BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H404559**

RONNY L. RANGEL, EMPLOYEE CLAIMANT

S N S ERECTORS INC., EMPLOYER RESPONDENT

TRAVELERS PROPERTY CASUALTY CO. OF AMERICA, CARRIER/TPA RESPONDENT

OPINION FILED **AUGUST 22, 2025**

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

Claimant represented by JARID M. KINDER, Attorney, Fayetteville, Arkansas.

Respondents represented by AMY C. MARKHAM, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 2, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 15, 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 May 22, 2024.

3 The compensation rates are $699.00 for temporary total disability and $525.00 for permanent partial disability.

At the hearing, the parties also stipulated that claimant sustained a compensable injury on May 22, 2024.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing

were limited to the following:

1 Whether claimant is entitled to temporary total disability benefits from May 31, 2024, through August 23, 2024.

2 Whether claimant is entitled to a permanent partial disability rating above the 10% rating accepted by respondent for his left knee injury.

3 Attorney fees on all indemnity payments.

All other issues are reserved by the parties.

The claimant contends that "The claimant, Ronny Rangel, sustained a compensable injury to his left knee on May 22, 2024, while working for SNS Erectors, Inc., in Nashville, Arkansas. This matter was controverted in its entirety by the respondents. Below is a timeline of events:

a. The claimant filed an AR-C on July 19, 2024;
b. The respondents filed an AR-2 on July 22, 2024, controverting stating "No injury per statutory definition;"
c. Claimant's counsel requested a hearing on compensability – requesting medical and TTD benefits on August 1, 2024;
d. Respondents' counsel filed her response to the pre-hearing questionnaire on September 6 2024, again controverting the claim.

The claimant contends that he is still owed temporary total disability benefits from May 31, 2024, through August 23, 2024. The claimant was assessed an impairment rating of 40% to the body as a whole. The claimant is owed $44,160.00 in permanent partial disability benefits. Due to controversion of entitled benefits, the respondents are obligated to pay one half of the claimant's attorney's fees. This includes all indemnity paid after controversion on July 22, 2024. Claimant reserves the right to raise additional contentions at the hearing of this matter."

The respondents contend that "Claimant declined medical treatment on May 22, 2024. Claimant worked until May 31, 2024, which was the last day of the project and everyone working on that project was laid off. Claimant did not seek medical treatment until June 27, 2024, when he was placed on modified duty. The claim was accepted for a grade 2 sprain of medial collateral ligament of the knee, which his doctor determined to be non-surgical. Claimant was diagnosed with degeneration in the knee unrelated to the occupational injury. Claimant has undergone a functional capacity examination, which determined claimant can perform work in the heavy classification. Appropriate medical treatment has been provided to claimant; and no additional benefits are owed."

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 witnesses and to observe their 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 May 15, 2025, and contained in a pre-hearing order filed on that same date are hereby accepted as fact, as is the stipulation announced at the hearing that claimant suffered a compensable injury on May 22, 2024.

2. Respondents' motion for an independent medical examination is granted. The issue of the degree of claimant's permanent partial impairment rating is reserved until the results of the independent medical examination is provided to the Court.

3. Claimant has met his burden of proving he is entitled to temporary total disability from June 28, 2024, through August 23, 2024. Claimant did not meet his burden of proving entitlement to temporary total disability benefits from May 31, 2024 through June 27, 2024.

4. Claimant's attorney is entitled to an attorney fee on temporary total disability benefits and permanent partial disability payments previously paid to claimant, on unpaid benefits awarded herein, and on future indemnity benefits, if any.

FACTUAL BACKGROUND

On May 30, 2025, respondents requested an independent medical examination (IME) be conducted. I denied that request as untimely (see the blue backed email exchange). After considering it further, respondents were permitted to make their motion at the hearing, which I took it under advisement. The hearing on the merits was then conducted, and the testimony and documentary evidence in the case in chief was considered in deciding respondents' motion for an IME.

HEARING TESTIMONY

Claimant stated on May 22, 2024, he was working for respondent SNS Erectors (herein after SNS) at a job site at Nashville, Arkansas. Claimant said that as he was attempting to climb onto the back of a semi-truck, he stepped on one of the rear wheels while searching for a hand hold. He somehow missed his footing, and his left foot and/or knee buckled, and his right foot went down and touched the ground between the tires, causing his left foot to bend behind him. He pulled himself out of the position he was in and reported the injury to his boss. He felt excruciating pain in his knee, could not walk well at all, and felt it beginning to swell. His boss asked if he wanted to go to the clinic, and claimant decided to simply go to his room, ice and elevate the leg, and try to get the swelling down. Claimant returned to work the next day and was able to work a half day before returning to his room. After the weekend, claimant was placed on a different job that did not require a lot of walking. The job ended on scheduled on May 29, 2024, then claimant returned home.

Claimant's knee continued to hurt and was swollen after returning home. He called SNS about seeing a physician, but the company had no information on physicians in Siloam Springs where

claimant lived. He was eventually sent to Conservative Care in Springdale where he was x-rayed and did physical therapy for a few weeks. He then saw Dr. Craig Murphy two more times before he was referred to an orthopedist, Dr. Tyler Carllee. Claimant then learned that he had injured the MCL in his left knee.

Claimant said that he was given restrictions at Conservative Care on June 27, 2024, that included no ladders, stairs, pushing, or pulling over fifteen pounds. He sought legal counsel because the doctor had released him to light duty. The employer had no work for him, and he was not drawing weekly checks, so he contacted his attorney. Claimant said that if his employer had cooperated with him on getting treatment for his knee he would have cooperated and would have worked at light duty had it been offered.

After the AR-C was filed, claimant saw Dr. Tyler Carllee at UAMS Orthopedics where he began more intense physical therapy designed to have the MCL repair itself. Claimant said that his temporary total disability checks began after he saw Dr. Carllee and continued until he was released from treatment.

Claimant was advised by his doctor not to have surgery on his left knee because he had had a total prosthetic knee replacement which claimant had undergone years earlier. Claimant stated that he had no issues with his left knee for four or five years and it did not interfere with his working.

Claimant testified that he was released from treatment at UAMS in March 2025, at which time he was given a 40% impairment rating on his left lower extremity. After he was released, he began working immediately. Claimant is earning more money at the jobs he has worked since his employment ended with SNS because he is a union worker.

Claimant requested temporary total disability benefits from May 29, 2024, when his job ended with SNS, through August 23, 2024, when respondents began paying temporary total disability

benefits. Claimant also requested attorney's fees on those sums because he had received no disability benefits prior to retaining counsel.

On cross-examination, claimant explained more about his manner of work. He is a member of a union hall but can call other union halls to secure work. He said he was sometimes contacted by contractors or business agents regarding jobs in various parts of the country. Claimant learned when he started the job at SNS that it would last approximately three or four weeks barring any extraordinary circumstances. He again confirmed that he declined to go to the doctor so SNS would not have lost time injury on their insurance claim. Claimant recognized Respondents Exhibit B, the declination of treatment that he signed on May 23, 2024, which stated:

> "I am declining medical treatment at this time. Should my condition worsen, or should I change my mind regarding treatment, I know I must inform my supervisor immediately."

Claimant did not know if he missed any work with SNS other than going home early a couple of days and when the job ended, he had not been told not to work by a doctor. Claimant said he first sought medical treatment in mid-June, and it took a little bit of time for him to be sent to Conservative Care Occupational Health on June 27, 2024. Claimant said the people he dealt with at SNS was rude and he quit talking to them and began dealing with respondent Travelers. Claimant understood that he was told by Dr. Craig Murphy at Conservative Care Occupational Health that he could work within certain restrictions but understood that his physician at UAMS completely restricted him from work.

Claimant explained that the way he worked was dependent on his financial need. He had not planned to work during the summer of 2024 but a union representative asked him a few times to accept the job with SNS, and claimant agreed to do so. He did not have an immediate plan to work once the SNS position was over. Claimant understood that he had been released to heavy duty with restrictions on using stairs and ladders.

MEDICAL RECORDS REVIEW

Claimant submitted 50 pages of medical records, while respondents submitted 31 pages, five of which duplicated claimant's submission. These will be reviewed in chronological order.

As claimant testified, he was first seen at Conservative Care Occupational Health on June 27, 2024, Dr. Craig Murphy believed claimant had suffered an MCL strain and prescribed physical therapy for that as well as Naproxen, ice and heat treatment and restricted claimant's activity to no climbing stairs, no lifting, no pushing or pulling over fifteen pounds. Claimant began physical therapy on July 8, 2024, with the stated goal of returning claimant to his previous employment without restrictions. He returned to see Dr. Murphy on July 11, 2024, but there was no change in the diagnosis and recommended treatment. Physical therapy did not yield any improvement and on July 26, 2024, Dr. Murphy referred claimant to an orthopedic doctor. Claimant had three visits with Dr. Tyler Carllee before he was referred to a total joints surgeon.

Claimant next saw Dr. Benjamin Stronach at UAMS, who referred him for a functional capacity evaluation (FCE), which was conducted of February 4, 2025. and in which he put forth a reliable effort. The evaluator stated that claimant put forth a reliable effort and based on this evaluation, he was able to work in the heavy classification as far as his ability to lift and carry up to fifty pounds on a frequent basis and an occasional lift and carry up to one hundred pounds. The examiner noted that claimant did not demonstrate an ability to kneel, and his crouching should be done only occasionally. The FCE evaluator noted that when claimant was carrying heavy weights, his left lower extremity limp increased and further observed a mild limp on claimant's left lower extremity when he was walking and gradually worsening by the end of the activity.

After some additional physical therapy, Dr. Stronach recorded on March 6, 2025:

> "He has plateaued in regard to benefits of physical therapy. At this point I would not recommend any further intervention for his left knee. He does

> have some stable radiolucencies appreciated around the left knee implant with no evident changes since we have seen him with multiple, serial x-rays. He does have continued pain since his injury. At this time, I have not recommended any surgical intervention. He may require a revision of his left total knee replacement in the future."

After reviewing the results of the FCE, Dr. Stronach assigned a 40% lower extremity impairment rating for claimant's left knee injury.

Respondents submitted medical records from Dr. Stronach to Dr. Hilary Alpert at CareReview in Arlington, Texas. Dr. Alpert did not examine claimant, but from her review of the records, she believed claimant should be assessed a 10% permanent impairment rating for his left knee injury.

NON-MEDICAL RECORD REVIEW

Claimant submitted thirteen pages of non-medical exhibits which outlined the history of this matter from July 16, 2024, through September 6, 2024. These records demonstrate that after claimant retained counsel and filed his AR-C Form on July 19, 2024, the employer denied that there was an injury as per the statutory definition of that term. Further, respondents' prehearing questionnaire response as of September 6, 2024, stated that an issue to be litigated was "compensability of an alleged injury to the left knee."

Respondents' non-medical documentary evidence consisted of four pages, which included the declination of treatment form claimant signed on May 23, 2024, and the physician's report from Dr. Murphy following the claimant's first visit with him in which claimant was released to return to work with the restrictions of "No climbing stairs, no lifting, pushing pulling over fifteen pounds."

ADJUDICATION

Addressing first the motion by respondents for an IME, the question is whether an independent medical examination is reasonable and necessary in this matter.

Arkansas Code Annotated section 11-9-511(a) provides, in relevant part:

> An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the Commission may require from time to time if reasonable and necessary. The threshold question is whether the examination is reasonable and necessary. (Emphasis added.)

