BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H307345

JOSH W. WEST, EMPLOYEE	**CLAIMANT**
DIAMOND PET FOODS, EMPLOYER	**RESPONDENT**
ARCH INDEMNITY INSURANCE CO, CARRIER/ SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., TPA	**RESPONDENT**

OPINION FILED 28 APRIL 2026

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 26 February 2026 in McGehee, Arkansas.

Mr. Daniel A. Webb, Daniel A. Webb, P.A., appeared for the claimant.

Mr. Guy Alton Wade, Friday, Eldredge & Clark, LLP, appeared for the respondents.

I. STATEMENT OF THE CASE

A Prehearing Order was filed on 4 June 2025 and admitted to the record as Commission's Exhibit № 1. The parties agreed to the following at the hearing:

STIPULATIONS

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

2. The employee/employer/carrier-TPA relationship existed at all relevant times, including on 12 November 2023.

3. The respondents have controverted this claim in its entirety.

ISSUES TO BE LITIGATED

Following an amendment at the hearing, the parties agreed to litigate the following Issues:

1. Whether the claimant sustained a compensable injury by specific incident to his right index finger.

2. Whether the claimant is entitled to medical benefits and expenses associated with his alleged compensable injury.

3. Whether the claimant is entitled to permanent partial disability (PPD) benefits.[1]

4. Whether the claimant is entitled to benefits under Ark. Code Ann. § 11-9-505.

5. Whether the claimant is entitled to an award of an attorney's fee under Ark. Code Ann. § 11-9-715.

All other issues are reserved.

CONTENTIONS

The parties' Contentions were set out in their respective Prehearing Questionnaire responses and were amended at the hearing to read:

Claimant

Claimant contends that he sustained serious injuries to his right finger, and Respondents have refused to accept the claim as compensable. Claimant contends entitlement to all benefits related to his finger injury, including medical benefits and expenses and PPD. All other issues are reserved.

Respondents

Respondents contend that the claimant did not sustain a compensable injury to his right index finger within the course and scope of his employment. Claimant was intoxicated at the time of the accident. As a result, the claim is not compensable, and the respondents are not responsible for the payment of any medical and/or indemnity benefits.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the claimant and the witnesses, observing their

[1] While the parties anticipated at the time of the prehearing conference providing an agreed-upon average weekly wage amount at the hearing, they had not yet made that determination on the date of the hearing. They agreed that they would revisit the matter as may be necessary in the event benefits were awarded in this Opinion and that the applicable average weekly wage determination need not be included as an Issue to be litigated at the hearing. [TR at 23.]

demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The Commission has jurisdiction over this claim.

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

3. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury by specific incident to his right index finger.

4. The claimant has proven by a preponderance of the evidence that he is entitled to medical benefits associated with his compensable injury. He has further proven by a preponderance of the evidence that all of the treatment that he received for his compensable right index finger injury and that is in evidence was reasonable and necessary.

5. The claimant has proven by a preponderance of the evidence that he is entitled to a 45% (forty-five percent) permanent impairment rating to the right index finger and PPD benefits consistent with the same.

6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to benefits under Ark. Code Ann. § 11-9-505.

7. The claimant has proven by a preponderance of the evidence that he is entitled to attorney's fees under Ark. Code Ann. § 11-9-715 on the indemnity benefits awarded in this Opinion.

III. ADJUDICATION

The stipulated facts as outlined above are reasonable and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). 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.*

SUMMARY OF THE EVIDENCE

The claimant, Mr. Ricky Snow, and Mr. Cody Gipson testified at the hearing. The record consists of the hearing transcript, which includes following exhibits: Commission's Exhibit № 1 (the 4 June 2025 Prehearing Order and a subsequent rescheduling letter); Claimant's Exhibit № 1 (one index page and 29 pages of medical and billing records); Claimant's Exhibit № 2 (a one-page billing statement dated 6 February 2026); Respondents' Exhibit № 1 (one index page and 15 pages of employment and incident records); Respondents' Exhibit № 2 (one index page and eight pages of medical records); Respondents' Exhibit № 3 (one disc with an incident investigation report (on PowerPoint) and two short video files showing machinery); and Respondents' Exhibit № 4 (the 14 January 2026 cover letter that accompanied the respondents' exchange of hearing exhibits).

Claimant's Testimony

The claimant is thirty-seven years old with an associate's degree in aviation maintenance and applied sciences. The respondent-employer operates a pet food manufacturing facility in Dumas, Arkansas. The claimant had been employed there for approximately three years before his accident. He worked in machinery maintenance at the time relevant to this claim.

On 12 November 2023, the claimant and his coworker Colby Russell were called to work on a malfunctioning "bagger" machine that was overfilling bags with dog food. The machine controlled the amount of dog food that was dropped into the bags via a roller system that opened and closed over a spout atop of the bags. Debris could get caught between the rollers and prevent them from completely closing and stopping the downward flow of dog food. The claimant and Mr. Russell each had a roller and spout set to clear on

the machine. Mr. Russell cleared out his set and then pressed a button that actuated the roller system while the claimant still had his hand between two rollers. The end of the claimant's right index finger was smashed when the rollers closed together.

The claimant testified that his direct supervisor was not present at the time but that Ricky Snow, the plant's production supervisor, was notified of the accident and injury. The claimant also spoke with Charlotte Coakley, who happened to be standing nearby, immediately after the incident. He recalled saying, "Ms. [Coakley], I think I lost my finger. I need some help." [TR at 34.] According to the claimant, Ms. Coakley looked around for some first aid supplies, including in the women's restroom while he waited outside the door; but she did not find anything.

The claimant recalled Mr. Russell driving him the short distance to Delta Memorial Hospital within 10 minutes or so of the accident. He submitted to an after-accident urine drug screen while in the emergency department. Bill Hale, the respondent-employer's safety manager, signed off on the sample as part of the sample collection and custody procedure. The test later returned negative for any intoxicants. Consistent with that result, the claimant denied being intoxicated or under the influence of any illicit substance around the time of the accident.

As for the emergency treatment provided to the claimant, he stated that the doctor "gave me a shot and filed down the bone and put the skin over it and sewed it up." [TR at 39.] He testified that after a follow-up visit a few days later, he was authorized to return to work with restrictions. He was, however, terminated upon his return to work.

> Q: All right. Any explanation for the termination?
> A: They told me they thought I was lying about my drug screening. And when I… that's it.
> Q: But once again, you peed in the cup at the hospital that the nurse gave you, correct?
> A: Yes, sir.

[TR at 44-45.] He testified that he could have performed his work duties had he been allowed to return to the job. Explaining some of the ongoing difficulties that he now experiences as a result of the injury, he stated, "especially when it comes to writing anything. I used to have decent handwriting, now it's atrocious. Tightening bolts, if you try to reach in and grab one, I just have a problem with it, but I'm getting used to it now." [TR at 45.]

The claimant said that he was aware that the respondents reviewed security footage that showed him taking a plastic product sample cup out of his maintenance bag on the morning of his accident. He explained, though, that the cups were regularly used by him and others at the plant. "I probably had two or three, four more of them in it. They held bolts, cotter pins. If you [were] working on something, you know, you want to put your bolts in there, or your nuts. And I mean, that's just what we used…" [TR at 47.]

On cross-examination, the claimant acknowledged talking with Mr. Snow after the accident. He could not recall the specifics of their discussion, but denied that he stated any concerns about after-accident drug testing. He understood that his termination was for a "lack of trust." [TR at 71.] He denied obtaining any further medical treatment after his follow-up and release to return to work with restrictions. After some confusion about what was owed by whom for the medical treatment that he had received, the claimant presented a medical bill for the emergency medical treatment showing that he was being held responsible on an uncollected balance of approximately $4,000. That billing statement was introduced into the record as Claimant's Exhibit № 2.

The claimant recalled discussing his past drug history at his deposition. And he acknowledged that he regularly uses marijuana for symptoms related to a PTSD diagnosis. He maintained at his deposition and again at the hearing that he was not concerned about being able to pass a drug test after the accident.

Mr. Ricky Snow

The witness testified that he is a production supervisor for the respondent-employer and that he was working on the day of the claimant's accident. Before the claimant was taken to the hospital, Mr. Snow recalled:

> A: And he said that he cut his finger – cut his finger off. So I said, "Okay, Josh, well, we need to go to the hospital," and he said, "No," he can't go. And I said, "Well, why can't you go?" And he said, because he was dirty.
> Q: Meaning what?
> A: As far as taking the drug test.
> Q: Okay.
> A: That he was dirty. But I said, I mean, you still have to go to the hospital.
> Q: Okay. So he told you he wasn't going to be able to pass the mandatory drug test—
> A: Yes, sir.
> Q: -- following this event?
> A: Yes, sir.

[TR at 90-91.] He testified, however, on cross-examination that he did not witness any signs of intoxication from the claimant that day. As a supervisor, Mr. Snow had encountered employees before that he observed as possibly being intoxicated while at work and was familiar with the process for addressing those concerns. He did not take any such action relating to the claimant because that brief discussion aside, he did not have any reason to believe that the claimant was impaired while at work. Mr. Snow explained that he was later suspended for not immediately disclosing that conversation to the respondent-employer.

Mr. Cody Gibson

Mr. Gibson testified that he works as a corporate safety director for the respondent-employer and that he is based out of their offices in Meta, Missouri. He has remote access to the Dumas facility's security camera system from his office and reviewed the available video footage as part of his after-accident review. He recalled viewing the claimant and others moving around the facility after the accident. He believed that their activity was

suspicious and noted, among other things, that Mr. Russell emptied a water bottle into a garbage can and then carried the empty bottle to his truck before taking the claimant to the hospital.

On the nature of the accident, he testified that the proper procedure for cleaning the bag filler would have involved using an air hose and wand instead of one's hands to clear out debris. According to his testimony, Mr. Gibson prepared a PowerPoint report [Resp. Ex. № 1 at 1-9] after completing his accident investigation. Several employment actions were taken by the respondent-employer as a result of his investigation.

> Q: Now, after your investigation and after this PowerPoint was put together, there were several employees that were punished as a result of this, is that right?
> A: That is correct.
> Q: In fact, [the claimant] was even let go?
> A: Yes.
> Q: Along with Charlotte?
> A: Yes.
> Q: Along with Colby?
> A: Yes.
> Q: And along with Cory?
> A: Correct.
> Q: And even Ricky over here got suspended for a few weeks after that, is that right?
> A: Yeah, that's correct. Yeah.
> Q: Okay. And the reason they were terminated of the reason for the suspension was because of the circumstances of what the videos revealed that occurred immediately following this accident?
> A: That is correct. Based on the statements we received, and then, confirming with the camera system, there were definitely lies that were told.
> Q: Okay. And based upon—you were present for Mr. Snow's testimony that the claimant, actually, told him that he was not gonna be able to pass the drug test.
> A: That's my understanding. That's correct.
> Q: And that was consistent with the statements that you have?
> A: Yes, sir.

[TR at 119-120.] He went on to say that he believed the claimant and others attempted to or at least intended to provide the claimant with a urine sample that he could submit as his own. He further acknowledged, however, that he was not familiar with Quest Diagnostics'

procedures for conducting employee drug tests and that he did not have any reason to question the competency of the hospital staff who were involved in collecting the claimant's urine sample. He also confirmed that Mr. Russell was not drug tested after the accident and that the accident would likely not have occurred but for Mr. Russell mistakenly activating the machine while the claimant was still working on it.

Mr. Gibson also explained some confusion about the billing for the claimant's medical treatment. He stated that the claimant had been advised that the charges would be taken care of by the respondents. But when Mr. Gibson inquired with the hospital about the patient's balance, he was told that nothing was owed. The respondents then took no further action regarding the payment of the claimant's treatment.

Claimant's Rebuttal Testimony

The claimant again denied telling Mr. Snow that he would not be able to pass a drug test. He also again denied using any marijuana around the time of his accident.

> Q: Did you tell this fella [Mr. Snow] that you couldn't take the test because you were dirty?
> A: No, sir.
> Q: Were you smoking pot at that time in your life?
> A: No, sir. No, sir.

[TR at 130.]

Medical Records and Documentary Evidence

The Emergency Room Note authored by Dr. David Chambers includes, in part, the following:

> CHIEF COMPLAINT: Cut the tip off his right index finger.
> HISTORY OF PRESENT ILLNESS: The patient was at work at Diamond and got his finger caught in a bagging machine and it basically gnawed the end of his index finger off on the right. He has some exposed bone and most of the bone from the distal inner phalangeal joint is missing.
> EXTREMITIES: He is missing most of the tip of his index finger on the right with estimated 80% of the bone missing on the distal inner phalangeal distally on the right index finger. He has a very small area

> of cuticle intact. The remainder of the nail is totally gone. He does not have the remaining finger with him. He said he felt like [the] machine ate it.
> PROCEDURE NOTE: The finger was prepped with Betadine. A digital nerve block with approximately 6 mL of 2% blue lidocaine was placed between the distal and middle intraphalangeal joints. Thus, digital nerve block of the finger. Rongeurs were used to remove bone fragments and smooth the bone. The tip was then closed over the exposed bone with four stiches of 2-0 Monofilament nylon. Tetanus shot was given. Cleaned and dressed. He tolerated the procedure well. I will see him back Tuesday in the office but sooner if he has any problems.

An X-ray report included the following findings:

> There is amputation of the soft tissues of the distal second digit. There is a fracture through the mid shaft of the distal phalanx with the distal fragment displaced anteriorly and inferiorly. The DIP and PIP joints are maintained. There are no radiopaque foreign bodies.

An Emergency Department Nurse's Note included, in part, the following narrative:

> Pt presents to ER with amputation past first joint on right index finger. Pt's finger cleaned with normal saline. Pt tolerated well. Pt prepped for suturing… Applied 1 non-adherent bandage to right index finger, wrapped with 2 kerlix secured in place with tape and covered with 1" tubular gauze. Pt tolerated well.

Per his discharge instructions, the claimant presented for a follow-up visit on 14 November 2023. He was authorized to return to work the next day with the use of his right hand restricted.

The drug screening paperwork indicates that the testing was being requested on behalf of the respondent-employer by Ricky Snow and Bill Hale. Mr. Hale signed the form. The specimen collection form indicates that the claimant's sample was provided at the appropriate temperature. And the urine screening Result Report dated 14 November 2023 provided a negative result verification.

A billing statement dated 21 January 2025 showed total charges from Delta Memorial Hospital in the amount of $6,580.10; it appeared to represent a zero-balance owed at the time. The full balance appeared to be covered by Blue Cross on 2 January 2025.

[Cl. Ex. № 1.]

The claimant appeared at the hearing with a billing statement that he had recently received from Delta Memorial Hospital. The statement was dated 6 February 2026 and represented an adjusted balance owed of $3,948.06 against an original balance of $6,580.10, with no insurance payments having been applied to the account.

[Cl. Ex. № 2.]

The Employer Discharge Statement indicated that the claimant was terminated on 20 November 2023 for "tampering with post-accident urine sample" and that his actions violated company policy as a "fraudulent act or breach of trust." The Termination Form listed Gross Misconduct and indicated that he could not be rehired without consulting a plant manager or human resources.

The respondent-employer's Injury/Incident form indicated that the claimant sustained a "Disabling Injury" to his "(R) 2nd distal finger." The Corrective Action section provided that "Both workers are being assigned LOTO Refresher Training." It also stated, "Maintenance Manager has met with crews & discussed one-man tasks and need for proper communication." The form was signed by Mr. Hale on 13 November 2023.

Mr. Hale then signed a disciplinary report dated 20 November 2023 that indicated that the claimant was being terminated for "fraudulent activity after accident on 11/12."

[Resp. Ex. № 1.]

DISCUSSION

A. THE CLAIMANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE SUSTAINED A COMPENSABLE INJURY TO HIS RIGHT INDEX FINGER.

To prove a compensable injury by specific incident, the claimant must establish four (4) factors by a preponderance of the evidence: (1) that the injuries arose out of and in the course of his employment; (2) that the injuries caused internal or external harm to the body

that required medical services or resulted in disability or death; (3) that the injuries are established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) that the injuries were caused by a specific incident identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). If a claimant fails to establish by a preponderance of the evidence *any* of the requirements for establishing a compensable injury, compensation must be denied. *Mikel, supra.*

"Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). The requirement that a compensable injury must be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The facts in this case clearly support a finding that the claimant met his burden in proving all four of the requisite factors listed above. There is no dispute that the claimant was injured while at work and while performing ordinary work duties. The end of his right index finger was amputated in a sudden accident. The treatment records contained objective findings of this and show that medical treatment was required for the injury. The record plainly supports a finding that the claimant has satisfied the basic elements of a compensable injury to his right index finger by specific incident.

But the respondents argue that they have appropriately denied liability for the claimant's otherwise compensable claim under Ark. Code Ann. § 11-9-102(4)(B)(iv), which provides:

> (B) "Compensable injury" does not include:
>
> . . .
>
> (a) Injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.
>
> (b) The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.
>
> (c) Every employee is deemed by his or her performance of services to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any of the aforementioned substances in the employee's body.
>
> (d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the alcohol, illegal drugs, or prescription drugs utilized in contravention of the physician's orders did not substantially occasion the injury or accident.

If after-accident testing reveals that a claimant had illegal drugs in his system around the time of a workplace accident, a presumption attaches that the accident or injury in question was "substantially occasioned" by his use of such drugs. He must then rebut this with proving by a preponderance of the evidence that the illegal drugs did not substantially occasion the injury or accident. Ark. Code Ann. § 11-9-102(4)(B)(iv)(d). The phrase "substantially occasion" requires that there be a direct causal link between the use of the drugs and the injury for the injury to be noncompensable. *Waldrip v. Graco Corp.*, 101 Ark. App. 101, 270 S.W.3d 891 (2008) (citing *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998)). Ordinarily, this defense is raised when an after-accident drug screening results *positive* for the presence of some illicit substance in a

claimant's system around the time of testing. That is not the case here, however. The medical evidence in the record clearly shows that the urine sample tested after the claimant's accident returned a *negative* result—i.e., there were no illicit drugs or metabolites found in the urine sample that was provided by the claimant.

Still, the respondents argue that the adverse inference should be applied in this case and cause the presumption to attach. They are unable to rely on any controlling authority or persuasive case law in support of this notion, though. They instead encourage that the totality of the circumstances (the claimant's supposed statement to Mr. Snow and the allegedly suspicious behaviors of others that were described in their internal after-accident report) support assigning the adverse inference even in the absence of a positive drug testing result.

I disagree. The record evidence shows that the claimant produced a urine sample in the emergency department at the request of the respondent-employer. Appropriate personnel then signed-off on the chain of custody of the sample (which showed an in-range temperature at the time of collection); and the sample returned a negative result for any intoxicants. The respondents presented no actual, direct evidence attacking the validity of the sample or showing that the collection procedure was somehow inconsistent with normal sample collection protocols. If there had been actual evidence of an adulterated sample or of the claimant refusing the timely collection of a sample, an argument could be better made that he was in violation of his implied consent to testing and thus potentially depriving the respondents of their ability to present evidence, at least by way of testing results, that the accident was substantially occasioned by the use of some illicit substance. But just as there is no actual evidence of the claimant adulterating the sample he provided in the emergency department or refusing or delaying his urine sample collection, there is no evidence of any pre-accident behavior that might suggest that the accident (which, again, would very likely

not have happened but for the mistaken and unsafe actions of another) was substantially occasioned by the use of an intoxicant.

Even assuming, *arguendo*, that claimant did voice a *concern* about “something” showing up in his system, a claimant’s worried mind is not a substitute for the *actual* “presence of alcohol, illegal drugs, or prescription drugs” that is contemplated by the applicable statute. Timely after-accident testing is the accepted means for determining whether some intoxicant is actually present around the time of an accident. That testing happened in this case in a nearby emergency department shortly after the accident. To disregard the facially valid testing results in the absence of any direct evidence undermining the validity of the testing would require engaging in speculation and conjecture. And that, I cannot do. *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979).

The claimant has thus proven by a preponderance of the evidence that as a result of the workplace accident on 12 November 2023, he suffered a compensable injury by specific incident to his right index finger. He is, therefore, entitled to the benefits that ought to be associated with the same.

B. THE CLAIMANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO MEDICAL BENEFITS ASSOCIATED WITH HIS COMPENSABLE INJURY

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

claimant may be entitled to additional treatment even after her healing period is ended, if that treatment is geared towards management of a compensable injury. *Patchell, supra*. An employee who has sustained a compensable injury is not required to offer objective medical evidence in order to prove that he is entitled to additional treatment. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408.

The claimant has met his burden on proving that he suffered a compensable injury by way of the partial amputation of his right index finger. He is, therefore, entitled to reasonable and necessary medical benefits associated with that compensable injury. The treatments discussed at the hearing were reasonable and necessary in relation to the claimant's compensable injury. The testimony showed some confusion around the charges and billing associated with the claimant's treatments (received during one hospital emergency department visit on 12 November 2023 and one follow-up clinic visit on 14 November 2023) associated with his compensable injury. The respondents are liable for the costs and associated benefits related to those treatments, including any out-of-pocket reimbursement and mileage owed the claimant.

C. THE CLAIMANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO PERMANENT PARTIAL DISABILITY BENEFITS.

An injured worker must prove by a preponderance of the evidence that he is entitled to an award for a permanent physical impairment. Any determination of the existence or extent of physical impairment shall be supported by objective and measurable findings. Ark. Code Ann. § 11-9-704(c)(1). Under Ark. Code Ann. § 11-9-522(g) and 11 CAR § 25-129 (previously our Rule 099.34), the Commission has adopted the *American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) for the assessment of anatomical impairment(s).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. § 11-9-102(14)(A). Preponderance of the evidence means evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W. 3d 252 (2003).

Based on the preponderance of the evidence presented in this claim, the claimant's compensable injury to his right index finger was the major cause of his impairment. The claimant did not seek additional treatment after his release with restrictions and subsequent termination from employment. Nor did he separately seek an impairment rating from a physician relating to the partial amputation of his finger. The claimant is thus seeking a rating assignment from the Commission based on the evidence presented at the hearing. In *Jones v. Wal-Mart Stores, Inc.*, 100 Ark. App. 17, 262 S.W.3d 630 (2007), our Court of Appeals held that the Commission has the authority to assess its own impairment rating in the absence of a physician-assigned rating. *See also Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001); *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994).

The medical records provide objective evidence to support a permanent impairment rating. I find those records to be credible. 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). Approximately 80% (eighty percent) of the distal inner phalangeal (DIP) bone was missing after accident. The physician then removed more exposed bone before closing the skin over the remaining tissues. Based on the records and my visualization of the claimant's healed

injury, I am assigning a 45% (forty-five percent) permanent impairment for the amputation of the right index finger at the DIP joint, which corresponds to a 9% (nine percent) impairment of the hand, and to an 8% (eight percent) impairment of the upper extremity, and to a 5% (five percent) impairment of the whole person. *See AMA Guides, Figures 16-3, 16-5, Table 16-4.* Because the claimant has proven by a preponderance of the evidence that he is entitled to a permanent impairment rating in relation to his compensable injury, he is entitled to PPD benefits consistent with the same.

D. THE CLAIMANT HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO BENEFITS UNDER ARK. CODE ANN. § 11-9-505.

The claimant contends that he is entitled to benefits under Ark. Code Ann. § 11-9-505(a)(1) ("Section 505") for the respondent-employer's refusal to return him to his prior job. In order to receive benefits pursuant to Section 505, a claimant has the burden of proving by a preponderance of the evidence the following: (1) that he sustained a compensable injury; (2) that there is suitable employment within his physical and mental limitations available with the employer; (3) that the employer refused to return him to work; and (4) that the employer's refusal to return him to work was without reasonable cause. *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S.W. 2d 237 (1996); *Nat'l. Cmty. Coll. v. Castaneda*, 2018 Ark. App. 458, 588 S.W. 3d 911.

The claimant cannot meet his burden for benefits under Section 505. He argued, essentially, that because he did not screen positive for drugs, he should not have otherwise been terminated for anything related to his accident and injury. In relying on this general notion, he failed to meet his burden on elements (2) and (4), above.

First, he did not put on evidence of the availability of suitable work within his physician-ordered "no use of right hand" restrictions after his release. Instead, and somewhat to the contrary, the note releasing him to return to work with restrictions states

that he "was adamant that he didn't need to return to work" and that he was "going to seek treatment by another physician." [Cl. Ex. № 1 at 21.] The claimant did not present any evidence of any light duty or one-hand-only maintenance work that would have been available upon his (apparently reluctant) return to work.

But even if he had produced some evidence of unsuccessful efforts to return him to available work, element (4) would remain fatal to his claim. The respondents testified at length about their belief that the claimant and others acted dishonestly and in violation of company policies in the aftermath of the accident. The after-accident investigation findings resulted in the termination of several employees. Mr. Gibson explained that the involved employees were believed to be "[l]ying, not being truthful," and that "there was just reason to believe that they were adamantly lying… [when] supervisors on the floor cannot trust you, then, that's not someone that we, typically, want to employ." [TR at 120-121.] Given that several serious employment actions were taken after the review of the accident, I cannot find that the respondent-employer acted without reasonable cause in their decision to terminate the claimant's employment or in any subsequent refusal on their part to return him to work. Because the claimant has failed to prove by a preponderance of the evidence all of the required elements for benefits under Section 505, his claim for the same must fail.

E. THE CLAIMANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO AN ATTORNEY'S FEE.

Because the claimant has proven an entitlement to indemnity benefits, he is also entitled to an attorney's fee consistent with Ark. Code Ann. § 11-9-715.

IV. CONCLUSION

The claimant has proven that he suffered a compensable injury by specific incident to his right index finger, that he is entitled to medical benefits associated with that

compensable injury, and that he is entitled to PPD benefits consistent with a 45% (forty-five percent) permanent impairment rating to the right index finger. He has failed, however, to prove that he is entitled to benefits under Ark. Code Ann. § 11-9-505. All issues not made part of this litigation have been reserved.

The respondents are directed to provide benefits accordingly. Any accrued amounts shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid. Ark. Code Ann. § 11-9-809. *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995). The claimant's attorney is entitled to a twenty-five percent (25%) fee on the benefits awarded herein. One-half (1/2) of the fee is to be paid by the claimant, and one-half (1/2) of the fee is to be paid by the respondents, consistent with Ark. Code Ann. § 11-9-715. *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2012).

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE