BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G107174

JUDITH MELTON, EMPLOYEE	CLAIMANT
CLARKSVILLE SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MARCH 30, 2022

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

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

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

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The claimant appeals and Respondent No. 1 cross-appeals an administrative law judge's amended opinion filed September 28, 2021. The administrative law judge found that the claimant proved she sustained permanent anatomical impairment ratings for her compensable head and neck injuries. The administrative law judge found that the claimant did not prove she sustained a permanent anatomical impairment rating for her

compensable back injury, and that the claimant did not prove she sustained wage-loss disability.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she sustained permanent anatomical impairment as a result of her compensable head injury. We find that the claimant proved she sustained permanent anatomical impairment in the amount of 4% as a result of her compensable neck injury. The Full Commission finds that the claimant did not prove she sustained permanent anatomical impairment as a result of her compensable back injury. We find that the claimant proved she sustained wage-loss disability in the amount of 5%, and that the statute of limitations does not bar the claimant's entitlement to wage-loss disability.

I. HISTORY

Judith Melton, now age 67, testified that she held undergraduate and graduate degrees. Ms. Melton testified that she was certified in the areas of working as a principal in schools, educational media specialties, and instructional technologies. The record indicates that the claimant became employed with the respondents, Clarksville School District, no later than August 1985. The claimant testified that she began as a deaf interpreter and instructional aide for the respondents, and that she eventually became an elementary teacher.

The claimant testified on direct examination:

> Q. What kinds of physical requirements are there in regard to the job that you had with the school district?
> A. In the primary school in the first grade classroom, I was to instruct children, but I also had to get down on their level, which meant kneeling by their chair, listening to them read, picking them up if something happened to them on the playground or getting them off equipment that they could get up on, but couldn't get off.
> Q. Okay. Let me stop you at that point. How much would those kids weigh, approximately?
> A. Probably 40, 50 pounds.
> Q. Okay. Go ahead.
> A. There was things that I had to move around my classroom and get my classroom ready, including desks, filing cabinets, whatever needed to be moved. And getting our room ready to be put up for the summer and get everything right back out again and ready for August. Putting up bulletin boards. Putting things online. We had to document all of our records and testing and grades and things like that, so I spent quite a bit of time at the computer….
> Q. It sounds to me like your job was kind of physical.
> A. Yes, a large part of a primary teacher's job is physical.

Dr. Tom Phillip Coker reported on May 8, 1991, "This patient was originally seen by me [in] February, 1989. She had a chronic ankle sprain with laxity. This was operated upon by me in January, 1990. She subsequently developed further problems in her knee and foot….I estimate that she has a 40% permanent partial physical impairment of the leg."

Dr. Stephen A. Heim reported on November 6, 2002:

> Judith had an excellent visit with Dr. Glen Marshall at the Russellville Neurology Clinic and he diagnosed in October a small right paracentral disc herniation at C5-6. This does not appear to seriously indent the cervical cord and the cervical cord is normal in signal intensity. This may have been

> definitely contributing to the occasional pain she is having in her right arm and the fact that it is small is probably the reason we did not find it on the EMG/nerve conductions while we were looking for a nerve dysfunction.
> The cyst in her right scaphoid appears to have nicely healed….She also has a tear of the meniscus of posterior horn right knee as proven by MRI, but that is doing fairly well right now….Her right wrist, hopefully, will do well and cause no increased pain from her cyst in her wrist or from her previous surgery, but I would not be at all surprised to see the difficulty she is having in her right upper extremity from the herniated disc at C5-6 increase to the point where this may have to be addressed by a neurosurgeon. I think Judith right now is at a steady state, but could require surgery on the right knee and the neck in the future. Right now, she has a 5% disability to the body as a whole due to her meniscal tear and dysfunction of the right knee.

An x-ray of the claimant's lumbar spine was taken on December 2, 2002: "There are 5 lumbar type vertebrae. There are some mild anterolateral degenerative changes at 2-3, 3-4, and 4-5 levels. No flexion or extension instability. IMPRESSION: Mild multilevel degenerative changes."

Dr. Joseph W. Queeney reported on December 2, 2002:

> The patient is a 47-year-old right-handed female who is referred by Dr. Hendren for surgical evaluation of neck pain and right upper extremity pain. She states she started having this problem as she indicated on her neurosurgical questionnaire since 3/12/02. In the interview she states that this began in 2000. She gives a very elaborate history about how she slipped and fell in the bathroom….
> RADIOLOGIC: I had the opportunity of reviewing an MRI scan performed of the cervical spine at Valley Diagnostic Imaging. Apparently this was performed in Russellville on 10/14/02. This shows some disc degeneration at C4-5 and C5-6. The axial images show that she may have a very small

> disc protrusion off to the right side at C5-6 but this is certainly difficult to determine. She has also had an EMG and nerve conduction velocity performed of the right upper extremity. There was normal nerve conduction in the median and ulnar nerves.

Dr. Queeney's impression was "Right upper extremity paresthesias….I had a very long discussion with the patient regarding her findings. I demonstrated the MRI scan to her. She does have a very small disc protrusion/herniation off to the right side at C5-6. I am uncertain if this is causing her upper extremity symptoms. She does not really have classic findings of radiculopathy. Therefore, I told her that I am uncertain how much improvement she would have following an anterior cervical surgery….I again informed her that I cannot give any guarantees if we were to perform an anterior cervical diskectomy whether or not she would have improvement."

Dr. Heim reported on or about December 23, 2003, "I have reviewed at length Ms. Melton's functional capacity evaluation. She should be able to lift up to 20 pounds on a regular basis, which should be adequate for her position of elementary school teacher….In reviewing the functional capacity evaluation and reviewing her upper extremity and lower extremity strengths and weaknesses, her neck range of motion and strength, I would raise her to 10% total body disability due to her neck and upper extremity or wrist problem."

An MRI of the claimant's cervical spine was taken on April 7, 2004 with the impression, "Disc ridge complex C5-6, midline to the right without apparent foraminal encroachment."

A "First Report Of Injury Or Illness" was prepared on December 15, 2005. The First Report Of Injury indicated, "Taking food tray to cafeteria slipped on wet floor injuring Rt. leg."

The parties stipulated that the claimant sustained a compensable injury "to her head, neck, back, and left elbow" on August 19, 2011. The claimant testified on direct examination:

> Q. Ms. Melton, would you briefly explain how you got injured while working for the school district back in 2011?
> A. I was taking the first Friday of school that year, I was taking the children out to the school bus, and I walked down the ramp and I guess my – I don't remember – I was knocked out, but my feet hit water, and I fell back on my back, bounced my head, and was knocked out.

According to the record before the Commission, the claimant treated at Clarksville Medical Group beginning August 19, 2011:

> She comes in today as a Workers' Comp patient. She was at school today finishing work and she said that she slipped on some water that was in the floor. She is not sure exactly what happened, but she knows that she fell onto her buttocks, back, elbows, and head. She complains of a headache and pain at the back of her head that seems like it radiates up and hurts in the top of her head. She has pain in her neck and says that when she turns her neck it feels like a "thread is breaking." She has kind of a burning pain along her back, especially the right side of her back and into her sacrum and buttocks area….She did not lose consciousness that she was aware of.

A treating physician assessed “Status post fall with probable concussion, but I want to rule out an intracranial bleed, and contusion to the back and elbows with muscle spasm.”

It was noted on August 22, 2011, “She hit the occiput of her head and pelvis. She went to the ER and had a negative CT scan head and x-rays of the pelvis and C-spine. She continues to have some dysfunction with her memory and processing of information. She also continues to have a frequent headache, dizziness, and nausea.”

The claimant followed up at Clarksville Medical Group on August 29, 2011: “She said that she was doing a lot better until she went shopping up at Fort Smith yesterday, several places. Now, she said her headaches are back, occipital headache. She said she thinks she just kind of overdid it….She had a CT of her head and x-rays of the pelvis and cervical spine in the hospital when she fell, and this was all completely normal….She would like to try to go back to work. She is going to try to go back this Wednesday, we decided, and she is not going to do any playground duty for at least two weeks.”

A physician’s assessment on September 1, 2011 was “1. Persistent headache secondary to concussion. 2. Neck strain.” The assessment on September 12, 2011 was “1. Persistent neck pain and back pain secondary

to fall. 2. Headaches, improved. 3. Concussion, improved." The claimant continued to follow up at Clarksville Medical Group.

Dr. Reginald Rutherford evaluated the claimant on November 30, 2011:

> Ms. Melton is seen for neurological evaluation referable to complaints emanating from a recent closed head injury with cerebral concussion….
> Ms. Melton fell on 08/19/11 striking her head on concrete. She was briefly unconscious. She underwent a CT scan of the brain on the date of injury which is normal by report. Since this accident she has experienced headache visual disturbance neck pain and difficulty with concentration and memory. There was some improvement until she was referred for physical therapy. The therapy included cervical traction which was poorly tolerated resulted in increased pain. She has been treated with Neurontin for headache and neck pain with limited benefit….
> CT head normal by report….

Dr. Rutherford assessed "Closed head injury with cerebral concussion followed by posttraumatic headache neck pain and difficulty with memory concentration consistent with postconcussion syndrome. Further investigation to rule out traumatic brain injury and cervical spine injury."

An MRI of the claimant's brain was taken on December 29, 2011 with the following findings:

> Evidence of recent infarct is seen on diffusion-weighted images. Scattered hyperintensities are visualized in the supratentorial white matter which are nonspecific and could be related to small vessel disease, diffuse axonal injury, vasculitis, migraines, et cetera. The corpus callosum, pituitary

> gland and the stalk are normal. The cranial cervical junction is normal. Signal alteration in the mid pons on the FLAIR images could be due to small vessel disease or capillary telangiectasia. No abnormal air-fluid levels are seen in the paranasal sinuses. No opacification of the mastoid air cells is seen. No cephalhematoma.
> IMPRESSION: Nonspecific hyperintensities in the supratentorial white matter and the pons could be due to small vessel disease. Differential diagnoses would include vasculitis, diffuse axonal injury, migraines, et cetera.

An MRI of the claimant's cervical spine was taken on December 29, 2011 with the following findings:

> Cervical vertebral bodies demonstrate normal height, marrow signal and alignment. The anterior and posterior longitudinal ligaments, interspinous ligaments, ligamentum flavum and the tectorial membrane are normal.
> Decreased disc height is seen at C4-C5 with no significant canal or foraminal narrowing.
> Decreased disc height is seen at C5-C6 with uncovertebral osteophytes and disc osteophyte complex formation resulting in mild to moderate bilateral foraminal narrowing and minimal central canal stenosis.
> Cervical cord is normal in size and signal. The craniocervical junction is normal. The facet joints are well aligned.
> IMPRESSION: 1. Degenerative disc disease at C4-C5 and C5-C6. Minimal central canal stenosis at C5-C6 with mild to moderate bilateral foraminal narrowing. No fracture. No cord edema.

The claimant followed up with Dr. Rutherford on December 29, 2011: "Her MRI study of the brain demonstrates nonspecific white matter change consistent with age. Her MRI study of the cervical spine demonstrates minor degenerative change without evidence for disc herniation spinal

stenosis spinal cord or nerve root compromise. She awaits her psychological testing with Dr. Judy White Johnson."

A physician at Clarksville Medical Group gave the following impression on January 20, 2012: "1. Traumatic brain injury with evidence of subsequent infarction. Continue to follow up with Dr. Rutherford. He apparently is going to arrange some rehabilitation or therapy for her in regards to her memory loss. I think this would be beneficial. 2. Lower back pain, worsening. We are going to try to get an MRI scan of her lumbar spine approved through the workman's compensation. We will see if we can get this arranged. Continue current pain control for now."

Dr. Judy White Johnson corresponded with Dr. Rutherford on January 25, 2012 and stated in part:

> Thank you very much for your kind referral of Ms. Melton for a neuropsychological evaluation….
> Ms. Melton is a first grade teacher in the Clarksville School System where she has been employed since 1985. On 08/19/2011, she was walking children to the bus when she slipped and landed on her back. She was told there was a brief loss of consciousness. Her next memory is being at the doctor's office where she was told to go to the hospital for a scan. She experienced headache, nausea and vomiting and believes she was off work a week or two. She tried to return to work but these symptoms returned. She then stayed off work until after Labor Day….
> The overall pattern of the neuropsychological evaluation is not compatible with a traumatic brain injury. Reassurance and information will surely reduce her anxiety and somatic concerns. This in turn will decrease her focus on perceived deficits allowing her to reestablish her structure and organization in her day to day living.

Dr. Rutherford noted after a January 27, 2012 follow-up visit, "She [has] completed her neuropsychological testing. There is no evidence for traumatic injury. There is evidence for significant psychological dysfunction. Ms. Melton believes she suffered a stroke based upon reading her MRI brain report which embodies a typographical error. This was discussed with Dr. Alexander at RAPA who will have [the] study reviewed and the report amended."

An MRI of the claimant's lumbar spine was taken on January 31, 2012 with the impression, "1. Bulging disc L4-5. Spinal canal diameter lower limits normal at L4-5."

Dr. J. Zachary Mason noted on March 9, 2012:

> The patient is a 57 year old female who fell August 19, 2011, while working at the Clarksville school district. She is a first grade teacher and was walking down an inside ramp inside the building. There was water on the ramp and she slipped and her feet went out from under her. She landed on her buttocks and her back. She had quite a bit of pain. She was briefly unconscious….
> She had a lumbar MRI scan that shows her to have a bulge at L4-5 with some slight narrowing.
> She had a similar fall six years ago. She had an MRI scan at that time that also showed a bulge at L4-5….
> MDM: Moderate to high complexity. I have reviewed the findings of the MRI scan with the patient. She does not have much of a bulge at L4-5, if any. There is some slight enlargement of the facet joints but no significant spinal stenosis.
> The cervical study shows her to have some spondylosis at C4-5 and C5-6. This appears to be an old finding with no acute abnormalities noted.

Dr. Mason recommended conservative treatment for the claimant's back and neck.

Dr. Darren S. Freeman, Clarksville Medical Group, gave the following impression on March 12, 2012: "1. Fall with evidence of traumatic brain injury. Continue to follow clinically. Neurologist is on-board with her care. 2. Degenerative disk disease of the cervical and lumbar spine. Epidural steroid injections are planned. We have asked her to schedule a follow up with us couple of weeks after she has these injections done. 3. Chronic pain with mood symptoms. I asked her to consider starting of an SSRI and SNRI such as Cymbalta or Celexa. She will research and think about this and get back to us."

Dr. Mason referred the claimant to Dr. Kenneth M. Rosenzweig, who began treating the claimant on April 6, 2012:

> Ms. Melton is a 57-year-old established patient of Dr. Mason and Dr. Joe Dunaway in Clarksville….She is having ongoing back pain. She also has neck pain, headaches, and a visual disturbance….
> The main issue at this time is an injury that occurred on August 19, 2011 when she fell on her back….
> The diagnostics reveal bulging disks at L4-L5 with a small canal but no obvious nerve root compression or findings of traumatic changes.
> The x-rays of the cervical spine obtained today reveal a normal lordosis with collapse of the C5-C6 disk without spondylolisthesis. The x-rays of the lumbar spine reveal a normal lordosis with no fractures or spondylolisthesis or disk space collapse….The pelvic x-rays show symmetric SI joints and hip joints with no bony abnormalities.

Dr. Rosenzweig's impression was "1. Sacroiliac dysfunction status post contusion from a fall at work. 2. Underlying degenerative disk disease with spondylosis….A fluoroscopic guided SI joint injection bilaterally will be considered with premedication for iodine allergy. The response to this injection will determine the need for further evaluation of the lower back, cervical spine, and headaches."

The claimant underwent a CT of the brain on November 25, 2012: "Calvarium is intact. Brain appears normal. No abnormality evident. IMPRESSION: Normal." The claimant also underwent a CT of the cervical spine on November 25, 2012 with the impression, "Degenerative disc disease C5/6." An MRI of the claimant's lumbar spine was taken on December 31, 2012 with the following findings:

> The vertebral body heights and disc space heights are fairly well preserved. No compression deformities or spondylolisthesis. No areas of marrow edema. The conus terminates at L1-2. Sagittal images of the lower thoracic spine are unremarkable. No marrow replacement is seen. Imaged paraspinal soft tissues are unremarkable.
> L1-2: No focal disc abnormality.
> L2-3: No focal disc abnormality.
> L3-4: No focal disc abnormality.
> L4-5: Mild diffuse disc bulge and thickening of the ligamentum flavum.
> L5-S1: Mild degenerative facet findings.
> IMPRESSION: 1. Fairly unremarkable MRI lumbar spine. Very mild disc bulge at L4-5.

An MRI of the claimant's cervical spine was taken on January 15, 2013 with the following findings:

> The vertebral body heights and alignment of the vertebrae are preserved. There is mild loss of intervertebral disc height at C5-6 with anterior osteophyte formation. The remainder of the disc heights are preserved. The intrinsic signal of the spinal cord is normal. The anterior and posterior longitudinal ligaments have normal signal. No intraspinous ligament edema is identified. Visualized portions of the posterior fossa are normal.
> At the C2-3 level, the canal and foramina are maintained.
> At the C3-4 level, there is very mild uncovertebral joint hypertrophy without significant mass effect.
> At the C4-5 level, there is mild uncovertebral joint hypertrophy and shall disc-osteophyte complex without significant mass effect.
> At the C5-6 level, there is mild uncovertebral joint hypertrophy and a shall disc-osteophyte complex causing mild biforaminal narrowing and mild central stenosis, 9 mm.
> The C6-7 level demonstrates good maintenance of the canal and foramina.
> The C7-T1 level is normal.
> IMPRESSION: 1. Mild multilevel spondylitic changes of the cervical spine manifested most prominently at C5-6 where there is mild biforaminal narrowing and mild central stenosis. 2 No post-traumatic sequelae is demonstrated.

Dr. Mason noted on January 15, 2013, "Cervical MRI scan shows her to have some small bony ridging at C4-5 and C5-6. I do not see anything causing specific compression of the spinal cord or the nerve roots to warrant surgical intervention….I have recommended that she return to see Dr. Rosenzweig for other pain management techniques from a non-surgical point of view. I do not recommend any surgery for her and we will release her from our care at this time."

Another MRI of the claimant's cervical spine was taken on October 11, 2013 with the impression, "1. Disc space degeneration at C5-6 resulting in mild canal stenosis. This stenosis has not significantly changed since the prior study. No evidence of nerve root impingement or other significant abnormality."

Dr. Mason reported on October 11, 2013, "I have reviewed the MRI with the patient. She has some slight degenerative changes at C4-5 and C5-6. I don't see anything causing any specific compression of her cervical spinal cord. I have advised her of this….In essence, I don't see any specific changes related to the spondylotic ridging at C4-5 and C5-6. I do not recommend any surgical intervention. I have recommended she continue with nonsurgical treatments with the pain management physician, Dr. Rosenzweig, and her neurologist, Dr. Rutherford. I will release her from my care at this point."

Dr. Rosenzweig noted in part on October 17, 2013, "She states that her job as a first grade schoolteacher is wearing her out and it is all she can do to make it through the day." Dr. Rosenzweig's impression was "Chronic back pain due to spondylosis….Return to work full duties, with an understanding that she may need days off for further treatment."

The claimant continued to periodically follow up with Dr. Rosenzweig, who reported on May 8, 2015, "Ms. Melton returns in follow-up

of her back and hip pain. She is a 60-year-old workers' compensation claimant who is recovering from a revision total knee arthroplasty by Dr. Edwards. She states that her recovery has gone well but she is not returning back to work any time soon under Dr. Edwards' recommendation." Dr. Rosenzweig's impression was "1. Back pain localized to the SI joints possibly aggravated by a gait disturbance. 2. SI joint dysfunction."

Dr. Rosenzweig continued to provide follow-up treatment and reported on August 11, 2015, "She states that she is back to work. Her class is ready for her students. Other than long travel for field trips, she feels that she is up for her work demands. We will proceed if approved for the staged radiofrequency for her SI joint pain." Dr. Rosenzweig recommended on September 19, 2015, "There is no contraindication for her to return to work in a classroom setting to continue working as a teacher. It is in her best interest that she not go on bus field trips. It may improve her endurance by allowing her to use some sort of scooter to and from the play yard to monitor recess."

The claimant filed a Form AR-C, "Claim For Compensation" on October 27, 2015. The Accident Information section of the Form AR-C indicated that the claimant had injured her "back, hips, neck, head, elbow" as a result of the compensable injury occurring August 19, 2011. The Claim Information section of the Form AR-C indicated that the claimant

claimed “additional benefits” including Additional Permanent Partial, Additional Medical Expenses, Attorney Fees, and “Anything that should arise from accident.”

Dr. Rosenzweig noted on November 24, 2015, “She continues to work with modification of the job with respect to a schoolteacher in the early elementary age….It appears reasonable to offer further treatment for control of her pain so that she can maintain her gainful employment.” Dr. Rosenzweig stated on January 19, 2016, “There is no contraindication for her to return to work in a classroom setting to continue working as a teacher. Her only restriction is traveling on the bus for field trips, prolonged walks, walking unlevel ground, etc. There are no formal restrictions as far as her teaching in the classroom.” The claimant continued to follow up with Dr. Rosenzweig, who noted on August 2, 2016, “She had undergone radiofrequency for her back pain targeting the SI joints. She states that it helped well at the time….Meanwhile, she states that she has returned back to work getting her classroom ready….There is no contraindication to return to work as school starts as long as she is allowed to stay off the field trips and avoid prolonged standing and walking for recess duties. She has indicated that she would like to work at least 2 more years. She seems motivated to stay committed to her job. She is released to regular duty with respect to her school job with the aforementioned precautions.”

Dr. Rosenzweig performed "radiofrequency denervations" on April 27, 2017 and May 11, 2017. Dr. Rosenzweig noted on September 14, 2017, "She has obtained an electric cart to assist with her teaching duties." Dr. Rosenzweig reported on November 2, 2017, "Dr. Arnold has taken her off work….She is currently off work."

Dr. A. J. Zolten performed a Neuropsychological Evaluation on December 7, 2017 and gave the following impressions:

> 1. Judy Melton is a 62-year old female with remote history of concussion, post-concussion symptoms that include headaches, and problems with cognition that continue into the present.
> 2. Judy generates a neuropsychological profile that indicate (sic) average to high average core skills, commensurate with her education….
> 3. Judy's psychological adjustment appears to be good….
> 4. There appears to be some miscommunication between Judy and her attending physicians. At least some of the episodic lapses in attention she experiences are being labeled as "headaches" even though Judy admits that she is not experience (sic) head pain at the time of the episode. I would recommend that Judy and the physician she reports to have told her to label these episodes as "headaches" confer, and clarify what these episodes reflect. As far as today's results, the episodes in question are most likely lapses in attention.
> 5. Judy's medications may be the cause of the above episodic lapses in attention….
> 6. None of the problems that Judy is currently experiencing [are] thought to reflect long-term residual deficits from her concussion. Judy was able to return to work and was able to work for several years after her concussion with minimal decline in work product. Any minor problems with cognition during that time can also be attributed to medication side effects and/or direct interference with cognition caused by headache.

Dr. Rosenzweig recommended in part on December 8, 2017, "There are no contraindications to return to work as scheduled as per Dr. Arnold. It is unknown what restrictions he placed on her." Dr. Rosenzweig reported on January 19, 2018:

> Ms. Melton is a 63-year-old worker's compensation claimant. She is a school teacher who is having difficulty recovering from her total knee arthroplasties. She has asked for an impairment rating with respect to her neck and her back as well as her knees. Her neck has not been actively treated in some time. She has not had any active discussion regarding her neck pain, but she has reminded me of how much pain she does have in her neck. An updated MRI of her neck is recommended to identify her persistent difficulties.
> The MRI has been performed. The results reveal disk bulges at C5-C6 and C6-C7. They appear noncompressive. There is enlargement of the facet joints. She has mild canal stenosis with disk bulging at C5-C6. She has foraminal narrowing on the left at C6-C7. The C7-T1 level was negative. In summary, she has degenerative changes at C4-C5 through C6-C7 with moderate narrowing on the left greater than right at C6-C7 with canal stenosis at C5-C6.

Dr. Rosenzweig gave the following impression on May 9, 2018: "SI joint pain from chronic gait disturbance status post revision total knee arthroplasty with prolonged course of rehabilitation for recovery….The radiofrequency is a minimally invasive nonsurgical technique in controlling her pain by ablating the pain fibers from the joints. This is additionally very effective in treating axial spine pain as well as sacroiliac joints. The history of [this] claimant supports these opinions and it is certainly reasonable to offer continued treatment."

A pre-hearing order was filed on July 24, 2018. The claimant contended that "radiofrequency ablations" performed by Dr. Rosenzweig were reasonably necessary. Respondent No. 1 contended that Dr. Rosenzweig's recommended treatment was not reasonably necessary. The parties agreed to litigate the following issue: "1. Whether the claimant is entitled to medical treatment by or at the direction of Dr. Rosenzweig, including but not limited to radiofrequency denervation to her back."

A hearing was held on August 2, 2018. The claimant testified that radiofrequency denervations performed by Dr. Rosenzweig "helped tremendously." The claimant testified that she had undergone approximately 10 surgeries to her knee. The claimant testified on cross-examination that she was still employed as a teacher for the respondents.

The claimant followed up with Dr. Rosenzweig on September 5, 2018: "She remains off work at the recommendation of her knee surgeon, Dr. Chris Arnold, in Fayetteville. He has scheduled her for a revision of her revision total knee arthroplasty. This is going to make her 10th knee operation." Dr. Rosenzweig's impression was "1. Failed total knee arthroplasty revision. 2. Chronic back pain sacroiliac in origin….At this point, we remain focused on getting her SI joint pain under control."

An administrative law judge filed an opinion on October 30, 2018 and found, in pertinent part, "2. The claimant has proven by a preponderance of

the evidence that the medical treatment by or at the direction of Dr. Rosenzweig including, but not limited to, radiofrequency denervation to her back is reasonable and necessary medical treatment for her compensable injury." The parties have stipulated that the administrative law judge's October 30, 2018 opinion is "*res judicata* and the law of the case."

Dr. Tonya Phillips examined the claimant on January 22, 2019: "Judy returns today for follow-up for chronic intractable migraines of many years duration mild cognitive impairment after concussion in 2011. She's been left with some mild difficulty with concentration and focusing." Dr. Phillips' impression was "1. Minimal cognitive impairment" and "2. Chronic intractable migraine without aura."

An MRI of the claimant's lumbar spine was taken on August 9, 2019 with the impression, "Multilevel spondylitic changes as above most prominent at L4-5 where there is mild bilateral inferior foraminal narrowing and mild lateral recess stenosis." Dr. Rosenzweig noted on September 16, 2019, "She is a schoolteacher….She has not been able to return back to work due to her back or her knee surgery….An updated MRI of the lumbar spine performed on August 9, [2019] revealed multilevel spondylotic changes most prominent at L4-L5 with the development of stenosis." Dr. Rosenzweig gave the following impression: "1. Facetogenic degeneration with flattened lordosis due to spasms. 2. Advanced degenerative disk

disease with collapse and endplate spurring of the cervical spine. 3. Chronic back pain with flare of neck pain with chronic disease and advanced degenerative changes. 4. Chronic migraine headaches." Dr. Rosenzweig performed a trigger point injection. Dr. Rosenzweig also stated, "Ms. Melton is currently not working and most likely will not return to work in the classroom. I believe Dr. Arnold, her knee surgeon, will agree that Ms. Melton is not looking at recovery to where she can work unrestricted as a schoolteacher such as getting on the floor with the students, monitoring bus trips and recess, inc."

A note on October 8, 2019 indicated, "Per Dr. Arnold patient has met maximum medical improvement. Will order functional capacity exam and impairment rating at this time." Dr. Rosenzweig reported on October 11, 2019, "Updated x-rays of the cervical spine were ordered, performed, and interpreted by me with the following findings: flattening of lordosis at C5-C6 and C6-C7 with complete collapse of disk spaces with hypertrophic endplate changes." Dr. Arnold noted on October 28, 2019, "I do not feel that she is going to be able to return back to work as a schoolteacher. The difficulty of her walking may take her out of her workplace completely."

The claimant participated in a Functional Capacity Evaluation on November 5, 2019: "The results of this evaluation indicate that a reliable effort was put forth, with 40 of 40 consistency measures within expected

limits….Ms. Melton completed functional testing on this date with **reliable** results. Overall, Ms. Melton demonstrated the ability to perform work in the **SEDENTARY** classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal workday with limitations as noted above."

Additionally, an Impairment Evaluation Summary was prepared at Functional Testing Centers, Inc. on November 5, 2019: "Ms. Melton reports that she injured her right knee at work when she tripped on a chair and fell with the onset of right knee pain….The guides recommend using the section that provides the greater impairment. In Ms. Melton's case, the diagnosis based impairment is the greatest impairment and is the most appropriate, applicable impairment for this patient. This results in a 20% whole person, 50% lower extremity impairment for Ms. Melton's work related right knee condition." Dr. Christopher Arnold stated, "I have reviewed and agree with the above impairment evaluation."

The claimant followed up with Dr. Rosenzweig on November 25, 2019: "She is a schoolteacher but has not been able to work for the last several years. She has a failed total knee arthroplasty that has caused a chronic gait disturbance. It has affected her back pain and made her back pain worse. She has had a recent FCE which has aggravated her back." Dr. Rosenzweig performed "lumbar facet blocks" on November 26, 2019

and December 10, 2019. Dr. Rosenzweig planned on January 10, 2020, "It does not appear that Ms. Melton will return back to work in the classroom setting. It is not clear that she can return to work in any capacity due to her ongoing difficulty with her ability to sit, stand, and walk from a combination of her lumbar spine and ankylosis of her knee from a failed total knee arthroplasty."

Dr. Joseph Dunaway reported on January 27, 2020:

> My patient, Judith Melton, is a 65 year old female that I have been taking care of for many years. She has multiple medical problems that have disabled her including migraine headaches, hypothyroidism, fibromyalgia, diverticulosis, arthritis, and knee problems where she has developed calcium deposits and scarring. She had surgery on her right knee and is at the point that she cannot stand for long periods of time and she has trouble getting up and down from sitting positions without assistance. She has also had mental status changes including being unable to concentrate, getting more forgetful, forgetting where she is going and when she gets there forgetting what she went there to do. These mental status changes started in 2011 after falling and having a significant injury to the occipital area of her brain. She continues to see a neurologist for this. She does have some chronic and worsening white matter disease that has caused her to experience more anxiety, her headaches have become worse, she is getting blurred vision, and her memory is worse….Her profession was a school teacher where she was very organized. According to her husband, her organization skills are gone. She can't complete even routine activities around her house such as laundry, dishes, and cooking without making mistakes. This is worsening, along with her knee worsening. In my opinion, I don't feel like she would ever be able to hold a job again. If you have any questions, please feel free to contact me at the clinic.

Dr. Rosenzweig opined on June 28, 2020:

> Judy Melton's original date of injury was in 2011. She has had subsequent injuries. I have been treating her since 2012 regarding her job related injury. She has undergone extensive treatment regarding her cervical spine, lumbar spine, and sacroiliac joint. She has also had extensive treatment for a post concussion syndrome with chronic recurring headaches as documented by Dr. Reginald Rutherford, who is now deceased, and Tonya Phillips, M.D., a neurologist in Ft. Smith. She has had extensive surgery to her knee with multiple revisions….She has persistent ankylosis and gait disturbance which continues to aggravate her low back pain….The pathology as presented on her initial diagnostics suggest a preexisting condition but was aggravated by her mechanism of injury. This is the main source of her indication for treatment. She continues to experience symptoms regarding her knee, back, SI joint, and her headaches.
>
> Using the *American Medical Association Guide to the Evaluation of Permanent Impairment, Fourth Edition*, using Table 75, page 113, classification 2C, it is my opinion within a reasonable degree of medical certainty that Ms. Melton has sustained 5% impairment to the body as a whole regarding her brain injury. This was using Table 2 on Page 142. Table 75, Page 113, section 2C allows 1% per level for multilevel involvement. Ms. Melton has a minimum of three levels involved in both the cervical spine and lumbar spine. Therefore, the +2 represents the multiple levels of both impairments at 6% and 7% for the cervical and lumbar spine respectively which would result in an 8% and 9% impairment respectively.
>
> Her permanent restrictions include no overhead work, no away from body reaching or lifting, and no activities that require prolonged standing, repetitive bending, repetitive stooping, or walking on steps, inclines, or declines.
>
> If there are any questions regarding the formulation of this report, please contact me at this office.

Dr. Rosenzweig stated in part on June 29, 2020, "It has already been opined that Judy is not going to be able to return back to work as a

schoolteacher and most likely is not going to be able to return back to work in any capacity."

An Impairment Evaluation Summary was prepared at Functional Testing Centers, Inc. on September 1, 2020:

> **As it relates to her head injury,** this is outside the scope of practice of this provider and should be addressed by appropriate neuro-psych analysts. Therefore, no rating is established for this condition.
> **As it relates to her cervical injury,** Ms. Melton did have objective findings of muscle spasms present during physical examination this date with noted spasms in her left lower side cervical region….
> A diagnosis based impairment is appropriate for her cervical spine under Table 75, II. C: Unoperated on, with medically documented injury, and rigidity (pain not taken into account) associated with none to minimal degenerative changes on structural tests. This is a 4% Whole person impairment. She did have objective findings on her prior MRI's (notably at C5-6) and muscle spasms at the time of this evaluation, which also constitutes an objective finding.
> **As it relates to her lumbar spine,** there is no objective findings to support impairment based on physical findings or based on Diagnosis based impairments. She has not had surgery on her lumbar spine. Ms. Melton exhibited mildly decreased lumbar motion that is not ratable under Arkansas workers compensation statute. She did not have any altered lateral deviation of the spine and did not have muscle spasms present at the time of this examination this date. She had a normal lordotic curvature as well. She reports no radicular pain in either LE but has chronic pain in her right knee. It is noted that on numerous occasions, Dr. Rosenzweig related her chronic low back pain to a chronic gait disturbance (which Ms. Melton clearly has due to a prior right knee injury that has required multiple surgeries). In view of that statement, there is no available rating in the guides that would indicate impairment of her lumbar spine for gait derangement as this has already been addressed in her knee impairment….
> Summary Statement:

> **No impairment was assigned for Ms. Melton's head injury as this is outside the scope of this provider.**
> **Ms. Melton has sustained a 4% Whole person impairment of her cervical spine.**
> **Ms. Melton has a 0% Whole person impairment of her lumbar spine.**

Dr. Tonya Phillips corresponded on September 16, 2020:

> Mrs. Melton is a patient that I have followed for a number of years for chronic intractable migraines. She had a long history of migraines which exacerbated after concussion. She has had some mild attention and concentration focusing issues which was felt to be related to the concussion but also related to medication as well as her migraines. She has been stable as far as her migraines are concerned has had no worsening in her other symptoms. At this time from the standpoint of her migraines as well as cognitive impairment there are no limitations as far as her ability to work.

Dr. Rosenzweig stated on December 31, 2020, "She is in her 9th year since her claim and will not be able to return back to work unrestricted as a schoolteacher."

A pre-hearing order was filed on January 21, 2021. The claimant contended, "The claimant contends that she is entitled to permanent impairment as reflected by the impairment ratings assessed by her authorized treating physician, Dr. Rosenzweig. The claimant contends that she is entitled to wage-loss disability in addition to her permanent impairment. The claimant contends that her attorney is entitled to an appropriate attorney's fee."

Respondent No. 1 contended, "The respondents contend that all appropriate benefits are being paid with regard to the claimant's compensable injuries sustained on August 19, 2011. The claimant has been assigned the following ratings by Dr. Kenneth Rosenzweig: 5% for the claimant's brain injury, 8% for the claimant's cervical spine, and 9% for the claimant's lumbar spine. The respondents assert that none of these ratings are attributable to the compensable injury sustained on August 19, 2011. The 5% rating for the brain injury, according to Dr. Rosenzweig, is because of the MRI dated December 29, 2011. That MRI revealed nonspecific white matter change consistent with age, and the claimant has no evidence of a traumatic brain injury. Further, Dr. Tonya Phillips has opined that from the standpoint of the claimant's migraines and cognitive impairment, there are no limitations as far as the claimant's ability to work."

Respondent No. 1 contended, "The claimant's cervical spine rating, 8% according to Dr. Rosenzweig, is due to a pre-existing and underlying condition. Dr. Stephen Heim assigned a 10% rating to the body as a whole in 2003 for the claimant's neck and upper extremity condition. The MRI performed on December 29, 2011 revealed degenerative disc disease including spondylosis at C4-5 and C5-6. Dr. Zachary Mason opined that these findings were old, and no acute abnormalities were noted. The claimant has not undergone surgery on her cervical spine. The lumbar

spine rating, 9%, is also due to a pre-existing and underlying condition. Dr. Mason opined that the claimant had a bulge at L4-5, but an MRI performed approximately six years previously also showed a bulge at that level. The claimant has not undergone surgery to her lumbar spine."

Respondent No. 1 contended, "The claimant is not permanently totally disabled associated with her August 19, 2011 compensable injuries. No rating is applicable associated with these injuries and no wage-loss applies. The respondents are unaware of any medical treatment in dispute other than perhaps the claimant's entitlement to therapeutic massage. The same is not reasonably necessary. With regard to the statute of limitations, the last temporary total disability check was issued to the claimant on September 14, 2017. The claimant did not assert that she was permanently totally disabled until November 15, 2019. The Form C filed by the claimant on October 27, 2015 did not make a claim for permanent total disability benefits."

Respondent No. 2 contended, "The Death and Permanent Total Disability Trust Fund contends that the statute of limitations has run on the claim pursuant to Ark. Code Ann. §11-9-702(b) and *Kirk v. Cent. State Mfg.*, 2018 Ark. App. 78, 540 S.W.3d 714. The claimant filed an AR-C on October 27, 2015 which did not mark benefits for permanent total disability. The claimant's first request for permanent total disability benefits was made

in the pre-hearing questionnaire filed November 15, 2019. The Death and Permanent Total Disability Trust Fund will state its remaining contentions upon completion of discovery."

The parties agreed to litigate the following issues:

1. Permanent anatomical impairment.
2. Wage-loss disability.
3. Reasonably necessary medical treatment.
4. Date of maximum medical improvement.
5. Statute of limitations.
6. Fees for legal services.

A hearing was held on March 18, 2021. The claimant testified on direct examination:

> Q. Now, you are no longer working for the school district, are you?
> A. No, sir.
> Q. What caused you to stop?
> A. I was going to be unable to return to my job as a first grade teacher or even as a kindergarten teacher due to my back, and my neck, and later my knee.
> Q. So you had another injury that involved your knee and at some point the combination of all of those things, basically, cost you your job?
> A. Yes, sir.

An administrative law judge filed an opinion on June 16, 2021. The administrative law judge found, among other things, that the claimant did not prove she was entitled to additional treatment provided by Dr. Rosenzweig. The administrative law judge found that the claimant proved she sustained 5% permanent anatomical impairment as a result of her compensable head injury. The administrative law judge found that the

claimant proved she sustained 4% anatomical impairment as a result of her compensable neck injury, but that the claimant did not prove she sustained any percentage of permanent anatomical impairment as a result of her compensable back injury. The administrative law judge found that the claimant did not prove she was entitled to wage-loss disability.

The claimant thereafter moved to supplement the record with the administrative law judge's opinion filed October 30, 2018, as well as correspondence from Respondent No. 1 which indicated, "The adjuster will continue to approve reasonable and necessary treatment with Dr. Rosenzweig." The Full Commission granted the claimant's motion to supplement the record.

The administrative law judge filed an amended opinion on September 28, 2021 and vacated his earlier finding that the claimant failed to prove she was entitled to additional medical treatment provided by Dr. Rosenzweig. The administrative law judge found in pertinent part, "3. All other Findings of Fact & Conclusions of Law set forth in the Opinion filed June 16, 2021 remain subject to review by the Full Commission."

The claimant appeals to the Full Commission and Respondent No. 1 cross-appeals.

II. ADJUDICATION

A. Permanent Impairment

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. *See Commission Rule 34*; Ark. Code Ann. §11-9-522(g)(Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the claimant has proved she is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to establish a compensable injury, it does not follow that such evidence is required to establish each and every element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is required is that the medical evidence be supported by objective medical findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). Medical opinions addressing impairment must be stated within a

reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)((Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause must be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

1. Compensable Head Injury

An administrative law judge found in the present matter, "2. The claimant is entitled to permanent impairment in the form of permanent partial disability as she is entitled to an anatomical impairment rating of 5% to the body as a whole regarding her head/brain injury." The Full Commission does not affirm this finding. The Full Commission finds that the claimant did not prove she sustained any permanent anatomical impairment as a result of her compensable head injury.

The parties stipulated that the claimant sustained a compensable injury "to her head" on August 19, 2011. The claimant testified that she

slipped in water, fell backwards, "bounced" her head, and "was knocked out." Questions concerning the credibility of the witnesses and the weight to be given their testimony are within the exclusive province of the Commission. *Grantham v. Hornbeck Agric. Grp., LLC*, 2017 Ark. App. 520, 529 S.W.3d 666. 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. *Marshall v. Ark. Dep't of Corr.*, 2020 Ark. App. 112, 594 S.W.3d 160. The Full Commission in the present matter does not find credible the claimant's testimony that she "was knocked out" when she fell on August 19, 2011. A note at Clarksville Medical Group on August 19, 2011 indicated, "She did not lose consciousness that she was aware of." A treating physician assessed "probable concussion" but arranged additional diagnostic testing of the claimant's brain.

The Full Commission finds that the claimant did not prove she sustained a traumatic injury to her brain as the result of the compensable injury to her head on August 19, 2011. It was noted on August 22, 2011 that the claimant "had a negative CT scan head." A physician at Clarksville Medical Group reported on August 29, 2011 that "a CT of her head" was "completely normal." Dr. Rutherford noted on November 30, 2011, "She underwent a CT scan of the brain on the date of injury which is normal by

report….CT head normal by report." The evidence does not demonstrate that the claimant sustained a "cerebral concussion" on August 19, 2011 or any subsequent date. The Full Commission recognizes that an MRI of the claimant's brain on December 29, 2011 showed, among other things, "Evidence of recent infarct is seen on diffusion-weighted images." It is the Commission's duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). In the present matter, the MRI showing "Evidence of recent infarct" does not demonstrate that the claimant sustained a traumatic brain injury on August 19, 2011. Dr. Rutherford specifically noted on December 29, 2011, "Her MRI study of the brain demonstrates nonspecific white matter change *consistent with age* [emphasis added]." Dr. Rutherford did not opine that the December 29, 2011 MRI confirmed a traumatic injury to the claimant's brain.

We recognize the note at Clarksville Medical Group on January 20, 2012 which indicated, "1. Traumatic brain injury with evidence of subsequent infarction." The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Full Commission places minimal evidentiary weight on the notation that the claimant sustained a "traumatic brain injury"

on August 19, 2011. We place greater evidentiary weight on Dr. Rutherford's January 27, 2012 report, "There is no evidence for traumatic injury." Dr. Rutherford's opinion is corroborated by the CT of the claimant's brain which was taken on November 25, 2012: "Calvarium is intact. Brain appears normal. No abnormality evident. IMPRESSION: Normal." The Full Commission attaches no evidentiary weight to Dr. Dunaway's January 27, 2020 correspondence stating that the claimant suffered "a significant injury to the occipital area of her brain." We place significant evidentiary weight in the present matter on Dr. Judy White Johnson's January 25, 2012 report, "The overall pattern of the neuropsychological evaluation is not compatible with a traumatic brain injury." We also place significant probative weight on Dr. Zolten's opinion stated December 7, 2017, "6. None of the problems that Judy is currently experiencing [are] thought to reflect long-term residual effects from her concussion."

Dr. Rosenzweig stated on June 28, 2020, "Using the *American Medical Association Guide to the Evaluation of Permanent Impairment, Fourth Edition*, using Table 75, page 113, classification 2C, it is my opinion within a reasonable degree of medical certainty that Ms. Melton has sustained 5% impairment to the body as a whole regarding her brain injury. This was using Table 2 on Page 142." The evidence of record does not support Dr. Rosenzweig's assessment of a 5% rating. The probative

evidence does not reflect that the claimant sustained a traumatic injury to her brain on August 19, 2011 or any subsequent date. The record does not show that the August 19, 2011 compensable injury resulted in any "Mental Status Impairments" as described in the 4th Edition of the *Guides* at Table 2, page 4/142. The Full Commission therefore finds that the claimant did not prove by a preponderance of the evidence that the sustained a 5% impairment as assessed by Dr. Rosenzweig.

2. Compensable Neck Injury

The administrative law judge found, "The claimant has also proven by a preponderance of the evidence that she is entitled to an anatomical impairment rating of 4% to the body as a whole regarding her cervical spine." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable injury to her neck on August 19, 2011. The claimant testified that she slipped and fell while she was performing employment services. An MRI on December 29, 2011 showed degenerative disc disease in the claimant's cervical spine. The claimant began treating with Dr. Rosenzweig on April 6, 2012. Diagnostic studies arranged by Dr. Rosenzweig showed, among other things, "degenerative disk disease with spondylosis." The claimant underwent an extensive and lengthy course of treatment with Dr. Rosenzweig. On June 28, 2020, Dr. Rosenzweig assessed an overall 8% permanent anatomical impairment

rating for the claimant's cervical spine. Dr. Rosenzweig based the 8% estimate on what he described as "multilevel involvement" in accordance with the *Guides*.

It is the Commission's duty to translate the evidence of record into findings of fact. *Landers, supra*. It is also within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Baker, supra*. In the present matter, the Full Commission finds that the most accurate impairment rating with regard to the claimant's compensable neck injury was assessed at Functional Testing Centers, Inc. on September 1, 2020. The evaluators at Functional Testing Centers assessed a 4% whole-person impairment in accordance with the 4th Edition of the *Guides* at page 3/113, Table 75, II, "B. Unoperated on, stable, with medically documented injury, pain and rigidity associated with *none to minimal* degenerative changes on structural tests[.]" We find that the probative evidence of record corroborates an assessment of 4% permanent anatomical impairment as a result of the compensable neck injury. Diagnostic testing following the compensable injury showed no greater than *minimal* degenerative changes as described in the 4th Edition of the *Guides* at page 3/113, Table 75, II.B. We reiterate the MRI taken December 29, 2011 which showed "minimal central stenosis" in the claimant's cervical spine following the compensable injury. Dr. Mason reported "some

spondylosis" in the claimant's cervical spine on March 9, 2012. Dr. Mason did not report "*moderate to severe*" degenerative changes in the claimant's cervical spine which is required to assess greater than a 4% permanent rating in accordance with the 4th Edition of the *Guides*.

The Full Commission finds that the claimant proved she sustained permanent anatomical impairment in the amount of 4% as a result of the August 19, 2011 compensable injury. We find that the 4% rating is consistent with and corroborated by the 4th Edition of the *Guides* at page 3/113, Table 75, II.B. The 4% rating is supported by objective medical findings which include the reports of "muscle spasms" observed at Functional Testing Centers on September 1, 2020. The Full Commission finds that the August 19, 2011 compensable injury was the major cause of the 4% permanent anatomical impairment rating to the claimant's cervical spine.

3. Compensable Back Injury

The administrative law judge found, "The claimant has failed to prove that she sustained any impairment rating to the lumbar spine." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable injury to her back on August 19, 2011. An MRI of the claimant's lumbar spine on January 31, 2012 showed a "bulging disc L4-5." However, the evidence does not demonstrate that the L4-5 bulging

disc occurred as result of the August 19, 2011 compensable injury. Dr. Mason reviewed the MRI in March 2012 and opined, "She does not have much of a bulge at L4-5, if any." Dr. Rosenzweig stated on June 28, 2020 that the claimant had sustained 9% permanent anatomical impairment to her lumbar spine. The Full Commission assigns no evidentiary weight to Dr. Rosenzweig's assessment of 9% permanent anatomical impairment. We assign significant evidentiary weight to the assessment at Functional Testing Centers on September 1, 2020, "Ms. Melton has a 0% Whole person impairment of her lumbar spine." The record in the present matter does not demonstrate that the claimant sustained any percentage of permanent anatomical impairment to her lumbar spine as a result of the August 19, 2011 compensable injury.

B. Wage-Loss Disability

When a claimant has sustained a permanent impairment rating to the body as a whole, the Commission is authorized to increase the disability rating based on wage-loss factors. Ark. Code Ann. §11-9-522(b)(1)(Repl. 2012); *Redd v. Blytheville Sch. Dist. No. 5*, 2014 Ark. App. 575, 446 S.W.3d 643. The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2011).

An administrative law judge found in the present matter, "3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to wage loss disability." The Full Commission finds that the claimant proved she sustained wage-loss disability in the amount of 5% as a result of the compensable neck injury.

The claimant, age 67, holds undergraduate and graduate degrees. The claimant has worked at several different jobs but was primarily employed as an educator with the respondents, Clarksville School District, beginning in 1985. The claimant testified that her work with the respondents as an elementary teacher occasionally required physical labor. The record indicates that the claimant suffered from a number of medical problems prior to the stipulated injury, which problems required treatment for the claimant's neck, back, and lower extremities. As the Commission has discussed, it was stipulated that the claimant sustained a compensable injury "to her head, neck, back, and left elbow" on August 19, 2011. The claimant testified that she slipped and fell while walking down a ramp at school. The record indicates that the claimant returned to work for the respondent-employer on or about August 29, 2011. Dr. Rosenzweig stated on January 19, 2016, "There is no contraindication for her to return to work in a classroom setting to continue working as a teacher. Her only restriction is traveling on the bus for field trips, prolonged walks, walking unlevel

ground, etc. There are no formal restrictions as far as her teaching in the classroom." The claimant testified on August 2, 2018 that she had undergone approximately 10 surgeries to her knee but that she was still employed as a teacher for the respondents.

The claimant participated in a Functional Capacity Evaluation (FCE) on November 5, 2019. The claimant gave a reliable effort during the FCE, and it was reported that the claimant was able to perform at least "Sedentary" work. Dr. Rosenzweig reported on November 25, 2019, "She is a schoolteacher but has not been able to work for the last several years. She has a failed total knee arthroplasty that has caused a chronic gait disturbance." Dr. Rosenzweig noted on January 10, 2020, "It does not appear that Ms. Melton will return back to work in a classroom setting." Dr. Rosenzweig opined on June 28, 2020, "Her permanent restrictions include no overhead work, no away from body reaching or lifting, and no activities that require prolonged standing, repetitive bending, repetitive stooping, or walking on steps, inclines, or declines." Dr. Rosenzweig noted on June 29, 2020, "It has already been opined that Judy is not going to be able to return back to work as a schoolteacher and most likely is not going to be able to return back to work in any capacity."

The Full Commission has determined that the claimant proved she sustained permanent anatomical impairment in the amount of 4% as a

result of the August 19, 2011 compensable injury to the claimant's neck. We find that the claimant sustained wage-loss disability in the amount of 5%. The Full Commission recognizes that the claimant is advancing in age, 67 years old, but the claimant has marketable educational credentials and varied work experience. The record shows, however, that the claimant is not motivated to return to appropriate gainful employment within her permanent physical restrictions. The claimant's demonstrated lack of interest in returning to appropriate gainful employment is an impediment to the Commission's full assessment of the claimant's percentage of wage-loss disability exceeding her permanent anatomical impairment. *See City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984). We also attach minimal evidentiary weight to Dr. Rosenzweig's opinion that the claimant "most likely is not going to be able to return back to work in any capacity."

Respondent No. 1 contends on appeal that if the Full Commission determines that the claimant is permanently totally disabled, then the statute of limitations has run. This contention is moot because the Full Commission has not found that the claimant is permanently totally disabled. Nor does the statute of limitations bar the claimant's entitlement to permanent partial disability benefits. The claimant filed a Form AR-C, Claim For Compensation, on October 27, 2015. The claimant contended

that she was entitled to "additional benefits" to include "Additional Permanent Partial." Respondent No. 1 states that the date of the last payment of indemnity benefits was September 14, 2017. The Full Commission finds that the statute of limitations does not bar the claimant's entitlement to permanent partial disability benefits in excess of the claimant's percentage of permanent anatomical impairment. *See* Ark. Code Ann. §11-9-702(b)(1)(Repl. 2012); *Wynne v. Liberty Trailer*, 2021 Ark. App. 374. The claimant filed her claim for additional permanent partial disability benefits well before Respondent No. 1 ceased paying indemnity benefits, and the claim was not acted upon prior to the administrative law judge's opinion filed June 16, 2021. The statute of limitations does not bar the claim for wage-loss disability benefits in the present matter.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she sustained permanent anatomical impairment as a result of her compensable head injury. The Full Commission finds that the claimant proved she sustained anatomical impairment in the amount of 4% as a result of her compensable neck injury. We find that the claimant did not prove she sustained permanent anatomical impairment as a result of her compensable back injury. The Full Commission finds that the claimant proved she sustained wage-loss disability in the amount of 5% as a result of her compensable neck injury.

The August 19, 2011 compensable injury to the claimant's neck was the major cause of her 4% anatomical impairment and 5% wage-loss disability. The statute of limitations does not bar the claimant's entitlement to 5% wage-loss disability.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

_____
SCOTTY DALE DOUTHIT, Chairman

_____
M. SCOTT WILLHITE, Commissioner

Commissioner Palmer concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the majority on all findings of fact except for the finding that Claimant proved she is entitled to a 5% increase for the wage-loss factors. From this finding, I respectfully dissent.

Under § 11-9-522 of the Arkansas Code, when a claimant who has been assigned an anatomical-impairment rating to the body as a whole, the

Commission has authority to increase the disability rating based upon wage-loss factors. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). "Motivation, postinjury income, credibility, demeanor, and a multitude of other factors are matters to be considered in claims for wage-loss-disability benefits in excess of permanent-physical impairment." *Cooper v. Univ. of Ark. for Med. Scis.*, 2017 Ark. App. 58, at 7, 510 S.W.3d 304, 309. A lack of interest or a negative attitude toward work impedes the assessment of a claimant's loss-of-earning capacity.

Claimant does not have a loss of earning capacity—she has a loss of earning *desire*. As pointed out by the majority, Claimant lacks motivation to return to work. And, at age 67 who can blame her? But Respondents are only responsible for the difference in earning capacity that is caused by her compensable permanent injuries (*i.e.*, her neck injury).

For nearly a decade following her neck injury, Claimant continued working and continued earning wages at or above the wages she was earning at the time of her workplace injury. On September 16, 2019, Dr. Rosenzweig noted "She is a schoolteacher. . .. She has not been able to return back to work **due to her back or her knee surgery** . . .." (emphasis added). Neither of the reasons that Claimant is no longer working are related to her permanent impairment. Increasing the neck-injury's disability

rating for the wage-loss factors is not supported by the record. Accordingly, I respectfully dissent from the majority on this point.

_____
CHRISTOPHER L. PALMER, Commissioner