11 C.A.R § 25-125 (formerly Rule 30 of the Arkansas Workers' Compensation Commission) provides:

> An independent medical examination shall include a study of previous history and MedicalCare information, diagnostic studies, diagnostic x-rays, and laboratory studies, as well as an examination and evaluation. This service may be necessary in order to make a judgment regarding the current status of the injured or ill worker, or to determine the need for further health care. (Emphasis added.)

When viewing the medical evidence considering the standards set forth above, I believe respondents have shown that an IME is reasonable and that it would be necessary to make an informed judgment in this case about the degree of claimant's permanent partial impairment rating for his compensable injury. The opinions from Dr. Stronach and Dr. Alpert on the degree of permanent impairment claimant has suffered to his left knee are very different. I recognize that a conflict in the opinions of the doctors is no reason, in and of itself, to order a "tiebreaker" IME. The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). However, because claimant had a left knee replacement many years before this injury, and since I do not see that Dr. Stronach took that into consideration in his assessment of a 40% permanent impairment rating for claimant's injury, I find the request by respondents for an IME to be reasonable and necessary for me to make a fair determination of the degree of claimant's permanent partial impairment, and I grant its motion for an IME. Therefore, the issue regarding claimant's PPD is reserved pending the receipt of the report from the physician conducting the IME. This matter will be referred to the Medical Cost Containment Division of the Commission to select that physician.

There are two components to this claim that are not dependent upon the results of the IME. Claimant seeks TTD benefits from May 31, 2024, the date after he last worked for SNS, through August 23, 2024, which is when the insurance carrier for SNS agreed to start paying TTD benefits. Claimant also requests attorney's fees on all indemnity benefits that have been paid and those that may be awarded.

The parties have stipulated that a compensable injury occurred on May 22, 2024. While claimant did not receive any medical treatment for the injury until June 27, 2024, I believe his testimony that the injury noted at the first visit to a medical provider was the one he suffered on May 22, 2024. However, claimant continued to work at a modified position until that job was finished. Claimant candidly said he was not planning to work during the summer of 2024; as he put it "I let my bank account decide when I need to go to work" (T.46). However, he also said that his finances were running low when he retained the services of his attorney (T.50). Accepting both statements as true, I conclude claimant would not have been working before his financial situation mandated it, and deny his claim for TTD from May 31, 2024, through June 27, 2024.

It is my opinion that claimant sought medical treatment when he became interested in working again. When he was given the physical limitations noted above by Dr. Murphy, I believe claimant realized he was about to be in a financial bind due to those restrictions which would limit his employment options. He testified that he talked to representatives of respondent Travelers but was unable to secure temporary disability payments until after he hired counsel. As such, I am awarding claimant TTD from June 28, 2024, through August 23, 2024, the date respondents began paying TTD benefits.

As to the claim for an award of an attorney's fee, the decision to deny indemnity benefits for claimant's knee injury was made before claimant hired an attorney, as witnessed by the AR-2 form

filed on July 22, 2024, three days after claimant's AR-C (CL.NMX.2-3), and continued through the filing of respondent's pre-hearing questionnaire response on September 6, 2024. I find *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998) and *Lee v. Alcoa Extrusion, Inc.*, 9 Ark. App. 228, 201 S.W.3d 449 (2005) govern this matter; from reading these cases (and others), I believe it is the denial of a claim before counsel is employed that is most relevant in determining if an attorney's fee is appropriate; it seems even more appropriate when the claim continued to be denied after claimant retained his attorney. "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," *Lee, supra.* It was respondent's initial denial that made the litigation necessary, and thus an award of an attorney's fee to claimant's counsel on all indemnity payments is appropriate under the facts of this case.

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one half by the carrier and one half by the claimant.

The respondent shall pay the court reporter's fee in the amount of $625.00

All issues not addressed herein are expressly reserved under the Act.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE