BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H004171

JOSHUA SHELTON, EMPLOYEE **CLAIMANT**

NUCOR YAMATO STEEL CO.,
EMPLOYER **RESPONDENT**

ARCH INS. CO.,
CARRIER **RESPONDENT**

OPINION FILED OCTOBER 13, 2026

Hearing before Administrative Law Judge O. Milton Fine II on July 31, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 31, 2026, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on March 6, 2023. 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 of the parties, 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 decisions in this matter are 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 an impairment rating, and permanent partial disability benefits pursuant thereto, in connection with his compensable back injury.
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 an amendment at the hearing to reflect the correct date of the accident, read as follows:

Claimant:

1. Claimant contends that on or about June 25, 2020, he injured his back in the course and scope of his employment stepping across a gap and falling into the roll line. This matter was the subject of a prior hearing; it was appealed to the Arkansas Court of Appeals and the opinion entered therein is law of the case.
2. Claimant further contends that he is entitled to permanent partial disability benefits for his compensable back injury. He is also entitled to permanent and total disability benefits as a result of his compensable injury. In the

event that the Commission finds that he is not permanently and totally disabled, Claimant contends that he is entitled to wage loss disability benefits.

3. Claimant's attorney is entitled to attorney's fees. All other issues are reserved.

Respondents:

1. Respondents contend that Claimant has no permanent impairment. He is not permanently and totally disabled. He received an impairment rating of zero percent (0%) from Dr. Riley Jones on November 10, 2020. The major cause of any permanent partial disability is the pre-existing surgery; and any current rating should be reduced by the rating for the prior surgery. Since there is no permanent partial disability, there is no wage loss. With no permanent partial disability and no wage loss, nothing has been controverted, and no attorney's fee is due.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, deposition testimony, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of 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's Proffered Exhibit 2 will be admitted into evidence and given due weight.

4. Claimant has not proven by a preponderance of the evidence that he is entitled to an impairment rating, and permanent partial disability benefits pursuant thereto, in connection with his compensable back injury.

5. Because of Finding/Conclusion No. 4, *supra*, Claimant cannot establish that he is entitled to wage loss disability benefits.

6. Claimant has not proven by a preponderance of the evidence that he is permanently and totally disabled.

7. Claimant has not 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).

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

In addition to the Prehearing Order discussed above, exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of four index pages and 229 numbered pages thereafter; Claimant's Exhibit 2, documents related to his Social Security disability claim, consisting of one index page and seven numbered pages thereafter; and Respondents No. 1 Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and nine

numbered pages thereafter. Moreover, I have blue-backed to the record the post-hearing briefs of the parties, consisting of nine pages. Finally, the transcript of the July 28, 2023, hearing on this claim (along with blue-backed documents) has been incorporated herein in its entirety by reference.

PRELIMINARY RULING

Admission of Claimant's Proffered Exhibit 2

At the hearing, Claimant sought admission of the contents of this proffered exhibit, consisting of his Social Security Administration Personalized Disability Explanation and Notice of Award. Respondents' counsel objected:

> Your Honor, that's a decision of a different tribunal. It is an administrative agency. It is not binding on the Workers' Compensation Commission, and the conclusion reached in that decision should not be considered as evidence in this case.

Claimant counsel replied:

> I think the well-settled law is that the Social Security Administration's decisions are admissible. I don't believe they are binding. I do believe that they are admissible and it is your discretion as to what weight it is to be given, but I think they are certainly admissible. One of the issues here today is whether or not the claimant is permanently and totally disabled. Obviously there is a—Page 2 indicates that there is a finding of disability, again, from a different tribunal, admittedly so. But there is a finding of disability based upon the medical records and treatment as a result of this admittedly compensable injury. So we're asking that it be admitted and given the weight that you deem appropriate.

I took the objection under advisement and allowed the exhibit to be proffered.

The decision in this matter is governed by Ark. Code Ann § 11-9-705(a)(1) (Repl. 2012), which provides:

> In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory

> rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

The Commission has a "great deal of latitude in evidentiary matters." *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). After due consideration of this matter, I find that admission of the document in question will help to "best ascertain the rights of the parties." The evidence is relevant. Respondents' objection is, respectfully, overruled. Claimant's Proffered Exhibit 2 will be admitted into evidence and given due weight.

ADJUDICATION

A. Procedural History

An assessment of the issues at bar first requires a recounting of the procedural history of this matter. On July 28, 2023, the first hearing was held on this claim before Administrative Law Judge Steven Porch. His August 22, 2023, 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. An employer/employee relationship existed on June 25, 2020, when Claimant sustained an injury to his back.

B. Claimant's average weekly wage on June 25, 2020, was sufficient to entitle him to compensation rates of $711.00 and $533.00 for temporary total and permanent partial disability benefits.

C. Respondents have controverted the additional benefits sought herein.

3. Claimant is entitled to additional medical treatment for his back injury of June 25, 2020.

4. Claimant is entitled to additional temporary total disability benefits from June 25, 2020, through a date to be determined.

5. Claimant did sustain a compensable back injury on June 25, 2020.

6. Claimant is entitled to controverted attorney fees.

This decision was appealed. On March 7, 2024, the Full Commission affirmed the ALJ decision as modified. In so doing, it affirmed the finding of compensability regarding Claimant's back injury, and affirmed that his treatment therefor on and after June 26, 2020, including a trial of a spinal cord stimulator, was reasonably necessary. However, the Full Commission did not affirm Judge Porch's findings regarding Claimant's entitlement to additional temporary total disability benefits. *Shelton v. Nucor Yamato Steel Co.*, 2024 AR Wrk. Comp. LEXIS 85. Thereafter, the Full Commission denied a motion by Claimant to amend the opinion. *Shelton v. Nucor Yamato Steel Co.*, 2024 AR Wrk. Comp. LEXIS 126. Both sides appealed. On April 23, 2025, the Arkansas Court of Appeals affirmed decision of the Full Commission on both direct and cross-appeal. *Nucor Yamato Steel Co. v. Shelton*, 2025 Ark. App. 249, 713 S.W.3d

494. On May 28, 2025, the court denied a petition for rehearing. *Nucor Yamato Steel Co. v. Shelton*, 2025 Ark. App. ___, ___ S.W.3d ___, 2025 Ark. App. LEXIS 358.

The above opinions are binding on this proceeding under the Law of the Case Doctrine; and they are *res judicata*. *See Thurman v. Clarke Industries, Inc*., 45 Ark. App. 87, 872 S.W.2d 418 (1994).

B. Impairment Rating

Introduction. Claimant is now contending that he is entitled to an impairment rating, and permanently partial disability benefits in connection therewith, regarding his adjudicated compensable back injury. Respondents have denied that he is entitled to such a rating, arguing that any impairment would be related to his pre-existing spinal condition that necessitated a laminectomy at L5-S1 in 2018, and for which they should not be responsible.

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 AMERICAN MEDICAL ASSOCIATION, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (4th ed. 1993) (hereinafter "AMA Guides") as an impairment rating guide. *See* 11 C.A.R. § 25-129. 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(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 Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994) and *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). 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. At the outset, it is noteworthy that Claimant's medical exhibit from his 2026 hearing is identical to his exhibit that was admitted in his 2023 hearing, save one addition: the two-page assessment by Occupational Therapist Casey Garretson dated July 15, 2026, wherein he assessed Claimant as having an impairment of five percent (5%) to the body as a whole. As for Respondents' medical exhibit in the 2026 hearing, it includes two items that were not a part of their 2023 exhibit: (a) the two-page report of Claimant's visit to Dr. Riley Jones on October 23, 2020; and (b) the two-page Form AR-3 filled out and signed by Jones on November 10, 2020.

In light of the foregoing, along with the fact that one of the issues addressed in the previous litigation was compensability, it is imperative that the opinion of the Arkansas Court of Appeals be quoted at length in order that the nature of Claimant's injury be set out so that it can then be determined whether he is entitled to an impairment rating in connection with it. The opinion reads in pertinent part:

> On June 25, 2020, Shelton, during the course and scope of his employment with Nucor as a caster inspector, tripped and fell while stepping over a roll line and injured his back ("the Incident"). Shelton had previously sustained a non-work-related injury and had undergone back surgery in 2018. Shelton testified that at the time of the Incident, he was symptom-free from his previous injury. Shelton was initially seen by Dr. Riley Jones of OrthoSouth, who evaluated him and based upon Shelton's complaints and history, had him undergo x-rays, prescribed a Medrol pack, and scheduled an MRI. Dr. Jones recommended Shelton remain off work. Shelton's MRI report contained findings of mild degenerative change at L5-S1 but no disc herniation, dural sac compression, or nerve root impingement. Shelton began physical therapy on June 29, 2020, and was placed on restricted duty. Dr. Jones diagnosed Shelton with a lumbar sprain and prescribed Flexeril.
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> On July 20, 2020, Shelton returned to OrthoSouth with complaints of back pain and was treated by Dr. Christopher Ferguson, who took him back off work and changed his medicine. Shelton saw Dr. Jones on July 31 and

August 14, 2020, and was kept off work, prescribed Robaxin for muscle spasms, and referred to physical therapy four times a week.

Shelton saw Dr. Todd Fountain on September 24, 2020. Dr. Fountain kept Shelton off work and recommended he see a pain specialist for a facet test and a radiofrequency ablation for facet arthropathy at L4-5 and L5-S1. Shelton returned to Dr. Jones during this time and was released from his care on November 10, 2020, to return to work with no restrictions.

Shelton reported that he followed up with Dr. Jay McDonald, a pain-management doctor, who performed medial branch nerve blocks of his L4-5 and L5-S1. Dr. McDonald released Shelton on September 13, 2021, with work restrictions. Then, on September 30, 2021, Shelton returned to the clinic complaining of back pain, which resulted in Dr. McDonald's placing him on sedentary duty. Shelton received a lumbar epidural steroid injection on November 11, 2021.

On December 7, 2021, Dr. McDonald recommended a psychological evaluation and spinal-cord stimulator. Nucor denied coverage of medical payments for the recommended psychological evaluation and spinal cord stimulator. On December 24, Dr. Jones signed a Form AR-3 Physician's Report setting forth his diagnosis as "[s]pondylosis without myelopathy or radiculopathy, lumbar region" and that, as of December 22, 2021, Shelton was at maximum medical improvement (MMI), having reached the end of his healing period. Despite being released from treatment, Shelton continued to follow up with his doctors. He saw Dr. Jones again on January 11, 2022. The medical records from that visit reflect a diagnosis of lumbar sprain but stated no work restrictions. Again, Shelton was discharged from his care as having reached MMI.

Until January 10, 2022, Nucor had accepted Shelton's indemnity claim and had paid Shelton TTD [temporary total disability] benefits. Shelton continued to see Dr. McDonald, who opined in February 2022 that Shelton remained a candidate for a spinal-cord stimulator. Shelton had a psychological evaluation, which confirmed that he was a candidate for the spinal-cord stimulator.

On June 27, 2023, Dr. McDonald, in response to a questionnaire, stated that he was treating Shelton for muscle spasms and an aggravation of epidural fibrosis because of a work injury.

. . .

In its first point on appeal, Nucor contends that substantial evidence does not support the Commission's finding that Shelton sustained a compensable back injury. Arkansas Code Annotated section 11-9-102(4)(A)(i) (Repl. 2012) provides in pertinent part:

Compensable injury means: (i)[a]n accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

With respect to Shelton's injury, the Commission held:

> Muscle spasms can constitute objective medical findings to support compensability. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000), citing *Continental Express, Inc. v. Freeman*, 66 Ark. App. 102, 989 S.W.2d 538 (1999). In the present matter, Dr. Jones diagnosed "Lumbar Sprain" following the accidental injury, and he prescribed Robaxin "for muscle spasms." The Full Commission finds in the present matter that the treating physician's diagnosis of "Lumbar Sprain" accompanied by a prescribed treatment of medication for "muscle spasms" is sufficient to establish objective findings of a compensable injury. *See Bradford v. Stracener Bros. Constr. Corp.*, 2021 Ark. App. 316, citing *Melius v. Chapel Ridge Nursing Ctr., LLC*, 2021 Ark. App. 61, 618 S.W.3d 410.
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> The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on June 25, 2020. The claimant also established a compensable injury by medical evidence supported by objective findings, namely Dr. Jones' prescription of medication for muscle spasms following the accidental injury. We find that these objective findings reported by Dr. Jones were causally related to the June 25,

> 2020 compensable injury and were not caused by a prior injury or pre-existing condition.

Nucor maintains that the Commission erred in finding that Shelton's medical evidence was supported by objective findings. Specifically, Nucor contends that none of the medical testing revealed a new injury, and none of Shelton's physicians palpated Shelton's back or found muscle spasms on examination. They further argued that he was taking the muscle relaxer Flexeril before the Incident.

Nucor urges us to reverse *Melius*, 2021 Ark. App. 61, 618 S.W.3d 410, which is directly on point. In *Melius*, this court found that the appellant's diagnosis of muscle strain along with prescribed treatment of medications, physical therapy, and pain management were enough to establish objective findings. We decline to reverse well-established precedent. *See Fred's, Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.3d 238 (2005).

This court has held there is no requirement that a doctor, a physical therapist, or other medical provider observe a patient's muscle spasm before the injury can be compensable. *See Estridge, supra*. Dr. Jones diagnosed Shelton with a lumbar sprain, and Shelton was given multiple prescriptions to treat "muscle spasms" throughout the course of his treatment. A doctor would not prescribe medications for muscle spasms if the doctor did not believe muscle spasms were present. *Id.* Dr. McDonald stated in response to a questionnaire dated June 27, 2023, that Shelton was being treated for muscle spasms. Various doctors prescribed different medicine for pain relief and muscle spasms and also prescribed physical therapy.

In sum, we agree with Shelton's argument that his diagnosis of lumbar sprain along with the prescribed course of medications for muscle spasms, physical therapy, and pain management is sufficient to establish objective findings. Nucor argues that Shelton had been taking Flexeril at the time of the Incident, which would suggest he was still having back pain. This argument has no merit. It was uncontested that Shelton had fully recovered from his back surgery and had not sought treatment for his back since the surgery. Moreover, the medical records stated he was taking Flexeril for plantar fasciitis—not for back pain. Substantial evidence supports the Commission's finding that Shelton sustained a compensable injury on June 25, 2020.

As the above clearly shows, Claimant was found to have a compensable back injury that consists of (a) muscle spasms, and (b) a lumbar sprain. Both of these

findings are attributable to Dr. Jones, Claimant's treating physician, who: (a) prescribed Claimant with both Flexeril and Robaxin for spasms, and (b) expressly diagnosed him as having a lumbar sprain. On two occasions—November 10, 2020, and January 11, 2022—Jones opined in a Form AR-3 that "[t]he claimant has suffered no permanent impairment due to [his] work-related injury." The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based on my review of the evidence, I credit Dr. Jones's opinion. In so doing, I credit Claimant's testimony that he never saw Garretson.

As for Garretson's opinion, he assessed Claimant as having impairment of five percent (5%) to the body as a whole under Table 75, Page 3/113 of the AMA Guides. Under that table, an individual is entitled to such a rating under Disorder II(B) for an [i]ntervertebral disk or other soft-tissue lesion" at the lumbar level that is "[u]noperated on, stable, with medically documented injury, pain, and rigidity associated with *none to minimal* degenerative changes on structural tests, includes unoperated on herniated nucleus pulposus with or without radiculopathy." I am aware that under the Arkansas Workers' Compensation Act, the employer takes the employee as the employer finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Comm. v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the infirmity to produce the disability for which

compensation is sought. *St. Vincent Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). But in the previous litigation outlined/quoted above, there was no finding—by either the ALJ, Full Commission, and/or the Court of Appeals—that Claimant had a compensable aggravation of his pre-existing lumbar condition; i.e., the condition of L5-S1, which was addressed surgically via a laminectomy in 2018. Consequently, Garretson's rating is not a valid one.

In sum, Claimant has not proven by a preponderance of the evidence that he is entitled to an impairment rating, and permanent partial disability benefits pursuant thereto, in connection with his compensable back injury.

C. Permanent and Total/Wage Loss Disability Benefits

Introduction. Claimant has asserted that as a result of his compensable back injury, he is permanently and totally disabled or, in the alternative, entitled to wage loss disability benefits. Respondents dispute this.

Standards. At the outset, it must be noted that because Claimant has not shown that he is entitled to an impairment rating, he is not eligible for wage loss disability benefits. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). Consequently, the only remaining issue here is whether he is permanently and totally disabled.

Arkansas Code Annotated Section 11-9-519(e)(1) (Repl. 2012) defines "permanent total disability" as follows: "inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment." Claimant is in the same position as someone who has sustained a scheduled injury; he

is limited to the applicable allowances in § 11-9-521, and such benefits cannot be increased by considering wage-loss factors. *See Federal Compress & Whse. v. Risper*, 55 Ark. App. 300, 935 S.W.2d 279 (1996).

Section 11-9-102(4)(F)(ii) (*a*) provides: "Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." "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).

Evidence. Claimant is 56 years old. Not only is he a high school graduate, but he received training through Arkansas State University to be an emergency medical technician ("EMT"). He went to work for Respondent Nucor in 2002.

Claimant detailed his work history. The first 16 years of his employment at Nucor, he was a heavy equipment operator. Claimant described this position as it existed during the last two years of his 16-year stint as an operator:

> As a heavy equipment operator, my primary responsibility was to load scrap metal into a bucket, a rather large bucket that holds 125 tons of steel. There was a recipe that was given to us inside the cab, so I would drive along a rail line and pick up the appropriate scrap metal for the process and back it into the metal shop for the crane operator to take it to the furnace.

This involved driving a track hoe. Before that time, his work as a heavy equipment operator entailed his driving a forklift and stacking tons of steel on large pieces of wood. According to Claimant, being a heavy equipment operator did not require much manual lifting:

> There was a lot of—you had to grease, you had to do daily maintenance and inspection on the machines. There was a lot of postures, awkward positioning, but nothing real heavy as a heavy equipment operator in a melt shop.

In 2018, Claimant suffered a back injury that necessitated surgery. His testimony was that he did "really well" after the surgery and was able to return to work two weeks early.

For the rest of his time at Nucor that preceded the accident in question, Claimant was employed as a torch inspector in the melt shop. The reason for the job change was two accidents that Claimant had at Nucor while operating heavy equipment. With respect to the torch inspector position, he testified that the plant produces steel I-beams. Claimant had the responsibility of making sure the beams got safely through the caster and molding, and then were tagged. He had to use a nail gun and attach two aluminum tags to each beam. In addition, he had to use a piece of chalk to write information on the beams. Because the recently-molten steel was still approximately 1200 degrees Fahrenheit when they were near Claimant, he had to don four layers of protective clothing. Along with the job described above, Claimant had to operate a forklift to help supply the caster, and work with dummy bars and bishop heads, which were part of the fabrication process. This included using a 20-pound sledgehammer. Per Claimant, this was a hot, heavy job that required that he be on his feet the majority of the time.

As discussed *supra*, the vast majority of Claimant's medical records were already discussed in the previous litigation; and the opinion discussing his medical history was quoted above. Asked what occurred 2023 to the present, Claimant responded:

> I started with Dr. McDonald and the only two options were the spinal cord stimulator or medications. And through some studies, there was—we didn't think that the spinal stimulator was going to work because of the high frequency magnetic field that's created in the melt shop. So medications was the only way to treat or manage my pain at that point. So it started—we went through, I had two ablations, one bilateral ablation and one nerve block. None of it worked. And so Dr. McDonald, he was at his end of care. He couldn't do any more for me, so he recommended me to a pain management in Memphis called Mays & Schnapp. That doctor there—going into that, I had been taking three 800-milligram Ibuprofens daily, two muscle relaxers, Cyclobenzaprine, as well as two to three pain pills just depending on—narcotic pain pills just depending on the day. I just went to see Dr. Schnapp at Mays & Schnapp. At that point, I had received my letter of termination and he offered me alternative ways to manage my pain . . . Dr. Schnapp started me on a different regimen of medications and one of them was called Dronabinol. Dronabinol was a synthetic marijuana. Through that trial and error, it started working really well for me as managing my pain. So at that point, we pursued medical marijuana treatment. Since those two years, I have not taken any prescription medications, not one of anything, no prescription, no pharmaceuticals. And I've not even been to a doctor in the last two years. I have managed my pain 100 percent with medicinal marijuana.

Asked if he was currently working, Claimant replied in the negative. He explained, as discussed above, that Dr. McDonald released him to full duty in September 2021. However, when he was unable to perform the torch operator duties, McDonald placed him on sedentary duty. Claimant's manager told him to bid on a particular job that had a sedentary classification. But Claimant was not selected. Thus, per Nucor policy, he was terminated 15 months after his injury due to his inability to return to work at 100 percent. Since Claimant left Respondent Nucor, he has not worked anywhere else. His testimony is that he has drawn short and long-term disability benefits. As a condition to receiving the latter, he had to file for Social Security disability benefits. Nucor secured an attorney to aid him in this. The application was successful; he was found to be disabled as of July 26, 2021. Per the Social Security

Administration, the medical records related to his treatment for the instant injury formed the basis for the determination.

Claimant related that as part of the previous litigation of this claim, he sought approval for a spinal cord stimulator. However, he eventually abandoned that effort when he discovered that he was able to manage his pain through use of medical marijuana. It is his understanding that use of this drug would prevent his returning to Nucor because it has a zero-tolerance drug use policy in place. Using the medication regimen, his pain is a 4/10; but otherwise, it can range as high as 7/10 to 8/10. When seeking relief, Claimant resorts to stretching or lying down.

The following exchange took place:

> Q. Do you feel like you can return to work either as a torch operator or a heavy machine operator?
>
> A. I don't believe I could perform those job duties required.
>
> . . .
>
> Q. What are you doing on a day-to-day basis?
>
> A. Well, I can't play golf anymore, so I bought a boat. I do some fishing occasionally. I piddle around the house. I'm a gun enthusiast. I do a little bit of gunsmithing, hobbyist.

He added that he is unable to do things like he could before the 2020 back injury. Things that he does now take longer than they did prior to the accident. Moreover, prolonged sitting or standing causes stiffness.

On cross-examination, Claimant testified that he is still drawing long-term disability benefits. However, his benefits have been reduced in order to satisfy his child

support obligations. He paid the premiums on this disability policy. In addition, as alluded to above, he is drawing Social Security disability benefits.

Claimant acknowledged that he still rides a motorcycle. He takes his boat to fish on Reelfoot Lake in Tennessee. According to Claimant, "it's relatively easy" to do this. His testimony is that he has not applied for any jobs since leaving Nucor. Asked about is his work history, he related that he previously worked as a disc jockey in clubs. But he hastened to add that his lack of knowledge of current music would prevent him from returning to that line of work.

Under further questioning from his attorney, Claimant testified that he has been riding motorcycles since he was age 8. To enable him to continue this hobby in the face of his physical condition, he upgraded his bike with a high-performance suspension system and a seat with back support. Nonetheless, he stated that his motorcycle rides are no longer in excess of one hour. He added that he "[c]an't ride any long distance anymore." His boat is a 17-foot john boat. Claimant stated that a disc jockey job can entail sitting and standing, depending on the venue; but it mostly involves standing.

Under questioning by the Commission, Claimant fleshed out his education and work history. He is a high school graduate. In addition, he completed a program at Arkansas State University to become an EMT. Thereafter, he was employed as an EMT at Nucor for 16 years. The EMT position began two years after he arrived at Nucor. He explained: "I was a heavy equipment operator. As an EMT, you're part of a response team that has a special radio and you respond when there's incidents or accidents at the steel mill." Before then, he was employed as a disc jockey. Asked by

the Commission if his entire work history consisted only of being a disc jockey and an employee at Nucor, he responded: "Odds and ends job, sir. I installed security systems for ADT for a short period of time. I mean, I'm the old jack of all trades . . . I feel like I could do anything."

Claimant's testimony was that the only paid work that he has done since leaving Nucor was four-week stint of painting and electrical work to help someone upgrade a house. However, he did not climb a ladder, and all work was above waist-level.

The following exchange occurred:

> Q. Why haven't you gone back to work?
>
> A. I'm not sure what I'm able to do, sir. With the marijuana—the way that I'm choosing to manage my pain, it seems to—I hit walls with people's drug testing policies. That seems to be the challenge.
>
> Q. Is that what's happened to you? Is somebody—is that your understanding or where does that come from?
>
> A. Well, the things that I think I'm capable of doing, that's just my understanding, sir.
>
> . . .
>
> Q. Did you say your pain is 100 percent controlled?
>
> A. The nerve pain is controlled. It prevents it from firing. Yes, sir.
>
> Q. Okay. So I'm a little confused. Just for example, that you say you can't ride your bike like you did before. Why is that? If you're capable of 100 percent controlling your pain, what's the problem?
>
> A. So there's two different pains that I deal with. The nerve pain is the shooting pain, the sharp pain, the one that puts me on my knees. Then just the average achiness, bad back from over the years of heavy lifting and working, that's what prevents me from riding anything long distance.

. . .

Q. I kind of want to go back on something you just said. When you said it's from years, is this—were you having back problems? Are you talking about the things that you had that led to your laminectomy and your other surgery or something—

A. No. I'm just—I was just—I'm sorry, Judge. I didn't mean to interrupt you. Just referencing just long-term work at the steel mill. There's lots of lifting and, you know, as you get older, our backs definitely deteriorate.

Q. So some of the other problems that you have with your back, that's also a factor in you not doing any—doing things such as riding your motorcycle. Is that what I'm hearing from you?

A. I can't—yes, sir. I can't ride that motorcycle long distance any longer.

In his earlier hearing before Judge Porch, Claimant testified as follows:

Q. And again, I think you've testified [to] this, but you want to return to work, don't you?

A. Yes, sir, sure do.

In light of this, Claimant was asked why he has not sought employment in light of the fact that his pain is 100 percent controlled. Claimant's response was that Nucor terminated him. But that happened prior to his July 28, 2023, testimony.

Notwithstanding his testimony highlighted above, under further questioning from his attorney, Claimant stated that all of his pain has arisen since the 2020 accident at issue.

Under additional questioning from the Commission, the following exchange took place:

Q. Are you taking any form of muscle relaxers now?

A. None whatsoever, sir. I manage my pain 100 percent with medical marijuana.

Q. And muscle relaxers can be for muscle spasms, right?

A. Yes, sir.

Q. Are you still suffering from muscle spasms?

A. I do have occasional muscle spasms.

Q. Okay. Where are they located?

A. In my low back.

Q. Okay. What do you do to treat them?

A. The medicinal marijuana.

Q. And what does that do? Does it relax them?

A. Yes. It absolutely relaxes them.

Discussion. Claimant is 55 years old. He has a high school diploma. While he formerly was a licensed EMT, he has let his license lapse in light of his injury. His work history prior to go to Respondent Nucor was of two types: (1) odd jobs such as installing security systems, and (2) being a disc jockey. At Nucor, he was employed as an EMT, a torch inspector, and as a heavy equipment operator. Those are described above. Unquestionably, his jobs at Nucor entailed heavy-duty work.

As found in the previous litigation of this claim, Claimant sustained a compensable injury to his back on June 25, 2020. He never underwent surgery thereon. His treatment consisted of prescription medication, medial branch nerve blocks, and an epidural steroid injection. As pointed out *supra*, there are no new medical records in evidence showing that Claimant has undergone any more treatment

from a physician in the three years since his last hearing. He admitted as such; he even abandoned his quest for a spinal cord stimulator. Instead, he is treating the pain arising from his back injury with medical marijuana. In his testimony, he attempted to differentiate the "nerve pain" that he stated is 100 percent controlled by use of the marijuana with another type of back pain that he says plagues him. He rated this pain as ranging in severity from 4/10 to 8/10. While at one point he testified that he did not experience this pain until after the June 2020 accident, elsewhere he stated something entirely different, which bears reproducing at length:

> So there's two different pains that I deal with. The nerve pain is the shooting pain, the sharp pain, the one that puts me on my knees. Then just the average achiness, bad back from over the years of heavy lifting and working, that's what prevents me from riding anything long distance.

I credit this account.

In his last medical record in evidence, Dr. McDonald opined on June 27, 2023, that Claimant's "current work restrictions" were "sedentary duty." That assessment is over three years old, and does not take into account the fact that Claimant's "nerve pain" is 100 percent controlled. I do credit his testimony that his marijuana use would render him ineligible to return to what he was doing at Nucor. But the evidence does not establish that his work-related back condition would prevent him from "earn[ing] any meaningful wages in . . . other employment" under § 11-9-519(e)(1). Moreover, because Claimant attributed his back pain (other than the pain that he readily states is "100 percent controlled" by the medical marijuana)—even if it keeps him from working—to "years of heavy lifting and working" as opposed to the June 25, 2020, injury, he cannot show that his compensable injury is the major cause of his claimed "inability . . .

to earn any meaningful wages in the same or other employment." Consequently, he cannot, and has not, proven by a preponderance of the evidence that he is permanently and totally disabled.

D. Attorney's Fee

Because Claimant has not proven herein his entitlement to indemnity benefits of any type, he cannot show that his attorney should be awarded a controverted fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits is hereby denied and dismissed.

IT IS SO ORDERED.

_____
Hon. O. Milton Fine II
Chief Administrative Law Judge