

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H306050**

JOSE A. NAVARRO-MALDONADO, EMPLOYEE	CLAIMANT
J C QUALITY FRAMING INC., EMPLOYER	RESPONDENT
LM INSURANCE CORPORATION, CARRIER/TPA	RESPONDENT

OPINION FILED **SEPTEMBER 10, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by DANIEL E. WREN, Attorney, Little Rock, Arkansas.

Respondents represented by ZACHARY F. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 20, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 6, 2025, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on September 9, 2023
3. The claimant sustained a compensable injury on September 9, 2023.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Compensation rate.

2. Whether claimant is entitled to wage loss benefits.
3. Attorney's fee.

All other issues are reserved by the parties.

The claimant contends that "He was given permanent restrictions, which were not sufficient to return to his job doing construction work. Since being released, the claimant has not been able to obtain full-time work and all the work he has found has paid significantly less than his prior wages."

The respondents contend that "This claim has been accepted, and all appropriate benefits have been paid. The claimant is requesting wage loss benefits which can be determined at a hearing."

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on March 6, 2025, and contained in a pre-hearing order filed on that same date are hereby accepted as fact.
2. The evidence in this case supports a finding that claimant was earning an average weekly wage of \$800.
3. Claimant has met his burden of proving by a preponderance of the evidence that he has suffered a loss in wage earning capacity in an amount equal to 5% to the body as a whole.

#### HEARING TESTIMONY

Claimant was injured on September 9, 2023, when he fell approximately forty feet from a roof. His employer also fell and died as a result of the fall. Claimant testified that he had three major injuries:

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to his foot, his knee, and his back. Claimant said he had surgery on each of these body parts and still has pain in his back and foot. Claimant demonstrated that he had a decided limp in his left foot, his gait appears to be uneven, and he looked to be unsteady on his feet. His left foot was not straight. Claimant testified that walking caused his back to hurt, although he always has pain in his back whether he is walking or not.

Claimant testified that his work involved building structures from the ground up. He walked and climbed ladders and scaffolding during his workday. Since the injury, claimant has worked four or five hours during the day picking up trash at job sites. He testified that the pain in his back caused him to shorten his workday. Lifting and twisting at work causes his back to hurt more and he limits his workday to five hours on days that he can work. Claimant testified that he has back pain when he gets up in the morning and it gets worse during the day when he works.

Claimant said he worked for J C Quality Framing for close to two years, although there was a period of time that he left because he wanted more money. He had returned to respondent J C Quality Framing about three months before this accident and testified that he was earning \$20.00 an hour on the day of the accident. He testified that he would often work between fifty and sixty hours a week. Claimant was aware that an adjuster for LM Insurance reported his average weekly wage (AWW) was \$925.00, but claimant believed he was making more. However, he believed that figure was fair.

Claimant said that he now works when his friends tell him about a job. He cannot lift heavy objects while working, limiting himself to fifty pounds or under. He said the most he had made in a week was \$450.00 and averaged around \$300.00 since the accident. Claimant said that if he could work more that he would.

On cross examination, claimant testified that his condition has not improved since he was deposed in February 2025. He stated that he could not lift more than fifty pounds and could not climb

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ladders. Claimant clarified that surgery had not been recommended because of the area of his back that is injured, the doctor was concerned that his condition might get worse. Claimant was concerned that he could end up not walking following the back surgery.

Claimant had not applied for jobs other than cleaning construction sites. Claimant had not worked at any employment other than construction. He had looked into painting jobs, but there was a requirement that he be on a ladder which he could not do. Claimant said that he made \$80.00 to \$100.00 dollars per day. He was paid by cash for these jobs and does not have a bank account. Claimant had no other form of income and had not applied for government benefits. Claimant admitted that he spoke only Spanish which would limit his employment prospects. Claimant conceded that he did not have any tax returns or pay stubs from J C Quality Framing, and had no proof other than his testimony that he was averaging \$925.00 per week. Claimant testified that Respondents' Exhibit 1 came from a money exchange house where he cashed a check. He used more than one money exchange house, and those places did not have a printer to make copies of what they saw in their computer.

