BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H506589

JAN SEBASTIAN RABIE, EMPLOYEE **CLAIMANT**

GREG NALL, EMPLOYER **RESPONDENT**

LUBA CASUALTY INS. CO., CARRIER **RESPONDENT**

OPINION FILED JULY 22, 2026

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 1, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Todd Williams and Mr. Chris Paul, Attorneys at Law, Little Rock, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 1, 2026, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on January 26, 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 stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. With the addition of a fifth and sixth at the hearing, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission (the "Commission") has jurisdiction over these claims.

2. The employee/employer/carrier relationship existed among the parties on October 3, 2025, when Claimant was killed in a work-related motor vehicle accident.

3. Respondents accepted this claim as compensable and are paying death benefits pursuant thereto.

4. Claimant's surviving spouse, LeJean Rabie, was wholly and actually dependent on Claimant.

5. During his term of employment with Respondent employer, Claimant was paid a total of $33,713.77. During this same time frame, he was provided a housing allowance of $92.00 per week.

6. Respondents calculated Claimant's average weekly wage to be $740.34, which includes the $92.00 housing allowance. Based on this, they calculated the weekly death benefit to LeJean Rabie to be $259.12.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. The following were litigated:

1. What was Claimant's average weekly wage?

2. Whether Claimant's surviving spouse has been underpaid death benefits pursuant to a miscalculation of Claimant's average weekly wage.

3. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends that the deceased employee's average weekly wage should be calculated in accordance with the statutory method, specifically Ark. Code Ann. § 11-9-518(a) (Repl. 2012), where his average weekly wage will be calculated upon each week of work under the contract.

Respondents:

1. Respondents contend that Claimant was a seasonal employee. In light of this, per the Arkansas Workers' Compensation Act and applicable case law, his average weekly wage has been calculated to be $740.34, and the appropriate weekly death benefit entitlement for his widow is $259.12. Claimant was hired as an H-2A temporary agricultural employee, which specifically holds that employees hired under this program are seasonal employees and cannot work as permanent employees in the United States. Per the United States Department of Labor, employment under this program is of a temporary nature used by an employer to fill a position with a temporary worker, which indicates the claimant's wages should be calculated as such pursuant to the Act, and case law defining seasonal employee compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the hearing witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

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

2. The Stipulations set forth above are reasonable and are hereby accepted.

3. The preponderance of the evidence establishes that Claimant's average weekly wage was $1,254.54. Per Ark. Code Ann. § 11-9-527(c)(1)(A)(i) (Repl. 2012), the value of the weekly death benefit payable to his widow, LeJean Rabie, is $439.09.

4. Per Stipulation No. 6, *supra*, Claimant's widow, LeJean Rabie, has been paid death benefits at the rate of $259.12 per week. In light of Finding/Conclusion No. 3, *supra*, she has been underpaid such benefits. Respondents owe her back benefits adjusted for the correct rate of $439.09, and ongoing benefits at that rate.

5. The preponderance of the evidence establishes that the attorneys for Claimant's estate are entitled to a controverted fee on the indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).

ADJUDICATION

Summary of Evidence

Claimant's widow, Ms. LeJean Rabie, was the sole hearing witness.

In addition to the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a document captioned "Submission of Weekly Wage and Benefit Rate Calculations," consisting of two pages; Claimant's Exhibit 2, a letter brief, consisting of two pages; Respondents' Exhibit 1, nonmedical records including H-2A visa information and Claimant's contract of hire and wage statement, consisting of one index page and nine numbered pages thereafter.

A. Average Weekly Wage

Introduction. As stipulated by the parties, Claimant lost his life in a work-related motor vehicle accident on October 3, 2025. Respondents accepted the death as compensable and have been paying his widow, Mrs. Rabie, benefits under Ark. Code Ann. § 11-9-527(c)(1)(A)(i) (Repl. 2012). The value of those benefits is tied to Claimant's average weekly wage. In the instant action, Claimant's estate is contending that Respondents are underpaying Mrs. Rabie because they have miscalculated his average weekly wage. Respondents disagree.

Standards. Arkansas Code Annotated § 11-9-705(a)(3) (Repl. 2012) provides that "[w]hen deciding any issue, administrative law judges . . . shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence." The standard "preponderance of the evidence" means the evidence having greater weight or

convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415 (citing *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947)).

In determining the average weekly wage of a claimant, Ark. Code Ann. § 11-9-518 (Repl. 2012) gives the following guidance:

> (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.
>
> (2) Where the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period not to exceed fifty-two (52) weeks preceding the week in which the accident occurred and by multiplying this hourly wage by the number of hours in a full-time workweek in the employment.
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> (b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.
>
> (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.

The term "wages" is defined in Ark. Code Ann. § 11-9-102(19) (Repl. 2012) in pertinent part as follows:

> "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer . . . .

Discussion. Claimant was a citizen of South Africa who worked in the United States for Respondent employer, Greg Nall, under the H-2A Temporary Agricultural Program. The Program Overview states in pertinent part:

> The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Employment of a seasonal nature is tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations. Employment is of a temporary nature when the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

The evidence establishes that Claimant's work for Nall during the period in question was unquestionably seasonal employment.

Claimant's contract with Respondent Nall, which is in evidence, was for the term of March 24, 2025, to November 2025. At the time of his fatal accident, Claimant had worked 29 weeks of the contractual period; he had seven left. The evidence clearly establishes that but for the accident, he would have done so, fulfilling his 36-week obligation.

Despite the contract providing that Claimant's rate of pay would be $16.00 per hour, the Wage Statement in evidence reflects that the rate was actually $18.40. I credit the latter. Mrs. Rabie testified that Claimant worked 29 weeks in 2025 before he was killed, and the Wage Statement and balance of the evidence bear this out. Claimant's gross wages for this period was $33,713.77, per Stipulation No. 5. As the statement further shows, workers such as Claimant were not entitled to receive overtime.

Taking all of this into account, I find that I am unable to the utilize the rubric set out § 11-9-518(a)-(b) to determine Claimant's average weekly wage because it "cannot be fairly and justly" done so. Claimant by and large worked well in excess of 40 hours a week. However, he was only paid straight time for doing so. While he was contracted to work for 36 weeks, he perished when he had seven weeks left on his contract. To use the 36 weeks as a divisor, I would have to speculate and project what he would have earned in those remaining weeks. But I am not permitted to engage in speculation and conjecture. *See Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979); *Sierra v. Griffin Gin*, 100 Ark. App. 113, 265 S.W.3d 129 (2007); *Chapel Gardens Nursery v. Lovelady*, 47 Ark. App. 114, 885 S.W.2d 915 (1994).

Instead, "exceptional circumstances" exist here under § 11-9-518(c). Accordingly, in order to calculate Claimant's average weekly wage, I must employ "a method that is just and fair to all parties concerned." That method is to take Claimant's gross wages for the period, $33,713.77 and divide it by 29 weeks. *See Magnet Cove Sch. Dist. v. Barnett*, 81 Ark. App. 11, 97 S.W.3d 909 (2003). This results in a dividend of $1,162.54. When, per the statute, Claimant's weekly housing benefit of $92.00 (per Stipulation No. 5) is added to the above amount, this results in Claimant having an average weekly wage of $1,254.54. Under Ark. Code Ann. § 11-9-527(c)(1)(A)(i) (Repl. 2012), the value of the weekly death benefit payable to his widow, Mrs. Rabie, is $439.09.

B. Underpayment

Per Stipulation No. 6, Mrs. Rabie, has been paid weekly death benefits at the rate of $259.12. In light of the above, she has been underpaid such benefits, to the tune of $179.97 each week. Respondents owe her back benefits adjusted for the correct rate of $439.00, and ongoing benefits at that rate.

C. Attorney's Fee

Introduction. Claimant's estate has asserted that its attorneys are entitled to a controverted fee in this matter.

Standard. Arkansas Code Annotated § 11-9-715(a)(1) (Repl. 2012) provides in relevant part:

> (a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.
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> (B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or **dependents of a deceased employee**. Attorney's fees shall not be awarded on medical benefits or services except as provided in subdivision (a)(4) of this section.
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> . . .
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> (B)(i) In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them.
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> (ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.
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> (iii) However, the commission shall not find that a claim has been controverted if the claimant or his or her representative has withheld from the respondent during the period of time allotted for the respondent to

> determine its position any medical information in his or her possession which substantiates the claim.

(Emphasis added)

Discussion. 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). It is clear that but for Claimant's estate instigating this litigation concerning the entitlement of his family member, Mrs. Rabie, to a proper calculation of her death benefits, she would have remained underpaid.

Therefore, the preponderance of the evidence establishes that Respondents controverted those benefits, and that the appropriate attorneys' fee here should be 25 percent (25%) of the indemnity benefits awarded herein—the amount of the underpayment—one-half of which would be paid by Mrs. Rabie and one-half to be paid by Respondents in accordance with § 11-9-715. *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

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 attorneys are entitled to a twenty-five percent (25%) attorney's fee awarded herein, one-half of which is to be paid by Mrs. Rabie 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
Chief Administrative Law Judge