BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H208296

LAURA TREADWELL, Employee	CLAIMANT
POPE COUNTY JUDGE, Employer	RESPONDENT
AAC RISK MANAGEMENT, Carrier	RESPONDENT

OPINION FILED JULY 22, 2025

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Russellville, Pope County, Arkansas.

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

Respondents represented by JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 24, 2025, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on February 24, 2025, and a Pre-hearing Order was filed on February 25, 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 April 15, 2022.

3. The claimant sustained a compensable injury to her back on or about April 15, 2022.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of $790.00 for temporary total disability benefits and $593.00 for permanent partial disability benefits.

5. All prior opinions are *res judicata* and the law of the case.

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

1. Whether Claimant is entitled to payment of 5% impairment rating issued by Dr. Brad Thomas.

2. Whether Claimant is entitled to wage loss.

3. Whether Claimant's attorney is entitled to an attorney's fee.

The claimant's contentions are as follows:

> "On November 29, 2023, Dr. Saer released the Claimant at MMI and recommended an FCE, but the test was denied by Workers Compensation. He released her with light duty level work with a lifting limit of 25 lbs. and no repetitive bending, twisting, or lifting. Restrictions should be considered permanent.
>
> On February 7, 2023, Claimant sought treatment for injury on her own insurance. Dr. Beavers referred Claimant to Dr. Brad Thomas.
>
> On March 15, 2023, Dr. Brad Thomas ordered an MRI and on April 7, 2023 Dr. Thomas ordered an EMG and referred her to pain management.
>
> On April 24, 2023, Dr. Thomas opined that no surgery was recommended based on the MRI and EMG. He also opined that Claimant is unable to do her current job as a paramedic and is doing a light duty job. Claimant will continue current work status. I feel her symptoms are related to the work accident. Dr. Thomas stated that we are going to get an FCE to evaluate her long-term work status.
>
> On May 19, 2023, the EMG/NCV test was performed.
>
> On July 8, 2024, the FCE test was performed with reliable and consistent measures.

> On November 20, 2024, Dr. Thomas issued Claimant a 5% impairment rating.
>
> Since the accident, the Claimant has been unable to return to her job as a paramedic. The Claimant is entitled to her impairment rating and a wage loss claim."

The respondents' contentions are as follows:

> "This is an accepted claim and all appropriate benefits have been paid. Dr. Saer released the claimant with a 0% on 11/29/22. The claimant suffers from degenerative issues. The 5% by Dr. Thomas is invalid as the work in injury was not the major cause. The claimant is not entitled to wage loss."

The claimant in this matter is a 47-year-old female who suffered a compensable injury to her back on April 15, 2022. The claimant was employed by the respondent as an EMT paramedic from 2003-2022, including the date of her compensable back injury. During testimony on direct examination the claimant described her job duties, which in addition to providing medical care to patients, included assessing patients and bringing them back to an ambulance. It was the claimant's testimony that sometimes this could be difficult due to the area or terrain the patient was located in, and sometimes it could be quite simple when a flat area was present to work in. The claimant's work as an EMT paramedic also required lifting of individuals of all sizes which could also be difficult with larger patients.

The claimant on direct examination described the April 15, 2022, incident in which she sustained a compensable back injury as follows:

> Q And again, just a thumbnail sketch, back on April the 22nd – April the 15th, I'm sorry, tax day, 2022; what happened? They've agreed on this but just so the judge has some –
>
> A A respiratory stress in Hector, (indiscernible) come out. We went in the house. The guy was short of breath. My partner and the first responder got the cot in the door, we got him on it. When we

> went to lift him, my partner failed to lock the legs which resulted from a full standing position of the cot to the ground in about a split second, and I was still holding it.
>
> Q When the cot was up, before the – it – the cot collapsed down to the ground?
>
> A Yes.
>
> Q Where were your hands hung in relationship to your waist?
>
> A Right here.
>
> Q Right at the belt – maybe right at the belt line, maybe a little bit above?
>
> A Yes.
>
> Q And when the cot went all the way to the ground, how far were your hands from your feet?
>
> A There were touching my boots.
>
> Q Okay, and did you have any pain?
>
> A Yes, sir.

On direct examination the claimant described medical treatment and restrictions she received after her April 15, 2022, compensable back injury as follows:

> Q Have you undergone a bunch of different treatment from different doctors?
>
> A Yes, sir.
>
> Q At some point did you use your own insurance and see Dr. Thomas?
>
> A Yes, sir.
>
> Q Did he do a nerve conduction test on you?
>
> A Yes, sir.