On redirect examination, claimant said his paycheck was the same most weeks but there were times they were higher and lower. Claimant said he made an effort to get as many copies as possible of the checks he cashed. Claimant said that when he spoke to an adjuster for the insurance company, he answered the questions about how many hours he worked and how much he was paid to the best of his ability.

Manuel Aranda testified by deposition. He is a claims adjuster for Liberty Mutual Insurance and has been since 2005. He identified the AR-2 form that he filed with the Arkansas Workers' Compensation Commission. He said the \$925.00 average weekly wage he used on that form was an estimate based on the conversation that he had with the claimant. He had no wage records to work

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with and he relied on claimant's representation as to what he earned. He did no investigation as to what the going rate was for construction workers in Arkansas but would not be shocked that a worker made \$925.00 per week. He had no reason at the time to believe that \$925.00 per week was incorrect. He also did no investigation as to claimant's average weekly wage other than speaking with family members of the deceased owner to see if there were any financial records that he could obtain, but received no cooperation from the family in that regard.

#### REVIEW OF THE EXHIBITS

In addition to the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of one index page and 17 numbered pages thereafter; Claimant's Exhibit 2, non-medical records, consisting of one index page and 55 numbered pages thereafter; Respondents' Exhibit 1, consisting of one index page and eight numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of two index pages and two numbered pages thereafter.

#### MEDICAL EXHIBITS REVIEW

Claimant submitted the discharge summary from Washington Regional Medical Center where he was taken after the accident, after two days he was discharged and was then seen at Ozark Orthopedics by three different physicians. Claimant provided the final office visit with Dr. Tom Coker on January 24, 2024, in which he was assessed a 12% rating to his lower left knee. Dr. Mark Miedema treated claimant for his back injury, and on February 8, 2024, he assessed a 5% permanent impairment rating due to the compression fracture in claimant's lumbar spine. Dr. Miedema recommended a functional capacity evaluation to determine claimant's permanent work restrictions. Dr. Miedema noted that the MRI on claimant's back did not show any significant retropulsion or canal compromise

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from the fracture. Claimant also submitted Dr. Jason Pleimann's discharge summary of March 18, 2024, in which claimant was given a 21% rating on his left foot.

#### NON-MEDICAL REVIEW

Claimant submitted thirty-six pages of documents that included the employer's intent to accept the claim that was submitted to the Commission by Mr. Aranda on September 26, 2023, on which the sum of \$925.00 was listed as claimant's average weekly wage. The remaining document appears to have come from the Commission's file and have no bearing on the issues to be decided in this matter.

Respondents' exhibits include copies of three checks dated June 23, 2023, in the amount of \$990.00, July 1, 2023, in the amount of \$800.00, and August 26, 2023, in the amount of \$960.00. Respondents also included as an exhibit claimant's answers to interrogatories in which claimant stated that he had very little education, that he did not have any tax returns for the previous five years and did not have any paystubs or copies of his checks. Claimant had already been deposed at the time the answers to these interrogatories and request for production of documents was submitted and claimant is the one that provided the three checks referenced above. I therefore understand his answer to request for production of documents number eight to mean he had no additional copies of paychecks or pay stubs.

#### ADJUDICATION

Claimant suffered severe injuries from a three-story fall, injuring his foot, knee, and lower back. Respondents did not contest the claim and from the issues presented in the prehearing order, it appears that all benefits have been paid to date. Two separate questions remain: what is claimants compensation rate and what degree of wage loss disability his unscheduled injury has caused?

What is the Claimant's compensation rate?

Ordinarily, it is a simple matter to examine wage records and determine what the average weekly wage is for a claimant. In this case, the employer died in the accident that caused claimant's injuries, therefore was not available to provide accurate income information as to his rate of pay, normal hours worked, frequency of employment and other such matters. Manuel Aranda, the adjuster handling the claim for respondent LM Insurance, interviewed claimant shortly after the accident; based on claimant's representations to him, Mr. Aranda began paying temporary total disability benefits based on an average weekly wage of \$925.00. Claimant's position was that since Mr. Aranda initially accepted the AWW as reported by claimant, that should have settled the matter. However, respondents clearly made it an issue in the prehearing order.

Arkansas Code Annotated section 11-9-518 provides in pertinent part:

(a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment...

(c) If, because of exceptional circumstances, the average weekly wage cannot be fairly and justly determined by the above formulas, the commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

Although claimant did not assert that this matter involved "exceptional circumstances," the statute anticipates the Commission will determine if such exist in order to determine a fair and just weekly wage. The death of the employer in the same accident is unusual enough to create an exceptional circumstance; he would have been able to answer questions about claimant's earnings. However, due to the way claimant was paid, the proof on this point is scant. Claimant's testimony was that he could work more or less than 40 hours per week, which is typical for construction work. Neither party provided the bank records of the employer, claimant had no bank records nor tax returns. There was no testimony presented by other employees or persons as to the hours claimant

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worked.<sup>1</sup> I found it curious that the only three checks claimant professed he could find just happened to average \$917.00—almost exactly what he had estimated to be his AWW when he talked to Mr. Aranda. While claimant's testimony was problematic in many areas, I do believe he was being paid \$20 per hour, and I find it would be fair and just to calculate his AWW on the basis of 40 hours per week at \$800.00. This would yield a permanent partial disability weekly benefit of \$400.00.

Did claimant prove entitlement to a wage loss disability award?

As set forth in the review of the medical records, claimant had three separate compensable injuries. However, two of those—to claimant's foot and knee—were scheduled injuries, and his recovery for those injuries is limited to the percentage of permanent physical impairment as per A.C.A. 11-9-519(g).

Claimant's back injury is an unscheduled injury, and is governed by Ark. Code Ann. § 11-9-522(b)(1), 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.

Such "other matters" include motivation, postinjury income, credibility, demeanor, and a multitude of other factors to be considered in claims for wage-loss-disability benefits in excess of permanent-physical impairment. *Ark. Highway & Transp. Dep't v. Work*, 2018 Ark. App. 600, 565

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<sup>1</sup> Ordinarily, a respondent is not required to present any evidence and can rest on the failure of a claimant to meet his burden of proof. This statute, however, is unusual in that the commission is to determine what is just and fair to all parties, making no mention of the burden of proof. Based on what was presented, my ruling would be the same if I found claimant had the burden of proof on this issue.

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S.W.3d 138. There is no exact formula for determining wage loss *Hixon v. Baptist Health*, 2010 Ark. App. 414.

Claimant is currently 34 years old, uneducated, unable to communicate in English, motivated to work in the construction industry but earning less wages than he was earning before his injury. Unfortunately, having seen claimant testify and observed his left foot, I believe it is that injury that is the major cause of claimant being unable to climb ladders and otherwise engage in the same type of labor he was doing when he was injured. Looking solely at the back injury, Dr. Miedema stated “Fortunately, this MRI did not show any significant retropulsion or canal compromise from the fracture.” There is no objective evidence of neural foraminal narrowing or central canal stenosis which would be causing claimant to have radicular pain into his left lower extremity. Because there were no results from a functional capacity evaluation submitted into evidence, I saw no restrictions on claimant that can be attributed to his back injury. Claimant testified that his doctor discussed a serious back surgery with him, but nothing about that discussion is contained in Dr. Miedema’s discharge summary. However, in the discharge summary, claimant was given instructions for “back care and preventing injuries.” As such, I do believe the condition of claimant’s back alone, without regard to his foot injury, would cause him to be unable to work at some of the jobs he had prior to his compensable back injury.

After considering all the factors set forth in this opinion, I am satisfied that claimant has proven he has a wage loss disability of 5% above his physical impairment rating on his lumbar spine.

#### ORDER

The proof in this case supports using exceptional circumstances to find claimant’s average weekly wage was \$800.00, for a permanent partial impairment weekly benefit of \$400.00.

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Claimant has proven by a preponderance of the evidence that he has suffered a loss in wage earning capacity in an amount equal to 5% to the body as a whole. Accordingly, claimant is entitled to payment of permanent partial disability benefits in an amount equal to 5% to the body as a whole. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits for wage loss disability.

Pursuant to A.C.A. § 11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the 5% wage-loss benefits awarded. This fee is to be paid one half by the carrier and one-half by the claimant.

Respondent is responsible for the court reporter's fee of \$642.00

**IT IS SO ORDERED.**

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE