he paid toward his first surgery with Dr. Tucker. Respondents are hereby ordered to reimburse Claimant for all such out-of-pocket expenditures forthwith.

[2]Claimant has not interposed an argument under § 11-9-802(d), which reads: "Medical bills are payable within thirty (30) days after receipt by the respondent unless disputed as to compensability or amount"; and because of the failure to raise it, it will not be addressed. *See Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998) (citing *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995)).

C. Additional Treatment

Introduction. Claimant has also asserted that he is entitled to additional treatment of both of his compensable injuries. Respondents dispute this.

Standards. Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown*, *supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). A claimant is not required to furnish objective medical evidence of his continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness's credibility and how much weight to accord to that person's testimony

are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id*. In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id*.

Evidence-Previous Hearing. The evidence adduced in the 2019 hearing was outlined and addressed in the opinion thereon as follows:

> In his testimony, Claimant–who completed the eleventh grade and has a graduate equivalency degree–related that he works for Respondent Vilonia Waterworks Association ("Vilonia Waterworks") as a Grade 4 Water Operator. He described his job there as follows:
>
> > We do connects, meaning–or tickets, meaning that, you know, like connects, turn people's water on and off, seeing if they have a leak. Just anything a customer has a question about their water, we go out there and check. If we have a leak on our line, we have two crews of trackhoes, and we go out there and dig and fix water leaks. Also set meters for new houses, new constructions, set new meters for that. We also read meters. So every month, around the 26th of every month, we read meters. We have over–right around 10,000 meters. I believe we have five or six routes. My route is 1,400 meters. Other than that, just anything that needs to be done regarding water.
>
> As the parties have stipulated, he was involved in a work-related motor vehicle accident on June 26, 2017. Claimant described what occurred:
>
> > Me and a co-worker were reading meters, and we were headed to the next meter and a lady pulled out of her driveway as–she pulled out the opposite way we were going. We were headed east; she was headed west. And it's a

> narrow road, and she just pulled out without looking, and I pushed her back in her driveway, and I kind of bounced around, hit my knees on the truck . . . [s]o it was basically a head-on collision with her. I pushed her out of the way and ended up into the–I hit two trees, and that's where the truck stopped.

His truck's speed at the time of the collision was approximately 40 to 45 miles per hour. The force of the impact totaled both vehicles; it knocked the front axle off of the Vilonia Waterworks vehicle and caved in the left side. Claimant added:

> I believe that [being stricken by the side mirror, which was sheered off by the impact] might've knocked me out just for a split second, the reason why I couldn't stop before hitting the trees. During that time, I was bouncing up and down. I hit my knee on the–my left knee on the dash, on the under part of the dash. I was jerked around. I had my seatbelt on. I was jerked around, going back and forth because of the collision with the vehicle and then also with the collision with the tree. And I was in all different types of positions because of the impact. I bounced up on–I bounced up, nearly hit my head on top of the roof of the truck.

His knee ended up nearly touching his chest–stopped only by the dash. At the same time, Claimant was hunched over because his seat belt did not catch right away.

Claimant is 29 years old and has led an active life. Prior to the head-on collision, he never had undergone any treatment of his hip. He was able to walk and run without difficulty. Moreover, he was able to perform the physical aspects of his job without any problems. Jeff Ruple and Josh McReynolds, his supervisors, and the General Manager of the waterworks, Cecil McMurtry, confirmed this, with McReynolds stating that before the head-on collision, Claimant "was one of the first people to–he would knock people out of the way to get down to be the one to fix the leak." He had no difficulty lifting heavier objects at that point in time. The elder McMurtry concurred, stating that his son (and Ruple) regularly had to work extra hours on the weekend with no problems.

After the accident, he treated with, inter alia, Dr. Justin Seale. This treatment included physical therapy. While he was

having difficulty walking after the wreck, it was during the second round of therapy that he noticed a problem with his left hip. He related:

> I had trouble walking and had a little bit of pain, but it wasn't that bad until the second physical therapy, because I was released from [Dr.] Reynolds then [concerning the left shoulder], and she [the therapist] focused all on my back this time. So I was doing exercises for my back, which meant different–since I was no longer doing the shoulder exercises, so that changed where I was lifting my leg, both legs, and having to like go knee to chest for my back strengthening and a lot more like being on my knees and stretching out my legs and stuff like that for strengthening my back, and that's when I noticed, the first day of the second physical therapy, that's when I noticed something definitely was wrong with my hip. I then tried to call Patrice Baker [the adjustor].

In explaining his symptoms, he described experiencing an "agonizing pain" in the area of his left hip and groin. He denied having an accident or any type of injury between the time of the collision and the time he first experienced this sensation in physical therapy. Ruple agreed with this in his testimony.

After multiple failed attempts to reach Baker, which began in the first or second week of September 2017, Claimant finally heard from her one week before his scheduled return visit to Dr. Seale on October 23, 2017. She told him to bring up the matter with Seale. He continued:

> The exercises that bothered me as far as my hip, and I was still doing the lifting of the weights and stuff, that was part of it also, but I would lay on my back and I would go knee to chest with my legs, and I just couldn't do it. I could do it with my right leg, not my left leg. I mean, I couldn't do it. I was in a tremendous amount of pain whenever I did . . . So after that first day of physical therapy, I missed the next two physical therapy dates because my hip was weak and I was in pain and I just couldn't do the exercises.

More weakness and difficulty walking coincided with this therapy.

Once Claimant presented to Seale with his left hip problem, the doctor had him undergo an MRI. This test revealed, inter alia, a labral tear. Seale referred Claimant to Dr. James Tucker. After their November 7, 2017 visit–during which time the MRI was discussed–Tucker had Claimant return in three months. He released Claimant to full duty as well. Claimant acknowledged that as reflected in the record of that visit, Dr. Tucker informed him that his hip condition was not a work-related injury. However, he denied that Dr. Seale told him this. He did acknowledge that Seale wrote in the record that "[Claimant] and his mother understand that this [the hip condition] may not be related to his work injury."

During this interim–from the November 7, 2017 release by Tucker until the work-related incident on January 11, 2018–Claimant worked. Asked to describe his condition during that time, he replied: "Even though I was on–even though I wasn't on restricted duties, I did not do my full job . . . I was still weak and had difficulty walking, getting in and out of trucks, doing shovel work. Everything that my job is I had trouble–I had difficulty doing." Co-workers assisted him. He was not able to drive a vehicle to read meters, because it required him to, among other things, exit the vehicle left leg-first. But he was able to ride in the front of the vehicle on the right side and read meters on the right side of the street. The elder Mr. McMurtry and McReynolds corroborated Claimant's testimony that he was having difficulty doing his job after he returned to work following the collision. Mr. McMurtry testified that during this period, Claimant's "stride was shorter. From what I noticed, he kind of favored–favored that [left] leg."

Claimant returned to Dr. Tucker in February 2018. He scheduled Claimant for a CT scan of the hip. Thereafter, on March 5, 2018, Tucker performed hip surgery to repair the torn labrum. Claimant returned to work on July 22, 2018. But because he was experiencing numbness and tingling going down his leg, he went back to the doctor. Dr. Tucker performed another hip surgery on November 19, 2018.

The medical records in evidence reflect that on October 23, 2017, Claimant told Dr. Seale that "[d]uring therapy he developed anterior hip pain with the exercises. He does report some hip pain at the time of the accident but is unsure if it is anterior hip pain." Seale recommended an MRI of the left hip. Per Dr. Michael Kendrick, who read the MRI, it showed:

> IMPRESSION:
> Q. No acute findings.
> R. Possible healed fracture versus sessile osteochondroma at the medial aspect of the femoral neck.
> S. Lack of femoral head neck junction cut back of the left with an associated anterior superior labral tear. These findings can be seen with femoral acetabular impingement, if clinically compatible.

Dr. Seale saw Claimant on October 30, 2017, stated that he "has normal findings in the left hip."

Claimant told Dr. Tucker on November 7, 2017 that his hip symptoms began with the June 26, 2017 motor vehicle accident. X-rays of the hip were normal. The doctor assessed Claimant as having femoroacetabular impingement and osteochondroma in the left hip and wrote:

> There is no acute injury to the hip related to his work injury. We will release him to full duty. I will see him back in 3 months, at which time his workers' comp issues will be resolved. We will then proceed with left hip arthroscopy with labral repair and femoroplasty. Again, this is not related to his work injury.

On February 9, 2018 Tucker recommended that he undergo a CT scan of the hip and stated: "At his last appointment, I discussed with Brandon that his issues were unrelated to his work injury but that they would need to be addressed at a later point." The CT scan, performed that same day, was found by Dr. Kathleen Sitarik to show "[b]ony excrescence compatible with osteochondroma medial aspect femoral neck." Tucker on February 13, 2018 wrote that the scan showed a "CAM lesion, indicative of CAM-type femoroacetabular impingement and a benign osteochondroma." They agreed to proceed with surgery.

Dr. Tucker operated on March 5, 2018, performing a femoroplasty and a labral repair. While the pre-operative diagnosis was only femoroacetabular impingement, left hip, the post-operative diagnoses specified that the impingement was a CAM-type; Tucker added that Claimant had a labral tear of the left hip.

As of July 20, 2018, the doctor prescribed an additional two months of physical therapy.

Claimant again presented to Dr. Tucker with left hip pain on October 2, 2018. He ordered a second CT scan. This scan, per Tucker on October 17, 2018, "show[ed] a very large sessile osteochondroma, which is likely causing impingement of the iliopsoas tendon." A second surgical procedure took place on November 19, 2018. In that instance, Dr. Tucker performed a diagnostic arthroscopy of the hip and a resection of an osteochondroma on the femoral neck. Claimant reported to the doctor on January 4, 2019 that about a week prior, he experienced left hip pain. But an epidural steroid injection into the back at that time alleviated it. Tucker gave Claimant work restrictions of no squatting or heavy lifting.

In a return visit to Dr. Tucker on May 24, 2019, six months after the second surgery, the doctor examined him and wrote: **"The labral tear that the patient had that we treated with repair and snip, was consistent with a hyperflexion injury from a motor vehicle accident."** (Emphasis added)

In this case, the evidence is clear that Claimant has objective findings of an injury to his left hip in the form of, inter alia, a labral tear. I credit Claimant's testimony that the mechanism of his injury was the stipulated work-related head-on motor vehicle collision that took place on June 26, 2017. The incident is identifiable by time and place of occurrence. Moreover, the hip injury caused internal or external physical harm to his body and required medical services.

Respondents have attempted to cast doubt on the above, arguing that Claimant did not complain about his hip until around three months after the accident. But the October 23, 2017 report by Dr. Seale confirms that Claimant told him that he experienced " some hip pain at the time of the accident but is unsure if it is anterior hip pain." He also told Dr. Tucker his belief that the hip condition was the result of the accident. I credit Claimant's testimony that he was not having any hip problems prior to the accident. In addition, I credit his testimony that he had been having trouble walking since the accident. As the evidence reflects, the hip injury merely became more pronounced later, during physical

therapy, when the maneuvers being performed then–manipulation of the left lower extremity–made it clear that something was wrong.

Respondents have also highlighted statements/opinions by certain of Claimant's treating physicians in the medical records to show that Claimant's hip injury is not work-related. First, they have pointed out that Dr. Seale on October 30, 2017 stated that the hip condition "may not be related to his work injury." Certainly, this does not conform with the standards governing medical opinions regarding causation. *See infra*. But curiously, Seale also stated that the hip MRI was "normal," when it certainly was not. It showed, inter alia, a labral tear. Kendrick, who read the MRI, wrote that a labral tear "can be seen with femoral acetabular impingement, if clinically compatible." But as Dr. Tucker, who actually operated on the hip, wrote, "[t]he labral tear that the patient had that we treated with repair and snip, was consistent with a hyperflexion injury from a motor vehicle accident." Claimant's testimony at the hearing concerning what occurred when his work truck collided with the other vehicle (and, thereafter, trees) on June 26, 2017 readily show that he hyperflexed his left hip at that time.

Respondents have attacked the May 24, 2019 opinion by Tucker quoted above, asserting that it was not given within a reasonable degree of medical certainty. In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examination medical opinions concerning causation:

> Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes

> that work was the reasonable cause of the injury, this evidence should pass muster. *See, Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

Respondents are correct that the above statement—particularly the phrasing "was consistent"–falls short of the standard applied to causation opinions. But while I cannot credit the above as an opinion without a reasonable degree of medical certainty that the accident caused the torn labrum–which was not the opinion that the doctor was offering–I nonetheless credit the opinion that he did give: that the injury Claimant suffered is consistent with hyperflexion. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). The evidence preponderates that Claimant suffered a hyperflexion injury in the June 26, 2017 accident that resulted in the torn labrum.

Also, Respondents have posited that the above opinion is not worthy of credit because "[i]t was also written more than fourteen months after the [surgery] and contradicts Dr. Tucker's own testimony at the time of the surgery." Respondents' Brief at 2. Nothing before me shows that Tucker has given any testimony. Furthermore, the opinion statement concerning hyperflexion was the only opinion offered by the doctor on this matter since he actually viewed the hip during surgery. That the statement was given much later is of no consequence; Tucker made it in the course of an appointment with Claimant, during which he examined him and had the medical records. Respondents' arguments on this point are thus without merit.

As for the other conditions of Claimant's hip disclosed by the surgery and radiological findings that may have been chronic and/or pre-existing–the femoroacetabular impingement and a benign osteochondroma–an employer under the Arkansas Workers' Compensation Act takes an employee as the employer finds him.

Employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Comm. v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the infirmity to produce the disability for which compensation is sought. *St. Vincent Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). "An aggravation, being an new injury with an independent cause, must meet the requirements for a compensable injury." *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). This includes the prerequisite that the alleged injury be shown by medical evidence supported by objective findings. *See Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). These standards have been met here.

In sum, Claimant has proven by a preponderance of the evidence that he sustained a compensable injury by specific incident to his left hip.

. . .

Claimant has contended that he is entitled to reasonable and necessary medical treatment of his alleged hip injury, and to additional treatment of his stipulated compensable back injury. Respondents disagree.

. . .

Claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment of his compensable left hip injury as set out in the above-quoted statute. Moreover, I have reviewed Claimant's Exhibit 1 and Respondents Exhibit 1, and I find that all of the treatment of the injury reflected therein was reasonable and necessary.

As for his back, his credible testimony was that he never had any back problems before the June 2017 head-on collision. The credible testimony of his co-workers corroborates this. After the wreck occurred, he was provided with, inter alia, two stints of physical therapy that each lasted for six weeks. He was released from treatment on October 23, 2017. Thereafter, Claimant

petitioned the Commission for a one-time change of physician. He was sent to Dr. Mark Miedema on February 7, 2018. The doctor gave him an injection.

But before this, on January 11, 2018–as the parties have stipulated–Claimant had injured his back again while at work. He related that on the day, the waterworks crew was trying to repair a blowout on a 12-inch pipe. Claimant and McReynolds went to retrieve a water pump to remove the water from the excavated hole. According to the elder Mr. McMurtry, had Claimant not been still dealing with the aftermath of the head-on collision, he would have been working in the hole on the leak instead of retrieving parts. Claimant in his testimony continued:

> Water pump sits on the trailer that we carry the trackhoe around it. It's in a special little spot and has bars around it, so whenever you're driving, it don't fall off the trailer. So you have to lift it up . . . [m]e and Josh got ahold of it and lifted it up on the bar where it stays . . . [t]hen we both get another grip on it because it's in a weird position, so you sit on that bar and let it–let you get another grip on it, then you pick it back up. When I picked it back up, my back popped and I dropped it, dropped the pump. And I went over there and told Jeff [Ruple] what happened.

In his testimony, McReynolds corroborated the above account, and added that after this incident, Claimant "could barely walk. It was very bad." Ruple confirmed that Claimant reported the injury to him.

Claimant first saw his primary care physician, Dr. Joe Buford. This took place on January 15, 2018. The doctor recommended that he undergo an MRI. He went back to Miedema on February 13, 2018, and was released from treatment that same day following another injection. That was the last treatment that Respondents provided. Since then, he has continued to treat on his own. Patrice Baker, the claims analyst for Respondent Arkansas Municipal League, testified that she was unaware that he had been doing this. She further denied that Claimant or anyone on his behalf asked Respondents to cover any treatment for his back on and after February 2018.

Despite the release, Claimant testified that his back was still bothering him. Asked to describe his hip and back condition at the time he went back to work on February 16, 2018, Claimant responded:

> [I]t was hard to walk. I couldn't–I couldn't hardly bend down. I couldn't lean over. If I leaned over, it took me about two or three minutes just to get up straight again. I couldn't squat. I couldn't–I couldn't basically do anything end [sic]–do–do anything bending, twisting, squatting, anything of that nature.

When Claimant went back to work on July 22, 2018 following his release in connection with his first hip surgery, he was still having trouble with his back. In describing his condition after his release following the second hip surgery, Claimant stated: "Still weak in the hip. Back was the worst." He added that his back condition has continued to worsen since the pump-lifting incident. The elder Mr. McMurtry and McReynolds confirmed this, with the latter adding that Claimant limps and is "lagging" when he walks now. Ruple described Claimant as now "favoring" his back when working. Despite this, according to the elder Mr. McMurtry, Claimant has not violated his 20-pound lifting restriction.

He has treated with Dr. Krishnappa Prasad, beginning on February 13, 2019. Prasad–a pain management physician–has administered two epidural injections at L5-S1 and has assigned him a 20-pound lifting restriction. Moreover, he has gone to Dr. Jonathan Reding, a neurosurgeon. He has undergone another lumbar MRI. But Reding has not recommended surgery. The following exchange occurred:

> Q. Have you had any improvement of your back since January the 11th, 2018?
>
> A. Yes.
>
> Q. You have had some improvement?
>
> A. Ever since the epidural injections, yes.
>
> Q. What's your condition when they wear off?

> A. They usually only last about two weeks and then it's back to–I don't know, I mean, it feels a little better, but it's kind of like the pain slowly, gradually comes back, and back to where I can't bend over, and like where it takes me more time to get back up straight . . . .

The other physicians that Claimant has seen concerning his back include Dr. Elizabeth Sullivan, in December of 2018. While she also administered an epidural steroid injection, Claimant remarked that the site of the injection was where he hurt the least. Dr. Jasen Chi, a rheumatologist, referred him to Sullivan. A physical therapist, in turn, had been the one to refer him to Chi.

The medical records in evidence show that Claimant's July 13, 2017 lumbar MRI showed no acute fracture or dislocation, but did reflect, inter alia, a Schmorl's node at T11-12 that "appear[ed] to be acute," per Dr. Jodi Barboza. Barboza wrote elsewhere in the report that the minimal edema in this area made it "likely from an acute development of a Schmorl's node." Despite this, Dr. Seale on October 23, 2017 wrote that Claimant had "[a]xial back pain without objective findings of injury and found him to be at maximum medical improvement concerning the spine. On October 30, 2017, Seale found that Claimant was not entitled to an impairment rating regarding his back "because [there were] no objective findings of injury and the spine."

Another lumber MRI on January 23, 2018 reflected that same findings as the one taken in July 2017. Dr. Miedema on February 7, 2018 wrote that the July 2017 MRI was "essentially normal with some mild disc dessication at the L5-S1 level but no disc herniation or neurocompressive lesions." He made the same remarks about the January 2018 MRI. Miedema stated:

> I think it is more likely than not that he had a strain of the interspinous ligament at L1-2 as a result of the motor vehicle accident on 06/26/17 which has been causing ongoing pain despite conservative treatments. We will proceed with an L1-2 interspinous ligament injection today.

He took pains to note that he was finding Claimant to be at maximum medical improvement only with respect to the June 26,

2017 injury–he was not asked to address the January 11, 2018 one.

But in a subsequent visit on February 13, 2018, Dr. Miedema did address the pump-lifting incident. He again noted that the January 2018 lumbar MRI was "essentially normal," found him to have reached maximum medical improvement with no impairment, and added:

> I think it is more likely than not that he had a strain of the interspinous ligament at L1-2. We will proceed with a repeat L1-2 interspinous ligament injection today . . . I encouraged him that his MRI was normal and that he should continue to improve. Related to his work injury which occurred on 1/11/18 I do think he has reached maximal medical improvement and that he can return to work without restriction and his impairment rating is 0%.

A November 7, 2018 thoracic MRI showed, per Dr. Ryan Fitzgerald, "[m]ultiple small nonacute interbody disc herniations (Schmorl's nodes)."

Dr. Elizabeth Sullivan saw Claimant on December 18, 2018. She recommended that he undergo facet injections.

Claimant went to Dr. Prasad on February 13, 2019. Although the history taken reflects that Claimant was involved in a motor vehicle accident both in June 2017 and in January 2018, the latter unquestionably refers to the pump-lifting incident. He rated his mid/low back pain as averaging 8/10. The examination found that he had pain with lumbar extension, along with pain with palpation of the lumbar disc spaces. Prasad diagnosed him as having, inter alia, chronic pain syndrome, a bulge of the lumbar disc without myelopathy, discogenic thoracic pain. He was prescribed Nucynta plus a lumbar-sacral brace. In a return visit to Prasad on February 25, 2019, Claimant rated his pain as averaging 7/10. The doctor increased his Nucynta dosage and recommended a lumbar epidural steroid injection at L5-S1. On April 3, 2019, Claimant was prescribed Hydrocodone. As of May 7, 2019, Claimant was presenting with back pain averaging 7/10. A second lumbar epidural steroid injection was scheduled, and Claimant was given a 20-pound lifting restriction.

On May 29, 2019, Claimant saw Hannah Ellis, APRN. She ordered another lumbar MRI. The test, administered on June 6, 2019, reflected, inter alia, a mild concentric bulge and a broad-based protrusion at L5-S1. Claimant went to Dr. Jonathan Reding on June 19, 2019. He read the most recent MRI to show no nerve root compression. The doctor wrote: "I do not recommend any surgical intervention and continue with pain management."

Claimant reported to Michelle Parish, APRN, on June 24, 2019, that his back pain was averaging 7/10. Parish continued him on pain management, taking him off Hydrocodone and adding Mobic, and gave him a 20-pound lifting restriction. On July 25, 2019, she recommended that he undergo a third epidural steroid injection.

While, per Dr. Miedema, Claimant reached maximum medical improvement concerning his back as of February 13, 2018, as the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex*, *supra*.

I credit Claimant's testimony, which was corroborated, concerning his present back problems. The evidence preponderates that all of the treatment for his back that he has undergone, as documented in the medical records in evidence, is causally related to the stipulated compensable back injury. *See supra; Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. This includes the medications and injections that have constituted pain management. Furthermore, he has proven by a preponderance of the evidence that he is entitled to the recommended additional treatment of this nature, at the expense of Respondents.

Evidence-Current Hearing. Claimant testified that after he returned to work in January 2019, the first doctor that he saw regarding his back was Dr. Krishnappa

Prasad. There, he was given injections and was prescribed medication and a back brace. The medications included Percocet, Hydrocodone, muscle relaxers, and sleeping aids (the pain medications caused him to suffer from insomnia). The procedures included multiple steroid injections and a nerve ablation. In June 2019, he underwent a lumbar MRI, and was referred by Dr. Amar Qureshi of Arkansas Spine and Pain to a neurosurgeon at UAMS. It took a while him to be able to see the neurosurgeon. In the meantime, until February 6, 2020, he continued to treat with Prasad's clinic, Arkansas Spine and Pain.

Questioned about his condition during this period, he stated:

> Definitely I want to say I got weaker. I mean, I definitely wasn't lifting anything that would make me stronger. I was weaker from the hip surgeries. I was weaker from those steroid injections and the back brace. You wear a back brace long enough, it does weaken your muscles, which could cause a problem. You know, it just worsened over time as it got longer.

Eventually, in December 2020, Claimant saw Dr. Johnathan Goree at UAMS regarding his back. Claimant denied doing anything to re-injure his back. After he was terminated from his position at the water department, Claimant began treating for his back two to three times per week with Dr. Chad Bryant, a chiropractor. Claimant eventually began to see him nearly every day. Goree has recommended that he have a ReActiv8 implantable neurostimulation system. Claimant explained that the device "goes through your muscles instead of your spine and rehabilitates the damaged muscles in your lumbar spine." While Claimant has been awaiting approval for this—pending the outcome of this proceeding—he has been going to Bryant. The

chiropractic treatment has afforded him temporary relief. He has a return appointment with Dr. Goree on September 20, 2022.

The testimony of Claimant was that his private health insurance covered both his chiropractic care and his visits to UAMS. He did not speak to anyone at Respondent Arkansas Municipal League about them.

With respect to his hip, Claimant testified that he returned to Dr. Tucker in May 2020, because he was having pain. The pain has been continuous since his first hip surgery. Along with this, he has experienced weakness in his left hip and leg. Claimant denied having done anything to reinjure that area. Tucker administered steroid injections to the hip before ultimately recommending an additional operation. The surgical procedure took place in August 2020. Thereafter, until December of that year, he underwent physical therapy. However, Claimant informed Dr. Tucker that his hip was worse after the surgery. Until October of 2021, he did not treat for his hip. The reason for this was Claimant's understanding at that point that nothing more could be done for him.

On December 30, 2021, he underwent another hip procedure. This was to treat his osteochondritis and to repair a labral tear. He experienced a complication from this in the form of a hematoma. As a result, he had to undergo yet another operation on his left hip. The surgeon in this instance had to make an incision and drain the area. Claimant had an MRI of the hip in 2022. He last saw Dr. Tucker on July 13, 2022. The visit was delayed because Claimant contracted COVID. Claimant has osteoarthritis in

the hip. The condition has not improved since he went back to work in January 2019. He has two injections left to undergo from a series of three that the doctor ordered.

Asked about the six-month gap in treatment of his hip from November 2019 to June 2020, Claimant explained:

> I was already off of work, and I was still in pain and still having a lot of weakness, but I wasn't at work hurting myself anymore just being at work. I was able—I was on medication for my back, which also relates to the hip. I went in whenever I felt necessary to, when I knew there was a for-sure problem, instead of wasting the doctor's time.

The medical records in evidence show that Claimant continued to treat at Arkansas Spine and Pain for pain management. He presented on September 9, 2019, with back pain ranging in severity from 6/10 to 10/10. Claimant was assessed as having chronic pain syndrome, along with lumbar radiculopathy and spondylosis, a lumbar disc bulge without myelopathy, discogenic thoracic pain, and enthesopathy of the left hip region. A lumbar epidural steroid injection was scheduled. Reports in the succeeding months show that he was prescribed, at various times, Tylenol-Codeine, Baclofen, Butrans, Amitriptyline, Tramadol, Percocet, and Meloxicam. He was continued on a 20-pound lifting restriction by Michelle Ann Parish, ARPN.

With respect to his hip, Claimant reported to Dr. Tucker on November 22, 2019, that he was "doing fairly well overall." X-rays showed no arthritic changes. Tucker wrote that Claimant was "doing well."

On March 11, 2020, Claimant began treating with Chad Bryant, D.C. A series of 20 visits are documented in the records in evidence. He presented with lower back

pain of 7/10 in intensity that began in January 2018 after he lifted a heavy pump at work. Claimant informed Bryant that his pain started to worsen in January 2020. He also complained of left hip pain that had "c[o]me on gradually" but was "progressively getting worse." Claimant rated his hip pain as 4/10. Dr. Bryant palpated spasms on both sides of the lumbar and sacral spine, along with subluxation at L1, L4 and L5. The treatments that Bryant recommended and administered included, inter alia, chiropractic adjustments and electric muscle stimulation.

On June 30, 2020, Claimant underwent an intra-articular steroid injection by Dr. Victor Vargas into the left coxa femoral joint. He also underwent an MRI of the left hip, which Dr. Tucker wrote showed no signs of a recurrent labral tear. The doctor added: "We will put him in a light-duty no climbing extended standing pushing or pulling [sic]." Later, Claimant reported to Tucker that the injection only gave him two days of relief.

Dr. Tucker recommended a diagnostic arthroscopy of the left hip with a resection of capsular scarring. This procedure took place on August 5, 2020. Claimant was given post-operative diagnoses of a labral tear, capsular labral adhesions, and femoral acetabular impingement. The operative notes reflect that Tucker found the labrum was torn anteriorly, and also that "[t]here was dense scarring between the labrum and capsule . . . ." Claimant told Tucker on December 3, 2020, that "his left hip feels about the same or even a little worse than before surgery." The report also reads:

> [Claimant] indicates he was initially much better after surgery but now is having increasing problems[. H]e has pain with flexion and internal and

> external rotation[. H]e has limited range of motion [and] has welling in the lower extremity along with burning type pain.

The doctor noted that x-rays of the hip did not show advancing arthritis or joint space narrowing. He recommended a bone scan to rule out complex regional pain syndrome, along with another MRI of the joint. Tucker gave Claimant restrictions of "[n]o lifting, squatting, pushing, pulling or twisting." Neither the bone scan nor the MRI showed any signs of obvious pathology, per Dr. Tucker. The doctor on December 17, 2020, wrote: "At this point I think the only thing that is going to improve [Claimant's] symptoms is getting his core and hip in better shape to stabilize and D rotate the pelvis's [sic] . . . ."

On December 29, 2020, Claimant went to Dr. Johnathan Goree. The doctor, following examination, assessed him as having axial back pain; chronic pain syndrome; and paraspinal, multifidus, and quadratus degeneration. Claimant presented to him on March 30, 2021, with back pain of 9/10. Goree wrote that he thought that Claimant would be "a great candidate for Reactiv8."

On October 8, 2021, Claimant reported to Dr. Tucker that "he has been having hip pain again for the past 3 to 4 months and it just keeps progressively getting worse." The report reads in pertinent part:

> Assessment/Plan
> He presents back is continued to have pain in his left hip he has an osteochondroma which we have done arthroscopic resection on because of the impingement caused however he still has bone remaining posterior medially from the osteochondroma. His pain is predominantly in the groin. He has numbness in the right leg extending from the head of the fibula distally distribution is also has weakness and difficulty with dorsiflexion of the foot.

> . . .
>
> We discussed that if we are going to remove any more of the osteochondroma it would have to be done with an open surgery. We need a CT scan to assess that this we[']re going to obtain a CT scan of the left hip He also appears to have peroneal nerve compression of the fibular head so we[']re going to obtain an EMG nerve conduction study. We will follow him up with a telemedicine visit once that is complete. [Sic]

That same day, Tucker assigned Claimant restrictions of no lifting, pushing, pulling, squatting, climbing, or bending. Later, on November 17, 2021, Tucker wrote:

> I saw Brandon McMurtry in the office today.
>
> Please excuse Brandon for 11/27/2021. It is my medical opinion Brandon needs to undergo surgery for a[n] osteochondroma resection.
>
> He is scheduled for a left femoral neck osteochondroma resect [f]or 12/30/2021[.]

On December 30, 2021, Dr. Tucker operated as he outlined above, performing an open resection of a femoral osteochondroma in the femoral neck of the left hip. The surgery confirmed the diagnosis of this osteochondroma. Tucker took Claimant off work for three months in a note dated January 3, 2022. On January 12, 2022, he amended this to restart the three-month period. The reason for this is because on January 13, 2022, Dr. Eric Gordon had to operate on the hip to drain and debride a hematoma that had developed on its anterior aspect. Claimant reported to Tucker on January 18, 2022, that he was "doing okay."

Claimant saw Dr. Drake Hardy on February 8, 2022, presenting with back pain of 6/10-7/10, but 10/10 at times. He reported that the ReActiv8 had been denied. Per Claimant, only Prednisone, Norco, his back brace, and chiropractic treatment had

helped. The doctor assessed him as likely having a multifidus dysfunction, and recommended that a Mainstay device (the ReActiv8) be considered. Goree on that date wrote that but for the instant claim, Claimant "would qualify for the Mainstay study . . . ." Claimant told Dr. Tucker on February 15, 2022, that he still had significant weakness in the left lower extremity. He was continued in physical therapy.

When Claimant went back to Tucker's office on March 11, 2022, and saw Tristan Jenkins, P.A., he reported that he "doing okay." But his pain had not improved. Jenkins wrote:

> Continued left hip pain. He has had 5 previous surgeries prior to this including arthroscopies of the left hip. He is worried he has another labral tear. I offered an intra-articular steroid injection today but he says he had 1 of these about 6 months ago that did not give any pain relief. He would like to move forward with an MRI to evaluate for repeat labral tear. We will get this done and see him back after this.

Per the report, the March 24, 2022, MRI showed:

> Low-grade articular cartilage loss in the left hip joint with small curtain osteophytes.
>
> No evidence for labral tear or re-tear.
>
> Small left hip joint effusion is likely reactive.
>
> Postsurgical artifact and/or scarring within the anterior soft tissues. Mild apparent edema in the rectus femoris musculotendinous junction is either artifactual or secondary to low-grade strain.
>
> Mild left iliopsoas and gluteus minimus tendinosis.
>
> Trace edema in the left trochanteric bursa is likely reactive or secondary to low-grade bursitis.

Tucker reviewed this and wrote on March 29, 2022:

> His MRI shows no sign of a recurrent tear in the left hip it does show some muscle atrophy and tendinitis . . . [b]ecause he does continue to have some muscle atrophy we are going to continue him in therapy and limit him to no climbing or lifting over 25 pounds will work on getting his hip strengthening.

Tucker on April 6, 2022, gave Claimant restrictions of no climbing, squatting, twisting, excessive bending, or lifting of over 25 pounds. That same day, Tucker wrote a letter to Amanda Blair of Respondent Arkansas Municipal League that reads:

> In regards to your letter dated January 3, 2022, concerning the above patient [Claimant], please find my answers below:
>
> The injury from 2017 on the left hip is not the cause of the need for surgery and is not related to the right leg numbness and weakness. Other than the patient attending two physical therapy sessions at our office, there was no treatment or physician visits between December 2020 and October 2021. There was no new injury reported or noted from the December 2020 visit to the October 2021 visit. My treatment of the left hip on Mr. McMurtry has not been related to the injury in 2017.
>
> IMPAIRMENT RATING
> The patient was placed at MMI as of December 2020. According to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Mr. McMurtry has a 0% partial impairment of the left hip associated with his work-related injury. These statements are made with a reasonable degree of medical certainty.

Per the medical records in evidence, Dr. Tucker last saw Claimant on July 13, 2022. He wrote:

> [Claimant] presents back today with continued left hip pain we have a recent MRI which shows no signs of a tear only mild degenerative changes. On exam today he is tender over the greater trochanteric bursa and has a snapping iliopsoas. We discussed this we[']re going to get him set up for a greater trochanteric bursa injection and possibly an iliac psoas injection later. We obtain[ed] 4 view x-rays today that showed no progression of any of the degenerative changes and no recurrence of his impingement. He has been treated long-term with hydrocodone for his

> back and hip. I discussed this with him today we cannot treat long-term pain he will have to see his pain physician for this. I am giving him a prescription for Talwin NX until he follows up with his pain physician. We are also going to set him up for the injections.

Discussion. Initially, Respondents have argued that they are not liable for any of Claimant's hip treatment after the October 28, 2019, administrative law judge opinion, or for any of his back treatment after February 13, 2018, because any such treatment was unauthorized.

Under Ark. Code Ann. § 11-9-514(b)-(c) & (f) (Repl. 2012):

> (b) Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing [the choice and change-of-physician rules in Subsection (a), except emergency treatment, shall be at the claimant's expense.
>
> (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 expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.
>
> . . .
>
> (f) When compensability is controverted, subsection (b) of this section shall not apply if:
>
> (1) The employee requests medical assistance in writing prior to seeking the same as a result of an alleged compensable injury;

> (2) The employer refuses to refer the employee to a medical provider within forty-eight (48) hours after a written request as provided above;
>
> (3) The alleged injury is later founded to be a compensable injury; and
>
> (4) The employer has not made a previous offer of medical treatment.

Subsection (c)(2) makes it clear that neither (b) nor (f) (applicable to the controverted hip injury) comes into play if Claimant was not furnished with the change-of-physician rules. In *St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman*, 2012 Ark. App. 475, the Arkansas Court of Appeals explained:

> Although St. Edward admitted a copy of the signed AR-N form, it made no argument related to the change-of-physician rules. Moreover, we have said that the burden of proving *delivery* of the change-of-physician form is on the employer, *St. Edward Mercy Med. Ctr. v. Phipps*, 2011 Ark. App. 497 (emphasis added), and we have also held that merely signing the AR-N form is not necessarily proof that it was "furnished and delivered" to the claimant as required by statute. *See Nettleton Sch. Dist. v. Adams*, 2010 Ark. App. 3 (Commission credited claimant's testimony that although she signed the form she was not provided a copy and thus was unable to examine the change-of-physician procedure printed on the back of the form, and we affirmed award of additional medical care). Pursuant to Ark. Code Ann. § 11-9-514(c)(2), if, after notice of injury, the employee is not furnished a copy of the notice, the change-of-physician rules do not apply.

In the instant case, the front pages of the two Forms AR-N regarding these claims were introduced into evidence both in the first and second hearings. But the second or reverse pages of the forms were not introduced. As Respondents have pointed out, the front page of the form states that it is a two-sided form, and that Claimant (as reflected on page 2 of Respondents' Exhibit 2) signed a report with regard

to his back injury on July 18, 2017, that states "I, Brandon [handwritten], received this day, a copy (front and back) of the Arkansas Workers' Compensation Form AR-N." However, nothing before me, whether by testimony or document, shows what the backs of those forms appeared or purported to be. In fact, it is unknown if the back sides were simply blank. I am not allowed to engage in speculation and conjecture. *See Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). In sum, Respondents have not met their burden under *Phipps* and *Chrisman*, *supra*, of proving that the change-of-physician rules were delivered to Claimant. Consequently, their authorization argument cannot prevail.

Moreover, after having reviewed all of the treatment of Claimant's compensable back injuries that is in evidence, including the ReActiv8 recommendation, I find that all of it is/was causally related to these injuries. He has proven by a preponderance of the evidence that all of it is/was reasonable and necessary. Respondents are thus liable for all of this treatment.

As for the left hip treatment, I credit Dr. Tucker's opinion that the compensable June 26, 2017, injury was not the cause of Claimant's need for surgery. *See Poulan Weed Eater*, *supra*. The context clearly shows that the doctor is referring to the December 30, 2021, and January 13, 2022, surgical procedures. In rendering this opinion, Tucker correctly pointed out that there was an approximate ten-month gap in hip treatment, from December 2020 to October 2021, save two therapy appointments. In making this finding, I am mindful of Claimant's testimony that he did not re-injure his

hip during this interim (which his father corroborated), and that the reason for the gap was his belief that nothing more could be done for him. But I note that the medical report from October 8, 2021, reflects that Claimant at that time only "ha[d] been having hip pain again for the past 3 to 4 months . . . ." Also, the December 17, 2020, report by Tucker, cited above, supports the doctor's opinion. Then, an MRI and bone scan that had been performed did not "show any signs of any obvious pathology." In fact, "[t]he MRI show[ed] the hip to be very stable as far as articular cartilage loss or labrum." Therefore, Claimant has proven by a preponderance of the evidence that only the treatment of his left hip in evidence that occurred prior to October 8, 2021, was reasonable and necessary.

D. Temporary Total Disability

Introduction. As discussed above, Claimant was awarded temporary partial disability benefits following the previous hearing. Herein, he has contended that he is entitled to temporary total disability benefits. Respondents have argued otherwise.

Standards. The compensable injuries that Claimant suffered—to his back, left shoulder and left hip—are all unscheduled ones. *See* Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing

further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id*. § 11-9-501(a)(1). Claimant must prove his entitlement to temporary total disability benefits by a preponderance of the evidence. *Falcon v. NW Med. Ctr.*, 2019 Ark. App. 6, 567 S.W.3d 893.

Evidence. Before going to work for Respondent Vilonia Waterworks Association, Claimant had jobs with a supermarket and a restaurant. His water department employment began when he was 19 or 20 years old. He attended school until the eleventh grade; he does not have a graduate equivalency degree.

Claimant's testimony was that when he returned to work on January 17, 2019, he "was working full time but not full duty." He added that his duties were

> very much accommodated. The guys out in the field, if there was any type of equipment that we used that weighed probably over ten pounds, I was, I did not pick up that equipment. Any type of excess bending, twisting, any type of stuff like that I did not do. I did a lot of paperwork out in the field. Any physical work, if I was the only one there, I did what I could. I wasn't always the only one there, I always had a supervisor there, and he knew what my limits were. And I did what I could, and he accommodated my restrictions as well.

In June 2019, he was given a 20-pound lifting restriction regarding his back. This was continued in October and December of that year. During this period, Respondent employer accommodated this. From January 2019 through February 2020, he never performed full-duty work. During the last six months of this period, his duties consisted primarily of filling out paperwork.

Asked about his ability to perform his regular duties at the water department in the face of such a restriction, Claimant explained that because one gallon of water weighs over eight pounds, he could not lift much over two pounds. Since his job entailed digging in the ground to fix water leaks, he would have to shovel mud, which is heavy. Pumps such as the one that originally caused his back injury weigh at least 50 pounds. But he never lifted one again after he got hurt.

Claimant continued to go to Arkansas Spine and Pain, where he got the lifting restriction, through February 2020. At that point, he received a letter from his employer that stated that it could no longer accommodate his restrictions. He was terminated. The letter was signed by Cecil McMurtry, the general manager of Vilonia Waterworks and—as pointed out previously—Claimant's father. Prior to the issuance of this letter, Claimant was questioned at a meeting by the seven board members of the Vilonia Waterworks Association regarding the timeframe that he would be treating and would have restrictions.

As for the condition of his left hip while he was working, Claimant described it as follows:

> Very weak and painful. I mean, for me, 90 percent of that job is bending, twisting, and lifting. That's 90 percent of the job. And when you can't bend, and when you can't, you know, flex that hip muscle down into a squatting position it really, you know, you can't do much, and that's how it was. That's how I felt, because I couldn't go into a squatting position, you know. And when you fix water leaks and, you know, all the water meters are inside the ground. I mean, it's not like you can, you know, just stay standing the whole time, you have to get down on the ground. And then when you fix water leaks, you know, when we dig holes you have to, you have to bend down and get—I mean, the pipe is right there at the bottom

> of the ditch of the hole that we dig, so you're bending down to the floor, basically, to give an example. That's all you're—that's all you've got to do is one pipe is exposed. That's it. It's your job to shovel around the pipe and to squat and get down, down there with the pipe.

After undergoing his first hip surgery, Claimant rarely worked as described above. Instead, his job mainly consisted of responding to a customer who complained about a water bill by checking the meter and talking to the customer. If there was a leak to be fixed or a water meter to be set, Claimant mainly advised the rest of the crew and handed them tools.

The following exchange took place:

> Q. Did you ever gain functionality and flexibility of your hip after your surgery in November of 2018?
>
> A. No, sir.

After his December 2021 hip surgery, Claimant was given a three-month restriction of no twisting, squatting, or lifting.

According to Claimant, he moved in with his parents in mid-2020 because of his injuries. He stated that he does not do anything to help out there; he does not do any housework or yardwork, and his mother generally prepares his meals. Claimant spends most of the day lying in a hospital bed and watching television.

The following exchange occurred:

> Q. Have you been able to work since February of 2020?
>
> A. No, sir.
>
> Q. Can you make a brief statement of why you've been unable to work since you were terminated at Vilonia Waterworks?

A. You know, my back is messed up, my head [sic—presumably, "hip"] was messed up. I honestly don't think they will get much better. My back may, but not, you know, my hip is—I don't have no—

Q. Go ahead.

A. With all these restrictions, it's hard to find a job anywhere, and you know, you can't go to Vilonia Waterworks where they require—you need to be able to lift 80 pounds on a daily routine if you expect to work there, when you can't lift ten.

Q. You can't do housework, can you?

A. I cannot.

With respect to his termination, Claimant related that he was aware that it was going to take place prior to his receiving the letter in evidence that made it official. He was at the meeting where the Waterworks Association board members voted to fire him. At the time his employment ended, he was still treating at Arkansas Spine and Pain Clinic and was still under the aforementioned work restrictions pertaining to his back. But he had different restrictions regarding his left hip.

The following exchange took place:

Q. And I believe you testified you haven't worked at all since your termination, correct?

A. Correct.

Q. Have you applied for any jobs?

A. The only jobs I qualify for and ones I could get are all exceeding my limitations and restrictions or education.

Q. But is that what you perceive, they exceed your limitations?

A. Well, it could go—I have a Grade—I have a Grade 4 water operator's license. To be a water operator anywhere you have to be able to, you know, like in North Little Rock I believe it's 100 pounds daily. That's what you have to be able to lift routinely. There's no job for a water operator with my limitations or restrictions.

Q. Right. But could you do something else other than be a water operator?

A. I don't know much where, you know, prolonged sitting, standing, lifting ten pounds. I don't know many jobs that hire those restrictions.

Q. But that's your perception of what they might hire, right?

A. Well, I don't know. Every job I've looked at has a requirement, and I have not—every job I've looked at that I'm may[be] qualified for, I do not meet their requirements according to my restrictions and limitations.

Q. And just to clarify, these restrictions and limitations, are they for your back or for your hip?

A. Both.

Q. What are your current restrictions for your back?

A. No prolonged sitting, standing, no lifting ten or more pounds, no excess bending or twisting.

Q. And who put you on those restrictions?

A. I've been on those restrictions ever since I left Arkansas Spine and Pain. They had them. They had them on those restrictions and also Chad Bryant put me on those exact restrictions. Dr. Goree has me on a 20 or 25-pound lift restriction, along with Dr. Tucker. I've not been released from Dr. Tucker's restrictions.

Q. What are Dr. Tucker's restrictions?

> A. No excess bending or twisting, no squatting, no like lunging but it's a different word, I'm not sure what word it is, but it's like a lunge, and I believe no climbing.
>
> Q. So I have the last work restrictions from Tucker on March 29th of '22. "No climbing or lifting over 25 pounds." Does that sound about right?
>
> A. Yes, unless it was from an earlier restriction. There should be excess bending and twisting on there. It may be from an earlier restriction, I don't know, but all the restrictions about work.

Asked to consider his hip and back injuries separately, and to assume that he only had one or the another, Claimant nonetheless testified that either one, in and of itself, would prevent him from working. As to why his back alone is problematic, he stated: "I can't take showers, I can't stand long enough to fry eggs or stand up long enough in the bathtub to take a shower. It's going to be pretty hard for me to work." With respect to his left hip, he elaborated:

> So like my hip, it's hard to—if I was to drop a pin on the floor, it's hard to get down and get that get back up. I have a hospital bed. One of the main reasons for that is whenever I'm like sleeping at night, my leg, my hip area, it gets so stiff. I have an end table right there, right there at my bed, and I have to lift up from that hospital bed, grab ahold to that end table just to maintain balance.

No provider prescribed the hospital bed; Claimant obtained it on his own because it makes it easier for him to get in and out of bed, and because lying flat hurts his back. His testimony was that he does not use an assistive device to walk. But he uses furniture to hold himself up and maintain his balance before he begins ambulating. Claimant stated that he no longer drives. Although he admitted that part of the reason

for this is that he never liked to drive, the other reason is that his injuries require him to move around constantly when in a seated position to become more comfortable.

Called by Claimant, Cecil McMurtry ("Cecil") corroborated the testimony of his son. When Claimant was working for the Vilonia Waterworks from January 2019 forward, Cecil did not know him to violate his restrictions by lifting in excess of 20 pounds. During that time, the water meters of the association's customers were being upgraded. Claimant was part of a two-person team that changed out meters (which weighed approximately six pounds) and did paperwork in connection with this process.

Once the change-outs were completed, there was nothing more that Claimant could do that would fall within his restrictions. Cecil explained: "He couldn't do the job that needed to be done along with everybody else without lifting more than 20 pounds." The decision to terminate Claimant "was made with the Board . . . [t]here was nothing, no other position that we could take. They instructed me to get with an attorney to draft the letter." Cecil did this, and signed the letter that is in evidence. It was Cecil's testimony that he had the attorney include the wording that Dr. Prasad's restrictions could not be accommodated. He was aware that Claimant was also under restrictions from another physician. Cecil stated that even though the other restrictions were not referenced in the termination letter, they would also have been sufficient to keep him from continuing his employment at Vilonia Waterworks. However, he later added: "I was aware that there were [other restrictions], and then they were lifted and then we started the process all over again."

He elaborated regarding the normal duties that Claimant had—which he was incapable of returning to after the meter change-out project wrapped up:

> He would have been performing repairing water leaks, using a trackhoe, digging, things of that nature . . . [a]nd according to the restrictions that was put on on [sic] him by this position, he couldn't perform those duties.

Cecil explained: "In other words, we don't have a light duty position for the restrictions that were given out."

Claimant has been living with him since 2020. Cecil related that Claimant no longer engages in activities such as hunting, fishing, riding all-terrain vehicles, vacuuming, sweeping, or cooking. Asked how much time Claimant spends in the hospital bed, Cecil responded:

> Quite a bit. I don't know, I can't put a time on it because I work during the day so I'm not there, but most of the time when I got home that's where he's at, and when I leave to go to work, that's where he's at.

Claimant, based on Cecil's observations, can only get out of a bed or chair "[w]ith difficulty." His son cannot stand long enough to take a shower.

It was Cecil's opinion that Claimant no longer has the physical capability of working at a retail store. He has difficulty picking up things from the floor. Although Claimant has not suffered another injury since the ones that are the subject of these two claims, his condition has worsened. The injections that Claimant has undergone have only given him temporary improvement.

The following exchange took place:

> Q. When you got the meters finished, was there anything left that he could do working wise for the Waterworks?

> A. Not without putting somebody else in a bind, no. We would have to—it would cause more of a problem, and that's why we don't do it.

He added that, based on his observations of Claimant at home, and on his knowledge of the requirements of the job that Claimant had at the Waterworks, "[h]e couldn't do the job" in his present condition. Moreover, Cecil was not aware of any job that Claimant could perform there in light of his hip and back condition. He continued:

> If I had an employee, whether my son or not, where we're at right now, that was in the condition he was in, he would get basically the same letter that Brandon got, because he can't do the job.

Discussion. The evidence at bar shows that on February 25, 2020, Claimant was terminated from his position at Vilonia Waterworks Association. This began the period for which he is seeking temporary total disability benefits. Before that time, he was still working there at light duty. But once the meter change-out project was complete, Claimant no longer had duties that he could perform within his physical restrictions, per Cecil McMurtry and Claimant. I credit their testimony on this point.

However, the question remains whether Claimant was still in his healing period then regarding any of his compensable injuries. At the time of his 2019 hearing, per his testimony, Claimant had long since been released from treatment by Dr. Kirk Reynolds for his shoulder. The evidence shows that he reached the end of his healing period for his shoulder before February 25, 2020. Thus, it cannot support his claim for temporary total disability benefits; and Claimant has not cited his shoulder in support of this portion of his claim.

Concerning his left hip injury, I credit Dr. Tucker's opinion that he reached maximum medical improvement as of December 2020. Specifically, based on my review of the medical evidence, I find that he reached the end of his healing period on December 17, 2020. Based on the copious evidence concerning the physical requirements of the job, including bending, twisting, and lifting, Claimant was not capable of performing it because of his hip problems once the meter change-out project concluded. He has not worked anywhere since his termination; and I find that the evidence preponderates that he was totally incapable of earning wages during that period. *See Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (1984)(claimant who has been released to light duty work but has not returned to work may be entitled to temporary total disability benefits where insufficient evidence exists that the claimant has the capacity to earn the same or any part of the wages he was receiving at the time of the injury). Therefore, based on his compensable hip injury, Claimant has established his entitlement to temporary total disability benefits from February 26, 2020, to December 17, 2020.

As to whether he is entitled to temporary total disability benefits in connection with his stipulated compensable back condition, I found in the previous opinion that "per the opinion of Dr. Miedema–which I credit–he reached the end of his healing period for his back injury on February 13, 2018." That opinion, as the parties have stipulated, is binding on this proceeding under the Law of the Case Doctrine; and it is

res judicata. *See Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994). Nothing before me shows that he entered another healing period regarding his back after the above-referenced date. Thus, his compensable back condition does not entitle him to temporary total disability benefits for any period. Claimant has not met his burden of proof here.

E. Attorney's Fee

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). Under Ark. Code Ann. § 11-9-715 (Repl. 2012):

> (B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee . . . In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them.

Discussion. The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to additional indemnity benefits. Thus, the evidence preponderates that his counsel, the Hon. George Bailey, is entitled to the fee as set out above.

CONCLUSION AND AWARD

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid

in a 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).

Claimant's attorney is entitled to a 25 percent (25%) attorney's fee awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2012).

IT IS SO ORDERED.

_____
Hon. O. Milton Fine II
Chief Administrative Law Judge