**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**
**WCC NO. H307207**

**RANDY D. MUNNS, EMPLOYEE** **CLAIMANT**

**CITY OF NORTH LITTLE ROCK,**
**SELF-INSURED EMPLOYER** **RESPONDENT**

**ARK. MUN. LEAGUE,**
**THIRD-PARTY ADM'R** **RESPONDENT**

**OPINION FILED NOVEMBER 4, 2026**

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 13, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Neal L. Hart, 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 13, 2026, the above-captioned claim was heard in Little Rock, Arkansas. A pre-hearing conference took place on June 15, 2026. The Prehearing Order entered on that date 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 previous decision in this matter is 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. The following were litigated:

1. Whether Claimant is entitled to additional anatomical impairment and permanent partial disability benefits pursuant thereto.
2. Whether Claimant is permanently and totally disabled, or in the alternative, entitled to wage loss disability benefits.
3. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendment, are as follows:

Claimant:

1. Claimant was awarded a spinal cord stimulator surgery in a prior Commission opinion, and this was done. It was his second spinal surgery related to this claim. Under Table 75 of the AMERICAN MEDICAL ASSOCIATION, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (4th ed. 1993) (hereinafter "AMA Guides"), he would be entitled to an additional two percent (2%) anatomical impairment to the body as a whole related to this procedure.
2. Claimant's work injury and its consequences have rendered him permanently and totally disabled. Alternatively, he has sustained wage-loss disability in an amount to be determined at trial.

3. Claimant's counsel is entitled to payment of a statutory attorney's fee on all controverted indemnity benefits.

Respondents:

1. Respondents contend that Claimant is not entitled to an additional two percent (2%) impairment rating following placement of a spinal cord stimulator. Following lumbar fusion surgery at L5-S1 performed by Dr. Jared Seale, Claimant received a twelve percent (12%) impairment to the body as a whole. Respondents have paid this rating in full. Following a change of physician with the Commission, Claimant saw Dr. Shah. Dr. Shah recommended a spinal cord stimulator. Respondents initially denied the spinal cord stimulator; but after a hearing, they were held to owe the spinal cord stimulator. Following a successful trial, the spinal cord stimulator was implanted on August 20, 2025. The placement of a spinal cord stimulator does not render additional impairment. Claimant has already received the maximum amount of impairment for this level according to the AMA Guides. The stimulator does not constitute a second surgery at L5-S1; instead, it was place just under the skin at T7-10. There was no herniation or bulge at any of the above thoracic levels. Moreover, spinal cord stimulators are implanted for pain control; but Arkansas law provides that impairment ratings cannot be given for pain.

2. Further, Respondents contend that, taking into account all the factors, Claimant cannot prove by a preponderance of the evidence that he is

permanently and totally disabled or entitled to wage-loss disability above the impairment rating assigned by Dr. Seale.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the deposition transcript, medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his 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. Claimant has not proven by a preponderance of the evidence that he is entitled to additional anatomical impairment, and permanent partial disability benefits pursuant thereto, in connection with the implantation of his spinal cord stimulator.
4. Claimant has not proven by a preponderance of the evidence that he is permanently and totally disabled.
5. Claimant has proven by a preponderance of the evidence that he is entitled to wage loss disability of twenty-five percent (25%).
6. 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 the indemnity benefits awarded herein.

## CASE IN CHIEF

Summary of Evidence

The hearing witnesses were Claimant and Cecilia Brunson.

In addition to the Prehearing Order discussed above, admitted into evidence in this case were the following: Joint Exhibit 1, a compilation of Claimant's medical records, consisting of two index pages and 62 numbered pages thereafter; and Respondents' Exhibit 1, non-medical records, consisting of one index page and 28 pages thereafter. In addition, the transcript of the January 23, 2025, hearing on this claim has been incorporated herein by reference. Finally, the two-page post-hearing letter brief filed by Claimant on August 26, 2026, has been blue-backed to the record.

Adjudication

Introduction

An assessment of the issues at bar first requires a recounting of the procedural history of this matter. On January 23, 2025, the first hearing was held on this claim. The March 14, 2025, opinion thereon contains the following findings of fact and conclusions of law:

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

2. The stipulations set forth [below] are reasonable and are hereby accepted[:]

   A. The employee/self-insured employer/third-party administrator relationship existed among the parties on April 5, 2023, when

Claimant sustained a compensable injury to his lumbar spine. Respondents also paid for medical treatment in the form of a peroneal nerve release related to the work injury.

B. Respondents accepted this claim and have paid medical and indemnity benefits thereon, including permanent partial disability benefits pursuant to an impairment rating of twelve percent (12%) to the body as a whole that was assigned by Dr. Justin Seale.

C. Claimant's average weekly wage of $1,006.20 entitles him to compensation rates of $671.00/$503.00.

3. Claimant has proven by a preponderance of the evidence that he is entitled to additional treatment of his stipulated compensable lumbar spine injury in the form of a spinal cord stimulator and related treatment that has been recommended by Dr. Jarna Shah.

4. Claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for February 7, 2024.

5. Claimant has proven his entitlement to a controverted attorney's fee on the indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).

This decision was not appealed. This opinion is thus 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).

A. Permanent Partial Disability

Introduction. On April 24, 2024, Dr. Seale assigned Claimant an impairment rating of impairment rating of twelve percent (12%) to the body as a whole in connection with his stipulated compensable lumbar spine injury. Subsequently, on August 21, 2025, Claimant underwent surgical implantation of a spinal cord stimulator. In this proceeding, he is arguing that he is entitled to additional permanent partial disability benefits because the 2025 procedure constitutes a "second operation" under Table 75 of the AMA Guides. Respondents dispute this, asserting: (1) the stimulator procedure does not constitute an "operation"; and (2) pain—the ostensible basis for the stimulator—cannot form the basis for a permanent impairment rating.

Standards. Permanent impairment, generally a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Pursuant to Ark. Code Ann. § 11-9-522(g) (Repl. 2002), the Commission adopted the AMA Guides as an impairment rating guide. *See* 11 C.A.R. § 25-129 (formerly AWCC R. 099.34). A determination of the existence or extent of physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2012)("Objective findings" are "those findings which cannot come under the voluntary control of the patient." *Id*. § 11-9-102(16)(A)(1)). Permanent benefits are to be awarded only following a determination that the compensable injury is the major cause of the disability or impairment. *Id*. § 11-9-102(4)(F)(ii). "Major cause" is defined as "more than fifty percent (50%) of the cause," and a finding of major cause

must be established by a preponderance of the evidence. *Id*. § 11-9-102(14). This standard 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). Any medical opinion must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16) (Repl. 2012).

In *Jones v. Wal-Mart Stores, Inc*., 100 Ark. App. 17, 262 S.W.3d 630 (2007), the Arkansas Court of Appeals held that the Commission has the authority to assess its own impairment rating in the absence of a physician-assigned impairment rating. *See also Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001); *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994).

Discussion. On September 22, 2023, Dr. Seale operated on Claimant. Among other procedures, he performed a transforaminal lumbar interbody fusion, left, with right facet/posterior fusion, at L5-S1. The doctor wrote on April 24, 2024: "The patient's impairment rating will be a 12% as taken out [of] page 113 of the 'Guides to the Evaluation of Permanent Impairment, Fourth Edition.' This is for a single level lumbar fusion with decompression with residual pain[.]" This is found in Section IV(D) of Table 75.

Just below that, Section IV(E)(1) provides that a rater may assign an additional two percent (2%) for a "[s]econd operation." Would the surgical implantation of a spinal cord stimulator fall within this designation? In a word, no. Table 75 deals with "Specific Spine Disorders." Disorder IV involves "Spinal stenosis, segmental instability, spondylolisthesis, fracture, or dislocation, operated on." The implantation of the

stimulator did nothing to address the above disorders, as did, for instance, Claimant's fusion surgery. The spinal structure was not altered in any way with the installation of the stimulator. Electrodes were placed in the epidural space at T12-L1 and were positioned to overlay T7-10; and a battery is placed under the skin.

I am aware that the Arkansas Court of Appeals in *Singleton v. City of Pine Bluff*, 102 Ark. App. 305, 285 S.W.3d 253 (2008), held that the Commission could not simply decline to assign an impairment rating in connection with a compensable injury on the basis that the AMA Guides "do not contain an express method" for doing so. *See also MHM Support Svcs. v. Miller*, 2025 Ark. App. 546, 2025 Ark. App. LEXIS 576. But that does not affect this decision for two reasons. First, Claimant's injury has already been rated. Second, while the stimulator is designed for long-term use, nothing in evidence shows that it cannot simply be removed without permanent alteration of Claimant's spinal structure if, for instance, it ceases to function; in other words, the presence of the implant is not a permanent condition subject to being rated.

The stimulator is designed to alleviate pain, not address anything structurally in the spine. On that basis, it is not ratable because, as provided in § 11-9-102(16)(A)(ii)(*a*),

> When determining physical or anatomical impairment, neither a physician, any other medical provider, an administrative law judge, the Workers' Compensation Commission, nor the courts may consider complaints of pain.

Moreover, it bears repeating that Claimant's residual pain was already addressed in the twelve percent (12%) rating that Dr. Seale assigned.

In sum, Claimant has not proven by a preponderance of the evidence that he is entitled to an additional or higher impairment rating due to the implantation of his spinal cord stimulator.

B. Permanent and Total Disability

Introduction. Claimant has contended that as a result of his stipulated compensable lumbar spine injury, he is permanently and totally disabled. In the alternative, he has asserted that he is entitled to wage loss disability benefits over and above his impairment rating—which, again, is twelve percent (12%) to the body as a whole. Respondents have argued otherwise.

Standards. The accident of April 5, 2023, resulted in a compensable injury to Claimant's lumbar spine. This injury is an unscheduled one. *Cf*. Ark. Code Ann. § 11-9-521 (Repl. 2012). The term "permanent total disability" is defined in the statute as "inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment." Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2012).

Claimant's entitlement to wage loss disability benefits is controlled by Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2012), which states:

> In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

*See Curry v. Franklin Elec.*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). Such "other matters" include motivation, post-injury income, credibility, demeanor, and a multitude of other factors. *Id*.; *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961). As the Arkansas Court of Appeals noted in *Hixon v. Baptist Health*, 2010 Ark. App. 413, 375 S.W.3d 690, "there is no exact formula for determining wage loss . . . ." Under § 11-9-522(b)(1), when a claimant has been assigned an impairment rating to the body as a whole, the Commission possesses the authority to increase the rating; and it can find a claimant totally and permanently disabled based upon wage-loss factors. *Cross v. Crawford County Memorial Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996).

To be entitled to any wage-loss disability in excess of an impairment rating, the claimant must prove by a preponderance of the evidence that he sustained permanent physical impairment as a result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). In considering factors that may impact a claimant's future earning capacity, the Commission considers his motivation to return to work, because a lack of interest or a negative attitude impedes the assessment of his loss of earning capacity. *Id*. The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). Finally, Ark. Code Ann. § 11-9-102(4)(F)(ii)(*a*)-(*b*) (Repl. 2012) provides:

> (*a*) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.
>
> (*b*) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

As discussed above, "Major cause" is more than fifty percent (50%) of the cause; and only by a preponderance of the evidence is this standard met. Ark. Code Ann. § 11-9-102(14) (Repl. 2012). "Disability" is the "incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury." *Id*. § 11-9-102(8).

The determination of a witness' 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–Testimony. Claimant testified that he was injured at work on April 5, 2023. He was using a wrench, it snapped and resulted in his back becoming injured. Respondents accepted the injury as compensable and paid for his treatment. This treatment initially consisted of three injections. Thereafter, he underwent a spinal fusion and a peroneal nerve release. Claimant was assigned an impairment rating of twelve

percent (12%) to the body as a whole. Respondents accepted this as well, and have paid it in full.

In relating his history, he testified that he is 63 years old and left school during the tenth grade to enter the workforce. He has worked ever since that time. In 1988 he obtained his graduate equivalency degree ("GED"). Claimant related that he has a mechanic's license, a forklift certification, and a commercial driver's license ("CDL"). His CDL is still active until June 26, 2029; but he acknowledged that he does not plan to renew it, and stated that he did not believe that he could pass the required DOT physical.

In setting forth his work history, Claimant testified that his jobs roughly fell into three categories: house framing, truck driving, and heavy mechanics. The framing work required that he lift over 50 pounds and walk atop a 3.5-inch wall while doing so. Questioned whether he could return to this line of work, he replied: "I wouldn't even try it. You can die walking a wall." As for his truck driving career, Claimant stated that he worked for numerous companies between 1981 and 2023. These jobs often involved lifting over 50 pounds of freight, along with bending and stooping. His testimony is that, currently, he is no longer able to do this kind of labor. Concerning his mechanic work, which was heavy-duty, Claimant stated that he held this position on three separate occasions: one working on locomotives, another fixing concrete trucks and plants, and still another doing the work for Respondent City of North Little Rock that led to the injury

at issue. It entailed working on heavy equipment such as bulldozers, and the kiddy train at the city park. He does not believe that he can go back to being a mechanic.

With respect to computers, Claimant believes that his skills in this area are sub-par. He does not own a smartphone. His work experience with computers consisted primarily of ordering parts via the "point and click" method.

According to Claimant, he takes Gabapentin. However, he does not take it as often as the prescription allows because it renders him groggy and unable to think straight. While on the witness stand, he admitted that he was not "thinking straight." Asked why this was the case, he responded that he did not and does not sleep well—no more than four to six hours a night. He explained what causes his insomnia:

> My nerves in my legs, they—they'll go to cramping. My feet will cramp and I have to get up and lean up against the wall and stretch it, try to stretch it back out. I get charley horses real bad.

In the previous hearing, he was found to be entitled to the implantation of a spinal cord stimulator to address his pain. The following exchange occurred:

> Q. Now, what I want to know is, did this spinal cord stimulator help your symptoms?
>
> A. Yes, sir. My leg don't burn, and it used to. Man, the front of my leg would just burn all the time constantly.
>
> Q. You're rubbing your left leg, right?
>
> A. Yes, sir.
>
> Q. Okay. Does it burn anymore at all?
>
> A. Some, but it's not as bad as it was.

> Q. Okay. Other than helping that, what else did the spinal cord stimulator do, if anything?
>
> A. Made me feel better, I mean, as far as my general health, I guess you could say, but that's about it. It made my leg don't burn, and my foot's better.

Asked to describe his pain at present, Claimant related that he experiences a "dull ache" in the middle of his back that never goes away. Its severity varies from day to day. When it is at its worse, he does not feel like getting out of bed. Two or three times a week, his left leg goes limp. When this happens, he has to "[s]it there and wait 'til it wakes up." The leg also has a burning sensation. These problems, combined with ever-present numbness in the leg, render it hard for him to stand, sit, or walk. Claimant rated his pain as being 7/10 on a good day, and 10/10 on a bad day. Because of his, he has to sit a lot. But his discomfort causes him to have to change positions every 45 minutes, and stand up and move around for around 15 minutes. He estimated that he can stand no more than one hour at a time. His mobility issues hamper his stair-climbing ability. While he walks around a local lake for exercise, his issues require that he stop and rest at each bench surrounding it. He uses a walking stick to help maintain balance, and lifts no more than 25 pounds. As a consequence of these problems, he has gained 20 pounds.

According to Claimant, he drives every day. But the distance involved is not more than eight to ten miles. His testimony was that this amount of driving does not bother him. Relating this and his sitting issues to his prior truck-driving career, Claimant did not feel he could be gainfully employed as a truck driver if he had to stop the rig

every 45 minutes to walk around for 15. He acknowledges that he rides a three-wheeled motorcycle, explaining: "Man, that's the only thing that keeps me sane." However, he is unable to travel very far on it. He believes that his pain level in the mornings would make it difficult for him to arrive at work on time.

In describing a typical day that he experiences in the aftermath of his back injury, Claimant stated that he sometimes has to roll out of bed onto his knees. He takes Ibuprofen to help deal with his pain, which he described as being 10/10 at that time of day. Then he lies in a recliner. Dressing himself can take 20 minutes, and necessitates sitting while doing so. He is able to mow his one-acre lawn; but he has to do it in four to five sections, resting after completing each one, over the course of multiple days.

Claimant underwent a functional capacity evaluation ("FCE"). Pursuant to that evaluation, he was assigned permanent restrictions. Because of those, Respondent City of North Little Rock would not allow him to return to work there. He has not worked since then. However, despite this, Claimant stated that he would like to re-enter the workforce. He has not filed for retirement or for disability. At present, he is able to cover his living expenses because he "cashed out an annuity"; he has no income.

Respondents furnished him with a vocational evaluation and job-placement assistance. An employee of the evaluator, Darlene Owens, helped him apply for some jobs online. Of those, while he heard back from three of the prospective employers, no job offers materialized.

Under questioning from Respondents, Claimant testified that he is licensed to work on brakes and air conditioning in vehicles. He is not receiving Social Security

benefits. Claimant is aware that Dr. Seale placed him at maximum medical improvement as of April 24, 2024. He was not aware that his FCE showed that he could perform work in the Medium category. Claimant reiterated his testimony on direct that he did not return to work for the City of Little Rock because there was not a job available for him there within his permanent restrictions. Asked what those restrictions are, Claimant responded:

> I can't walk very far, I can't sit very long, I can't stand very long, I can't pick up very much weight, I can't bend, can't lift, can't twist. I mean, there—y'all—y'all got everything wrote down.

He agreed that since undergoing the spinal cord stimulator procedure, he is doing better and is able to engage in more activities.

Returning to the subject of leisure activities, Claimant stated that not only does he walk laps around Lake Willastein, but that he fishes there. As for employment issues, he recently applied for jobs without any aid from the vocational rehabilitation people. These positions were at warehouses in Maumelle. Despite this, and his testimony that he now has apps for such services as Career Builder and Zip Recruiter, he maintained that he does not know how to apply for jobs online. Claimant does not believe that he could return to work as a truck driver. When asked about working for the security companies ADT and Vivint, he stated that he could not do a job that entailed walking door-to-door to solicit business. When it was pointed out that he walks around the lake, he replied that there would be benches at each house where he could rest/recover. With respect to the warehouse jobs, he surmised that each would involve a substantial amount of standing and walking—which he is no longer able to do

When questioned by the Commission, Claimant acknowledged that he "might've exaggerated a little bit" in testifying that he a taken "a couple hundred" DOT physicals in his career. But he hastened to add: "I know I've taken over a 100." He drives a pickup, and rides a Harley-Davidson two and three-wheeled motorcycle. . He denied telling the vocational evaluator that he "frequently used the computer to search for and order parts"—a quotation taken from his evaluation. He stated that he only performed this activity every couple of weeks.

Claimant stood for a time while testifying. Asked about the "numbness" in his left leg, Claimant stated that it is more of a pins and needle" sensation. He experiences leg cramps as well. Claimant testified that his pain ranges from 7/10 to 10/10. When asked to confirm that it never drops below that level, he responded: "Some days it gets lower, but not every day." Asked how his pain range could be so high, in light of his testimony that the stimulator helped, he stated: "Last time I seen you [the earlier hearing], I told you it was a 12." When it was explained to him that 10/10 is the rating for the worst pain imaginable, and he was asked to rate the pain he was having while on the witness stand, he responded: "Ten. I don't like pain." The following exchange took place:

> Q. But what you—do you understand what you're telling me is you're standing right here looking at me and you're telling me that you are in absolute agony, is that what you're telling me? It's a 10 out of 10 right now[?]
>
> A. Yes, sir.

Claimant agreed that he has extensive experience and knowledge involving truck and automobile parts. Questioned whether he felt that he could work at parts store,

Claimant replied that he could not do so because he would have to stand all day. However, he then acknowledged that such establishments have stools for the use of their counter employees. Claimant then explained that he still could not function in such a position because parts stores and warehouses have parts in excess of his 25-pound lifting restriction.

Called by Respondents, Cecilia Brunson testified that he is a certified rehabilitation counselor. She was retained by Respondents to perform a vocational assessment and job placement services for Claimant. Based on Claimant's employment history and the results of his FCE, Brunson identified eight available jobs that were within his skillset and physical restrictions. These included positions involving quality control, and equipment selection and monitoring. One of those jobs was a bus driver. Claimant did not apply for it because he was not interested in it, despite the fact that he has no driving restrictions. He also did not apply for a van-driving job.

Through an employee of Brunson, Owens, Claimant was provided continuing job placement assistance. Owens met with Claimant on multiple occasions. She also created an email address and resume for him, and assisted him with applying for jobs. Claimant was advised of the free computer services available for him at the library and through the Department of Workforce Development; but he did not avail himself of these. The only applications that Claimant sent from the library were done with the assistance of Owens. One company was identified that offers walk-in interviews. Claimant was notified of this; but he did not follow through and go there. Brunson advised him that her organization would help prepare him for such an interview.

The following exchange took place:

Q. In your professional opinion, do you feel Mr. Munns is motivated to find work?

A. I would say that Mr. Munns hasn't put forth much effort in finding work.

Q. And when you say effort, what does effort look like to you?

A. Actually applying for the jobs, going to the open interviews, the walk-in interviews, taking time upon your free time to go to the library and make an attempt to search for the jobs and fill out the job applications on your own and just follow up, period.

Q. So is it fair to say that, in your professional opinion, you felt like Mr. Munns could have done more to participate in the job-placement process?

A. Yes, I do.

On cross-examination, Brunson acknowledged that Claimant had been cooperative to some degree. He demonstrated, at least initially, a willingness to work with Brunson and Owens. She agreed that he met with Owens at the library on multiple occasions; and the two used the computer there together. Brunson likewise agreed that Claimant's computer skills are somewhat limited. He even had trouble using a smartphone to apply for jobs. The reason that Claimant needed a new email address and help preparing a resume was his problems operating a computer. Nevertheless, Brunson maintained that Claimant's computer skills are "average," explaining: "Well, he can turn the computer on, he can log in. In his previous job, he stated that he had to order parts, and he used the computer at that time to order parts . . . [a]nd so that—that's enough computer skills."

Brunson stated that she is familiar with Claimant's surgical history. She generally believes what he has told her.

Asked about some of the jobs that were recommended to Claimant, Brunson testified that the parts manager position requires computer skills. The checkout clerk job requires extensive standing. But most counter representative jobs have a sit/stand option. She agreed that the warehouse jobs require extensive standing and walking. As for the driving jobs, those require extensive sitting. Brunson agreed that, if Claimant's complaints about sitting/standing/walking are valid, it would be difficult for him to work as a truck driver or warehouse worker.

Under questioning from the Commission, Brunson testified that that, in her opinion, Claimant would qualify for a position as a clerk in an auto parts store. Such an establishment could accommodate someone who needs to alternate sitting and standing. It was not her belief that such a job would be in excess of Claimant's 50-pound lifting restriction.

Evidence–Medical Records. On September 22, 2023, Dr. Seale operated on Claimant, performing a decompression and an interbody fusion at L5-S1. He assigned the following post-operative diagnoses:

1. Foraminal disc protrusion right sustained from work injury
2. Degenerative spondylolisthesis spinal instability L5-S1
3. Degenerative disc disease and foraminal stenosis L5-S1

On December 16, 2023, Claimant presented with left leg pain and underwent an electrodiagnostic study that was abnormal. On January 29, 2024, he underwent a left knee peroneal nerve release by Dr. Eric Gordon. A lumbar MRI on March 4, 2024,

showed no evidence of neural impingement, but an incomplete fusion. Claimant reported on April 24, 2024, that he was unable to return to work due to pain. Dr. Seale recommended that he undergo an FCE. During that same appointment, Seale found him to be at maximum medical improvement and assigned him an impairment rating of twelve percent (12%) to the body as a whole. He added:

> If the patient has a valid functional capacity exam, then they may return back to work per the defined restrictions of that . . . valid functional capacity exam. If the functional capacity exam is invalid, the patient may return back to work full duty without restrictions. I will continue the patient's work restrictions of no bending, twisting, or lifting over 20 pounds until the results of their functional capacity exam are available.

On May 2, 2024, Claimant underwent the FCE. He gave a reliable effort, with 51/51 consistency measures within expected limits, and demonstrated the ability to work within the Medium category.

Dr. Shah on July 24, 2024, saw Claimant, assessed him as having post-laminectomy syndrome, and recommended implantation of a spinal cord stimulator. This recommendation was based on the fact that Claimant had failed other pain management measures including injections, physical therapy, and medication. The implantation took on June 27, 2025. Claimant reported to Shah on October 1, 2025, that he was doing well with the stimulator. The report of that visit also reads: "Patient is frustrated that because of his lifting and weight restrictions outlined on his FCE, he has lost his job as a mechanic." In the succeeding reports of his pain management, the following phrase is repeated: "Overall he is doing well."

Discussion. The evidence shows that Claimant is 63 years old. He completed the ninth grade, and later obtained a GED. He holds a number of licenses; he has a mechanic's license, a forklift certification, a CDL, and a license to work on vehicle brakes and air conditioning systems. His career has been spent primarily in three areas: house framing, truck driving, and heavy mechanics.

It was the third area—mechanics—in which he was employed when he sustained his compensable lumbar spine injury on April 5, 2023. Thereafter, he underwent three invasive procedures: a laminectomy and fusion at L5-S1, a peroneal nerve release, and implantation of a spinal cord stimulator. Claimant was found to have reached maximum medical improvement. His permanent impairment rating is twelve percent (12%) to the body as a whole. He gave a reliable effort in his FCE, and demonstrated the ability to perform work in the Medium category.

Claimant's testimony was that he cannot return to his previous careers of working on trucks and other heavy equipment, driving trucks, or framing houses. I credit this, and note that this self-assessment is corroborated by his FCE results. Those results prevented him from going back to work for the City of North Little Rock.

However, he does have marketable skills. His knowledge of motor vehicle parts, coupled with his experience in ordering them by computer, would translate into a position of working a counter at an auto parts store. As Brunson testified—and I credit—he would qualify for such a position as a clerk in an auto parts store. She noted that this job could accommodate someone who, like Claimant, needs to alternate sitting and standing. Finally, she gave credible testimony that, based on her experience as a

vocational rehabilitation counselor, this position would be within Claimant's lifting restriction. Tellingly, such a job opening was part of Brunson and Owen's report that is in evidence. Claimant declined to apply for it because of its distance from his house. But as the evidence shows, he has no driving restrictions. As he testified, he still drives a pickup truck on a daily basis, and also engages in motorcycle riding.

In addition to riding motorbikes, Claimant walks extensively. He fishes as well. While I credit his testimony that, despite the spinal cord stimulator helping, he still has pain, I have the firm conclusion that Claimant is exaggerating the severity of his pain. While it is still, no doubt, significant, it was not 10/10 while he was on the witness stand, as he claimed. As he admitted with regard to the number of DOT physicals that he had undergone, I find that this, too, was an area of his testimony where he engaged in a degree of embellishment.

The evidence shows that Claimant is somewhat motivated to continue working. This is shown by his declining to apply for positions for which he is qualified, arrayed against the fact that he has nonetheless applied for some jobs and has chosen, as of yet, not to retire or seek disability benefits.

In this case, after consideration of the foregoing, I find that Claimant has not met his burden of proving that he is permanently and totally disabled. I do find, however, that the preponderance of the evidence establishes that he has suffered wage loss disability of twenty-five percent (25%), and that his compensable lumber spine injury of April 5, 2023, is the major cause of this.

C. Controversion.

Introduction. Claimant has asserted that he is entitled to a controverted attorney's fee in this matter.

Standard. 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). In this case, the fee would be 25 percent (25%) of any indemnity benefits awarded herein, one-half of which would be paid by Claimant and one-half to be paid by Respondents in accordance with *See* Ark. Code Ann. § 11-9-715 (Repl. 2012). *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

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. Neal Hart, is entitled to the fee as set out above.

## CONCLUSION AND AWARD

Respondents are directed to furnish/pay 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.**

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Hon. O. Milton Fine II
Administrative Law Judge