Q Did he recommend a functional capacity exam?

A Yes, sir.

Q Even before that, when you were being treated by the orthopedic provided by workers' comp, did they put restrictions on you?

A Yes, sir.

Q And what were those restrictions, did it keep you from working as a paramedic?

A Yes, sir. I had lifting instructions/restrictions, and I don't remember the exact – it was 25 pounds.

Q But certainly way less than what you –

A Way less –

Q -- than what you would have to do as a paramedic?

A Yes, sir.

Q To give the county credit, did they find you a new job?

A Yes, they did.

Q And what is that job and then do you still have the same job?

A Yes, sir. I transferred to the assessor's office here in the courthouse.

Q And is that a sedentary job?

A Yes.

Q Were any other jobs offered to you in the county?

A No, sir.

On November 29, 2022, the claimant was seen by Dr. Edward Saer at Ortho Arkansas in Little Rock. Following is a portion of that medical record:

> Subjective:
> Laura Treadwell is a 45 year old Female who presents to discuss concerns about their Low Back Pain, Mid Back Pain. Since their last visit, patient report feeling Same.
>
> ***
>
> Assessment/Plan
> Ms. Treadwell is back in follow-up. She is an EMT and had a work-related injury on April 25, 2022 lifting a patient on a cot. She has had pain in her lower back as well as tightness in the lower thoracic area since then. She continues to complain of the tightness in her back especially if she overdoes things. She is taking a Flexeril, usually in the afternoon, although not every day. She gets relief if she takes the Flexeril and lies down to rest. She has avoided doing any heavy lifting and is continuing to work on a light-duty basis.
> She continues to take naproxen twice daily. She is using OTC naproxen now. She is continue with some exercising and stretching that she learned in physical therapy.
> Exam:
> She gets up and down easily and walks normally. She has good forward bending and good extension although extension is a little uncomfortable. Forward bending is her position of comfort. There is no muscle spasm. She has no localized tenderness.
> Her prior imaging did not show any significant focal abnormalities no new x-rays were obtained today.
> Assessment:
> I have recommended an FCE but that was not approved. Therefore I think she should continue with light duty level work, with a lifting limit of 25 pounds, and no repetitive bending twisting or lifting. These restrictions should be considered permanent.
> She is at MMI. There is no permanent impairment associated with this injury.

On that same day, Dr. Saer authored a letter to the respondent regarding the claimant. Following is the body of that letter:

> I saw Laura Treadwell in the office today. She has been treated for back pain following an injury at work. As far as I can determine she had a lumbar strain or sprain.
>
> Treatment was based on the recent injury, not on pre-existing changes. There are no objective findings to warrant permanent

> impairment rating. Work restricts are based primarily on the injury, not any pre-existing conditions.
>
> As far as I can tell, this was an acute injury, although I did not see her until 3 months after the date of injury.
>
> I do not think any further treatment is needed at this time.

After the claimant was found at maximum medical improvement by Dr. Saer, she began to see Dr. Brad Thomas at Little Rock Neurosurgery Clinic. Dr. Thomas ordered a nerve conduction study of the claimant's lower extremities. Following is the Impression section of that diagnostic report:

> IMPRESSION:
> Mild left proximal sciatic neuropathy; peroneal greater than post tibial division.

As previously noted, Dr. Saer had ordered an FCE for the claimant but that was not approved by the respondent. Dr. Thomas also ordered an FCE which the claimant underwent on July 8, 2024. That FCE was performed by Casey Garretson, an occupational therapist and Charles Davidson, a certified senior disability analyst from Functional Testing Centers. The report from the claimant's FCE is found at Claimant's Exhibit 1, pages 3-20 and indicates that the claimant gave a reliable effort "with 50 of 50 consistency measures within expected limits." The report also indicated that the claimant demonstrated the ability to perform work in the medium classification, giving her the ability to lift 50 lbs. occasionally.

The claimant was seen by Dr. Thomas on August 15, 2024. Following is a portion of the medical report from that visit:

> Chief Complaint: F/U Low Back Pain evaluated on June 7, 2023
>
> HPI: This is a 47 year old female who is following up for Low Back Pain (Low back pain, unspecified) on the lumbar spine. She

was seen on June 7, 2023, at which time MRI interpretation Lumbar Spine was performed and

There is no surgery recommended for her low back based on the MRI and the EMG. She does have some mild left radicular neuropathy. She is unable to do her job as a paramedic and is doing a light duty job, she will continue her current work status. She is a year out from the work accident and we do feel her continued symptoms are related to the work accident. We are going to get a FCE to evaluate her long term work status. We will order this and f/u after to determine her impairment rating.

EMG Result Review was performed and The following labs were ordered: Functional capacity assessment (RFC).

The patient presents for further evaluation and management and the FCE shows she gave reliable effort with a medium classification. She works in the assessor's office because she couldn't go back to her job at EMS as a paramedic. She will not be able to go back to working as a paramedic due to the lifting requirements. We recommend disability from the paramedic position based on the lifting restrictions.

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Tests
MRI Interpretation Lumbar Spine
MRI Data:
Date: 04/04/2023 MRI L-spine without gadolinium

MRI of the lumbar spine was obtained, demonstrating the following findings: mild degenerative changes, no sig canal stenosis or impingement.

EMG Result Review
Study Data:
Other Result Details: Mild left neuropathy.

Impression/Plan:
Low Back Pain
Low back pain, unspecified
Located on the lumbar spine.
Associated diagnosis: Intervertebral Disc Degeneration, Lumbar, Leg pain, and Numbness

Plan: Other.

> She has done the FCE testing and she should not be a paramedic due to her lifting requirements being lowered. She is in a job now that makes less and is seeking compensation from her paramedic job. We will send a copy to the patient and Dr. Homer Beavers PCP and Miller Henry Clinic in Russellville.

On November 20, 2024, Dr. Thomas authored a letter regarding the claimant. Following is the body of that letter:

> Ms. Treadwell is a patient of mine. I last saw her on 08/15/2024. I am going to place her with an impairment rating based on that date which is the last time I saw her. This will give her a 5% impairment rating for unoperated and continued lower back pain after her work injury.

On April 14, 2025, the claimant's attorney authored a letter to Dr. Thomas for clarification about the letter regarding the claimant dated November 20, 2024. Following is the body of that letter:

> On November 20, 2024, we received the attached letter from you stating that you gave her an impairment rating of 5% for unoperated continued lower back pain after her work injury.
>
> In order to clarify the above impairment rating given, could you please state that the impairment rating given to Laura Treadwell was based upon the guides to the evaluation of permanent injuries 4th edition.

On April 16, 2025, Dr. Thomas indicated "Yes" to the above question posed by the claimant's attorney.

The claimant has asked the Commission to determine whether she is entitled to the 5% impairment rating issued by Dr. Brad Thomas.

Permanent impairment, which is usually 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). Also, in *Wilson & Co. v. Christman*, 244 Ark.

132, 424 S.W.2d 863 (1968), the Arkansas Supreme Court held that physical functional loss may best be measured through physical examination by competent medical specialists. The Commission must first evaluate the medical evidence and determine if the permanent impairment is supported by objective and measurable findings. *Reader v. Rheem Mfg. Co.*, 38 Ark. App. 248, 832 S.W.2d 505 (1992). Ark. Code Ann. §11-9-704(c)(ii)(B) states that any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. In addition, permanent benefits may only be awarded upon a determination that the compensable injury was the major cause of the impairment, Ark. Code Ann. §11-9-102(4)(F)(ii).

Dr. Saer requested that the claimant undergo an FCE; however, that FCE was not approved by the respondents. In a November 29, 2022, medical record he discusses the disapproval of that FCE and places work restrictions on the claimant of 25 lbs. lifting and no repetitive bending, twisting or lifting. Dr. Saer also declares the claimant to be at maximum medical improvement at that time.

The claimant began to see Dr. Thomas after she was released by Dr. Saer in May of 2023. The claimant underwent a nerve conduction study of the lower extremities at the recommendation of Dr. Thomas which showed "mild left proximal sciatic neuropathy; peroneal greater than post tibial division."

The claimant requested and received a hearing on the issue on her entitlement to an FCE. That hearing was conducted by this administrative law judge on March 14, 2024. An Opinion granting the claimant's request for an FCE was filed on June 11, 2024. On July 8, 2024, the claimant underwent an FCE as previously discussed which placed her in the medium classification of work. On November 20, 2024, Dr. Thomas gave the claimant a 5% whole body

impairment rating and affirmed on April 14, 2025, that the rating was done based upon the *American Medical Association's Guides to the Evaluation of Permanent Impairment 4th Edition*.

After a review of the medical records submitted in this matter along with the claimant's testimony, I agree that the claimant is entitled to a 5% whole body impairment rating due to her April 15, 2022, compensable back injury. The respondent contends that Dr. Saer's 0% impairment rating on November 29, 2022, is correct and that Dr. Thomas' 5% whole body rating is invalid because the work injury was not the major cause of that rating. As to Dr. Saer's 0% rating, Dr. Saer attempted to have more information regarding the claimant's condition via an FCE. That FCE was denied by the respondent until a hearing determined that she was entitled to an FCE. Dr. Thomas had the benefit of a nerve conduction study and an FCE in which the claimant put forth a reliable effort with 50 of 50 consistency measures within expected limits. Dr. Thomas was in the better position to consider an impairment rating for the claimant as he had more information.

As to the issue of major cause, it is clear that the claimant has previously had a workers' compensation claim regarding her back. No documentary evidence was put forth by either party to date that claim, and the claimant was unable to recall when the incident occurred. Some medical records dated prior to the claimant's April 15, 2022, compensable back injury have been introduced into evidence. However, in considering the medical evidence and the claimant's testimony, which I believe to be credible, the claimant had been asymptomatic for at least two years prior to her April 15, 2022, compensable back injury. In fact, the claimant had continued to work, which required her to lift heavy patients and sometimes do so under difficult circumstances. On direct examination the claimant discussed her prior back problems and her most recent difficulties as follows:

Q Had you ever had any back pain before?

A I hurt my back at work once before.

Q And approximately when was that?

A I don't know, several years. It was at the nursing home.

Q And who treated you and were you given any restrictions?

A I was treated by the occupational health clinic and I was off for maybe a day. It was just a muscle strain.

Q And after that incident at the nursing home, whatever date and time that was, were you able to perform your job duties as a paramedic?

A Yes, sir.

Q Did that have any bearing whatsoever on your ability to do your job?

A No.

Q After this injury, were you left with any residual pain in your back?

A No.

Q Not this injury, the current injury, yes, I'm sorry. I jumped around.

A Yes.

Q From September – from April the 15th of 2022?

MR. RYBURN: Object to leading.

MR. WREN: I apologize.

A (Witness continues) Yes.

THE COURT: Let's start over.

MR. WREN: Let me – I'll ask the question.

Q (Mr. Wren continues) Were you hurt April 15th of 2022?

A Yes, sir.

Q Prior to that, did you have any residual pain or problems with your back?

A No.

Q After April 15th of 2022, have you had residual pain or issues with your back?

A Yes.

Q Describe those ongoing problems with your back.

A So if I do anything, any like, working in the yard for long periods of time, I'll have significant pain. I get numbness down my left leg. I just know what I can and can't do how, and I try to avoid what hurts it consistently.

Q You mentioned pain in your back, but you said you also have some pain that radiates into your left leg?

A My left leg goes numb.

Q Is it pain or numbness?

A Numbness.

Q And are those the symptoms that you described to Dr. Thomas.

A Yes.

Q And have you had problems with falling or almost falling with that left leg?

A Yes.

Q Have you actually fallen?

A I fell into the shelf, yes.

Q At the grocery store?

A At CVS.

Q CVS Pharmacy across the street from where we are now?

A Yes, and I fell into the wall of the house the second time.

Q Have you had any times where there has been weakness, but you've caught yourself?

A Yeah.

As in *Leach v. Cooper Tire & Rubber Co.*, 2011 Ark. App. 571 (2011), the claimant was asymptomatic prior to her April 15, 2022, compensable back injury and then symptomatic thereafter, such that the major-cause requirement is satisfied. The claimant is entitled to a 5% whole body impairment rating due to her April 15, 2022, compensable back injury.

The claimant has also asked the Commission to determine if she is entitled to wage loss disability.

Wage loss is the degree to which the compensable injury has affected the claimant's earning capacity. The extent of disability is a question of fact for the Commission. *Cross v. Crawford County Memorial Hospital*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). The Commission is charged with assessing wage loss on a case by case basis. Factors to be considered in assessing wage loss include the claimant's age, education, work experience, medical evidence and other matters which may reasonably be expected to affect the worker's future earning power such as motivation, post-injury income, bona fide job offers, credibility or voluntary termination. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984); *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990); *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307,

635 S.W.2d 276 (1982); and *Hope School District v. Charles Wilson*, 2011 Ark. App. 219, S.W.3d (2011). The award of wage loss is not a mathematical formula, but a judicial determination based on the Commission's knowledge of industrial demands, limitations, and requirements, *Henson v. General Electric*, 99 Ark. App. 129, 257 S.W.3d 908 (2008).

Given the claimant's work restrictions provided by Dr. Saer and more recently, Dr. Thomas after the claimant's FCE, it is clear that the claimant is no longer able to work as an EMT paramedic. The respondent has continued to employ the claimant in a different position associated with the county assessor's office at the courthouse. A Form AR-W associated with this claim and a "Pope County Government Direct Deposit Stub" of the claimant's, both found at Claimant's Exhibit 2, prove the claimant is making less money in her new position than her position with the respondent as an EMT paramedic.

At the time of the hearing in this matter, the claimant was 47 years of age. She began to work for the respondent in 2002, when she was 23 years old as a basic EMT. In 2003 the claimant became an EMT paramedic and worked for the respondent in that capacity until her compensable back injury and eventual transfer to the respondent's county assessor's office. The claimant testified that before going to work for the respondent, she worked for about three years in a food processing plant. The claimant further testified that she holds no other post-high school training certificates or education other than those associated with an EMT paramedic. The claimant did admit to having some basic computer skills but not advanced computer skills.

The claimant was asked on cross examination about her ability and to some degree her motivation to work as follows:

> Q And Dr. Thomas released you with a five percent for an un-operated on lesion to your lumbar spine; is that – do you have any understanding of that?

A He did give me a five percent impairment rating.

Q Okay, and I'm not saying that you should, but do you have any understanding of the medical guides that he used to come to that?

A No.

Q You have a – you are currently working a sedentary job with the county; is that correct?

A Yes, sir.

Q And that's working for the clerk, so I imagine that is a lot of computers and paper and that sort of thing; is that right?

A Yes, sir.

Q With almost no lifting?

A Yes, sir.

Q But you, according to the FCE, can do medium duty; is that correct?

A I can lift.

Q And so there are other jobs that you could do at least within your – according to the FCE's recommendations; is that fair?

A Yes.

Q Is that a "yes?" I'm sorry I spoke over you.

A Yes.

Q Thank you. And part of your motivation for staying at the county is your retirement; is that right?

A Yes, I mean this is my hometown, this is my place.

Q How many years do you need to secure your retirement?

A I can retire in 28 years with full retirement.

Q Okay, and how many years left?

A Five. A little over five.

Q And so part of your motivation for continuing your county clerk job is to maintain your retirement?

A Yes, sir.

Q And so if a job that paid more but was not with the county was offered, you would be reluctant to take it because you would be giving up that retirement; is that correct?

A I can't answer that. I mean I don't know if I would take it.

Q So is it fair to say that you are willing to work for less money because of your county retirement, state retirement?

A It was the job that was offered to me and it was the only job that was offered to me; yes, sir.

Q Have you applied for any other jobs?

A No.

Q Have you looked to see what other jobs are available within the county?

A Yes, sir.

Q Have you found any?

A No.

Q Have you looked elsewhere outside the county to see what jobs are available?

A No.

Q And why is that?

A I just haven't.

> Q So currently, motivationally speaking, you are motivated by your retirement to keep the job that you have now?
>
> A Yes.

Given the factors previously stated when considering wage loss disability along with the evidence and the claimant's testimony, I find the claimant to be entitled to wage loss disability in an amount that would be equal to a 10% whole body impairment rating. The claimant's very specific work experience as an EMT paramedic for such a length of time given her age and her motivation to remain with the county because of retirement prospects were both increasing and decreasing factors respectively.

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 her 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 February 24, 2025, and contained in a Pre-hearing Order filed February 25, 2025, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled a 5% impairment rating to the body as a whole.

3. The claimant has proven by preponderance of the evidence that she is entitled to wage loss disability in an amount that would be equal to a 10% impairment rating to the body as a whole.

4. The claimant has proven by a preponderance of the evidence that her attorney is entitled to an attorney's fee in this matter.

ORDER

The respondent shall pay the claimant an impairment rating of 5% to the body as whole. The respondent shall pay the claimant wage loss disability in an amount that would be equal to a 10% impairment rating to the body as a whole.

The respondent 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.

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HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE