

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H307648

JOSHUA OLSON, Employee	CLAIMANT
J. WILLIAMS CONTRACTOR, LLC, Employer	RESPONDENT
STONETRUST INSURANCE, Carrier	RESPONDENT

OPINION FILED DECEMBER 17, 2025

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 23, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 28, 2025, and a Pre-hearing Order was filed on July 30, 2025. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 relationship of employee-employer-carrier existed between the parties on October 31, 2023.
3. The respondents have controverted the claim in its entirety.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$427.00 for temporary total disability benefits and \$320.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained compensable injuries to his skull, brain, and jaw on or about October 31, 2023.
2. Whether Claimant is entitled to medical treatment for his skull, brain, and jaw injuries.
3. Whether Claimant is entitled to temporary total disability benefits from November 1, 2023, to a date yet to be determined.
4. Whether Claimant's attorney is entitled to an attorney fee.
5. Respondents raise Intoxication defense.

The claimant's contentions are as follows:

“1. The above listed proposed stipulations.

2. The Claimant was injured on October 31, 2023, when he was the passenger of a company vehicle which was involved in a single car accident causing him to receive multiple head injuries.

The Claimant was airlifted to Washington Regional Medical Center for treatment of his injuries. He was treated for six (6) skull fractures, five (5) brain hemorrhages, fractured jaw and a traumatic brain injury. The Claimant was hospitalized for approximately two weeks.

The Claimant followed up with his primary care physician, Dr. Kevn Richter, for continued headaches and traumatic brain injury residual effects. Dr. Richter referred the client for speech therapy at North Arkansas Regional Medical Center.

The Claimant attended physical therapy for his traumatic brain injury including memory and speech issues.

3. The Claimant reserves the right to amend and supplement his contentions after additional discovery has been completed.”

The respondents’ contentions are as follows:

“The claimant did not sustain a compensable injury. He was tested for illegal drugs on the day of the accident, and he tested positive for marijuana and amphetamines. The use of drugs is responsible for his injuries.”

The claimant in this matter is a 36-year-old male who alleges to have sustained compensable injuries to his skull, brain, and jaw on or about October 31, 2023, in a motor vehicle accident, while employed by the respondent. The respondent in this matter has controverted the claimant’s claim in its entirety.

The claimant worked for the respondent as a construction worker helping to run inground electric lines and installing streetlights and transformers. The respondent’s home office is located in Berryville, Arkansas, but on October 31, 2023, the day the claimant alleges his compensable injuries to have occurred, he and his crew were scheduled to work in Rogers, Arkansas. The claimant stated in direct examination testimony that the drive from Berryville to Rogers “took just about an hour, maybe a little bit more.”

The claimant was questioned in direct examination testimony about how he would get to and from the job sites as follows:

Q And how would you get to the job site to and from?

A As far as transportation or the route?

Q No, I mean how did you get there? Did you drive your own vehicle?

A I would drive my vehicle to the shop there in Berryville and then from there we would like clock in, all the guys would get in the work truck, and we would drive in the work truck to Rogers.

The claimant testified that on or about October 31, 2023, he entered into a four-door or crew cabbed truck owned by the respondent with three other passengers and left from the respondent's shop in Berryville, Arkansas, at about 5:30 am. The claimant identified the driver of the respondent's truck as Hayden Keith, who was a co-worker. The claimant's foreman, Tatum Keith, was seated in the front passenger seat of the truck and a co-worker named Lanny was seated in the rear passenger seat. As for the claimant, he was seated in the rear driver's side seat of the respondent's truck.

The claimant gave direct examination testimony about his memory of the drive to Rogers that morning and the motor vehicle accident he was involved in as follows:

Q How much of that trip do you remember?

A I remember getting in the truck and going to sleep.

Q Were you asleep at the time of the wreck?

A Yes, sir.

Q So of your own knowledge, -- I don't want you to say what anybody else said -- but of your own knowledge, do you have any personal knowledge of how the wreck occurred?

A No, I do not.

Q You were asleep?

A (Witness nods.)

Q What was the first conscious moment that you have after the accident?

A I was in the hospital. I think I was eating chicken and noodles, or chicken and rice, or something.

Q So you don't remember being on the scene at all?

A No, sir.

Q Your first memory is waking up in a hospital?

A Yes.

An Arkansas State Police Incident Report was introduced into evidence and found at Claimant's Exhibit 2, pages 1-11. The report was completed by Trooper Harley Hooper and his narrative is found at page 8 of Claimant's Exhibit 2 and states:

V1 was traveling westbound on Highway 62 near Inspiration Point Fire Station 2.

V1 was negotiating a curve right. V1 crossed left of center before exiting the roadway to the left. V1 traveled off an embankment striking several small trees before coming to a final rest. V1 came to final rest at the bottom of the embankment.

V1 sustained disabling damage.

NOTE: Contributing factor in the collision was reckless driving.

Photographs of the respondent's truck after the motor vehicle accident are found at Claimant's Exhibit 3, pages 1-13 and show heavy damage to front of the respondent's truck and the rear driver's side of the respondent's truck where the claimant was in a seated position and sleeping.

The claimant was med-flighted to Washington Regional Medical Center where he was treated for his injuries. On October 31, 2023, the claimant underwent a CT of the head and brain without contrast. Following are Impressions of that diagnostic test:

IMPRESSION:

1. HEMORRHAGIC CONTUSIONS WITHIN THE RIGHT TEMPORAL LOBE LARGEST 2.4 CM. ADDITIONALLY RIGHT FRONTOTEMPORAL SUBDURAL AND POSSIBLY LEFT ANTERIOR TEMPORAL FOSSA SUBDURAL HEMATOMA.

HEMORRHAGIC CONTUSION IN THE SUBCORTICAL WHITE MATTER OF THE RIGHT FRONTAL LOBE NOTED.

2. SKULL FRACTURE IN THE AREA OF THE ANTERIOR LEFT TEMPORAL FOSSA AS WELL AS THE LEFT

ZUGOMATIC ARCH AND POSSIBLY LEFT LATERAL ORBIT. BLOOD PRODUCTS WITHIN THE PARANASAL SINUSES.
LEFT LATERAL SCALP HEMATOMA.

Later that same day, the claimant underwent a second CT of the head and brain without contrast. Following are the Impressions of that diagnostic test:

IMPRESSION:

1. SLIGHTLY LARGER HEMORRHAGIC CONTUSION IN THE RIGHT TEMPORAL LOBE MEASURES 3.0 X 1.5 CM.
2. STABLE SMALL HEMORRHAGIC CONTUSIONS IN THE ANTERIOR RIGHT TEMPORAL LOBE AND ANTERIOR RIGHT.
FRONTAL LOBE.
3. STABLE SMALL FRONTOTEMPORAL SUBDURAL HEMATOMA.

The claimant also had a CT of the maxillofacial without contrast. Following are the Impressions of that diagnostic test:

IMPRESSION:

1. FRACTURE OF THE LEFT GREATR WING OF THE SPHENOID EXTENDS ACROSS THE ORBITAL APEX AND INTO
THE POSTERIOR LEFT ETHMOID BONE.
2. NONDISPACED FRACTURES OF THE LATERAL LEFT ORBITAL WALL AND LEFT ZYGOMATIC ARCH.
3. PARANASAL SINUS HEMORRHAGE.

The claimant was admitted to Washington Regional Medical Center on October 31, 2023, and was discharged on November 17, 2023. The claimant's discharge was given the following diagnosis:

Discharge Diagnosis: 1: MVA, unrestrained passenger; 2: Traumatic intracranial hemorrhage; 3: Fracture of temporal bone; 4: Fracture of left zygomatic arch; 5: Pneumothorax, left.

The claimant was discharged to home to convalesce and referred for cognitive therapy. However, it appears that the claimant was never provided with cognitive therapy, only speech therapy.

The claimant was seen by Dr. John Kevin Richter at Northern Ark. Regional Medical Center in Harrison, Arkansas, on May 20, 2024, for speech therapy. Following is a portion of that report:

Speech Initial Evaluation

Adult Assessment

DX:

Traumatic Brain Injury (S06.9X9S)

Post traumatic amnesia (R41.3)

Pt is a 34 y/o male referred today following a visit with PCP reporting difficulty with short term memory. Pt hospitalized for approx. 3 weeks following a MVA on 10/31/23. Pt was in the back seat asleep in work truck and involved in a single vehicle MVA. Pt was unconscious with GCS of 3 upon arrival to scene. Pt intubated on the scene and air transport to Washington Regional Medical Center. Pt was dx of traumatic intracranial hemorrhage, skull fx, pneumothorax left side, fx of temporal bone, fx of left zygomatic arch. Pt d/c WRMC on 11/17/23 to home. Pt arrived today in good spirits with wife. Pt reports he has been having difficulty with cognitive functioning following TBI. Pt reports a significant loss of independence secondary to cognitive deficits. Pt goals: To increase functional status for more independence and improved memory. Oral motor structure and function was evaluated. Pt exhibits no deficits with face, jaw, or lingual movement.

Speech is fluent and intelligible

The Cognitive Linguistic Quick Test (CLQT) was given to assess strengths and weaknesses in five cognitive domains (attention, memory, executive functions, language and visuospatial skills).

The following indicates the severity rating of pt performance:

Attention: Within functional limits.

Memory: Severely impaired.

Executive Functions; Within functional limits.

Language: Mildly impaired.

Visuospatial Skills Within functional limits.

Clock Drawing Severity Rating: Within functional limits.

Linguistic/Aphasia: Mildly impaired.

Composite Severity Rating: Within functional limits.

The claimant was seen multiple times between May of 2024 and July of 2024 for speech therapy by or at the direction of Dr. Richter.

The claimant has asked the Commission to determine whether he sustained compensable injuries to his skull, brain and jaw on or about October 31, 2023. It is the claimant's burden to prove by a preponderance of the evidence that his injuries are compensable.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

A compensable injury is defined, in part, as an accidental injury which arises out of an in the course of employment. A.C.A. §11-9-102(4)(A)(I). However, a compensable injury does not include an injury “inflicted upon the employee at a time when employment services were not being performed.” A.C.A. §11-9-102(4)(B)(iii). An employee is performing employment services when they are doing something that is generally required by his or her employer. *Continental Construction Co. v. Nabors*, 2015 Ark. App. 60, 454 S.W.3d 762; *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 478, 6 S.W.3d 98, 100 (1999). The same test is used to determine whether an employee is performing employment services as is used when determining whether an employee is acting within the course and scope of employment. The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was

carrying out the employer's purpose or advancing the employer's interest either directly or indirectly. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002).

The claimant clearly has objective medical findings of internal harm to his skull, brain, and jaw. Those are evidenced by the Washington Regional Medical Center medical records, particularly the CT scans that show definitively injury to all of the beforementioned body parts. The claimant was within the course and scope of his employment at the time of the motor vehicle accident and in that period of time, performing employment services. The claimant had arrived at the respondent's place of business in Berryville in his own motor vehicle. The claimant clocked into work and loaded into the respondent's vehicle as a passenger to be transported at the direction of the respondent to that day's work area in Rogers, Arkansas. The claimant's testimony is that he went to sleep while being transported to the worksite. However, the claimant had no other employment duties to do at the time of the motor vehicle accident other than to allow the respondent to transport him to the worksite. Clearly, the respondent had an interest in the claimant arriving at the worksite which directly furthered the respondent's interest.

The claimant did not arrive at the worksite that day due to an accident in which he had no part of its course as he was asleep while being transported. Instead, a co-worker was driving the respondent's truck at the time of the accident which did cause the claimant's injuries.

The respondent in this matter has raised the Intoxication Defense. ACA §11-9-102(4)(B)(iv)(a)(b) states:

Compensable injury does not include:

Injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

The presence of alcohol, illegal drugs, or prescription drugs used in

contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

The Supreme Court analyzed the intoxication statute with regard to alcohol usage, in *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998), and determined the following:

- (1) Any amount of an intoxicating or illegal substance invokes the presumption that the injury or accident was substantially occasioned by the use of the intoxicant or illegal substance.
- (2) Whether a rebuttable presumption is overcome by the evidence is a question of fact for the Commission to determine.
- (3) The phrase, "substantially occasioned by" requires that there be a direct causal link between the use of an intoxicant or illegal substance and the injury.

Ark. Code Ann. §11-9-102(4)(B)(iv)(a)-(d) states that compensable injuries do not include injuries where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. An employee is not entitled to compensation unless it is proven by a preponderance of the evidence that the alcohol did not substantially occasion the injury or accident.

The respondent introduced a medical document found at Respondents' Exhibit 1, page 1, dated October 31, 2023, which does show a positive result for both amphetamines and cannabis. That medical report is from Washington Regional Medical Center. This document in and of itself is enough to raise the rebuttal presumption of ACA §11-9-102. However, I note that the claimant

did not dispute that marijuana or amphetamines would show up in his system. I also note that the claimant was certain that cannabis would show up in his system but was unsure if amphetamines would.

However, here the claimant is able to rebut the presumption, in that the injury or accident was not substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in the contravention of physician's orders. In the present case, the claimant was being transported by the respondent while admittedly asleep. When the motor vehicle accident occurred, he had no role or part in the incident that caused his injuries. Thus, his intoxication, if it was even present at that time, could not have substantially occasioned the motor vehicle accident.

The claimant is able to rebut the presumption of intoxication. The claimant is also able to prove by a preponderance of the evidence that he sustained compensable injuries to his skull, brain, and jaw on or about October 31, 2023.

The claimant has asked the Commission to determine if he entitled to medical treatment for his compensable skull, brain, and jaw injuries.

Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

I have reviewed all of the medical records submitted by the parties and admitted into evidence in this matter. I find that all of the treatment submitted into evidence is reasonable and

necessary medical treatment for the claimant's compensable injuries and shall be paid for by the respondents. That payment should include any out-of-pocket expenses made by the claimant. I do note that the claimant was referred by Washington Regional Medical Center for cognitive therapy, but it appears he has only had speech therapy.

The claimant has asked the Commission to determine if he is entitled to temporary total disability benefits from November 1, 2023, to a date yet to be determined.

In order to be entitled to temporary total disability benefits, the claimant has the burden of proving by a preponderance of the evidence that he remains within his healing period and that he suffers a total incapacity to earn wages as a result of his compensable injury. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

From a review of the claimant's speech therapy records it appears that he resumed work in July of 2024. The claimant, according to the claimant's testimony and to medical records found at Claimant's Exhibit 1, page 78, he had applied for a job on or before July 7, 2024. Medical records also indicate the claimant began and obtained a job or employment on or before July 15, 2024. The claimant is entitled to temporary total disability benefits until he began his employment.

In review of the evidence before the Commission, I find the claimant is entitled to temporary total disability benefits from November 1, 2023, until that date that he began employment in July of 2024, which is a date between July 7, 2024, and July 15, 2024.

The claimant has also proven by a preponderance of the evidence his attorney is entitled to an attorney's fee in this matter, set forth in the Arkansas Workers' Compensation Act.

From a review of the record as a whole, to include 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 the pre-hearing conference conducted on July 28, 2025, and contained in a Pre-hearing Order filed July 30, 2025, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he sustained compensable injuries to his skull, brain, and jaw on or about October 31, 2023.

3. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment for his skull, brain, and jaw injuries. This payment should include any out-of-pocket expenses made by the claimant.

4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 1, 2023, until that date that he began employment in July of 2024, which is a date between July 7, 2024, and July 15, 2024.

5. The claimant has proven by a preponderance of the evidence that his attorney is entitled to an attorney's fee set forth in the Arkansas Workers' Compensation Act.

6. The respondents successfully raised the rebuttable presumption of Intoxication; however, the claimant was able to successfully rebut that presumption.

ORDER

The respondents shall pay for reasonable and necessary medical treatment associated with the claimant's compensable skull, brain, and jaw injuries.

The respondents shall pay the claimant temporary total disability benefits from November 1, 2023, until that date that he began employment in July of 2024, which is a date between July 7, 2024, and July 15, 2024.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**