

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO.: H403539

DAVID WYLIE, EMPLOYEE	CLAIMANT
POTLATCH CORPORATION, EMPLOYER	RESPONDENT
SENTRY CASUALTY COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 3, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

Claimant represented by the Honorable Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the Honorable Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 6, 2025, the above-captioned claim came on for a hearing in El Dorado, Arkansas. Previously, a pre-hearing telephone conference was held in this matter on May 28, 2025. A Pre-hearing Order was entered that same day pursuant to the telephone conference. Said order was admitted into evidence along with the parties' pre-hearing information filings without objection as Commission's Exhibit 1.

Stipulations

During the pre-hearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-insurance carrier relationship existed at all relevant times, including November 4, 2023, when the claimant allegedly sustained a compensable injury to his lower back.
3. At the beginning of the hearing, the parties agreed to withdraw their stipulation pertaining to the claimant's average weekly wage.
4. The claimant reached maximum medical improvement for his back condition on *April 24, 2024*.
5. The claimant received short-term disability for a period of time. The respondents are entitled to a credit in the event the claimant is awarded indemnity benefits.
6. The respondents have controverted this claim in its entirety.
7. Therefore, all issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

The parties agreed to litigate the following issues:

1. Whether the claimant sustained a compensable specific incident injury to his low back November 4, 2023, while working for the respondent-employer.
2. Whether the claimant failed to give his employer notice of his alleged injury until May 17, 2024.
3. Whether the claimant is entitled to temporary total disability/TTD compensation beginning on November 5, 2023, and continuing until April 24, 2024.
4. Whether the claimant's medical treatment of record is reasonable and necessary medical treatment for his alleged back injury.
5. Whether the claimant sustained an 8%<sup>1</sup> impairment rating for his back condition.

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<sup>1</sup> At the time of the hearing, the claimant's attorney changed his request from a 10% impairment rating to an 8% rating.

6. Whether the claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The claimant's and respondents' contentions are set out in their response to the Pre-hearing Questionnaire. Said contentions are as follows:

Claimant:

The claimant contends that the medical treatment received following November 24, 2023, was reasonable, necessary, and related such that respondents should be ordered to pay for same.

The claimant contends that he is entitled to temporary total disability benefits from November 5, 2023, through May 24, 2024.

Also, the claimant contends he is entitled to an impairment rating associated with the herniated disc which required surgery and resulted in an impairment rating of at least ten (10%) percent pursuant to the *AMA Guides, Fourth Edition*.

The claimant contends that the respondents should be ordered to pay attorney's fees as provided by law.

At the beginning of the hearing, the claimant contended that the respondents had sufficient notice of the claimant's injury.

Respondents:

Claimant did not suffer a compensable injury on November 4, 2023, while working for Potlatchdeltic. In the event compensability is proven, the respondents cannot be responsible for benefits before receiving proper *notice of a work-related injury on May 17, 2024*. The claimant is not entitled to temporary total disability benefits because he returned to work before giving notice of a work-related injury. The respondents are entitled to a dollar-for-dollar credit for the short-

term disability benefits the claimant received.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The proposed stipulations set forth above are reasonable and hereby accepted.
3. The claimant proved by a preponderance of the credible evidence that he sustained a compensable injury to his low back on November 4, 2023, during and in the course of his employment with the respondent employer.
4. The claimant gave management proper notice of his compensable injury on the morning of November 4, 2023, when he contacted his supervisor.
5. The claimant proved by a preponderance of the evidence that all of the medical treatment of record was reasonably necessary treatment in connection with the compensable back injury received by him on November 4, 2023.
6. The claimant proved by a preponderance of the evidence his entitlement to temporary total disability compensation from November 5, 2023, through April 24, 2024.
7. The claimant proved his entitlement to an 8% anatomical impairment rating for his lower back injury.
8. The parties stipulated that the respondents have controverted this claim in its entirety. Therefore, the claimant's attorney is entitled to a controverted attorney's fee.

9. All issues not litigated herein or addressed in this Opinion are reserved under the Act.

### Summary of Evidence

The hearing witnesses were the claimant, Debra Sue Wylie, Tracey Sutherland, and Josh Harris.

The record consists of the hearing transcript of August 6, 2025, and the exhibits held therein. In addition to the Pre-hearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, an abstract of the medical records consisting of five pages; Claimant's Exhibit 2 includes one cover page and a compilation of his medical records consisting of 62 numbered pages; Respondents' Exhibit 1, another compilation of medical records consisting of 18 numbered pages; and Respondents' Exhibit 2, consisting of seven pages of non-medicals.

### Testimony

The claimant is now 63 years of age. Instead of graduating from high school, the claimant obtained his GED. Subsequently, he went on to complete four years of training in a welding program. The claimant has 14 different various certifications associated with his welding skills. He began working for Potlatch in November 2020. Initially, the claimant went to work for Potlatch as a floor sweeper. He held that position for seven months and then transitioned to the kiln area and began working as a forklift driver.

According to the claimant, the forklift truck he worked with is probably the size of a Peterbilt truck and weighs approximately 36,000 pounds. The claimant described the truck as being like a large diesel-type piece of equipment. He testified that the forklift is 10 feet wide and 25 feet long.

The claimant explained:

Q. All right. What was the purpose of that forklift? What were you moving? What were you transporting at Potlatch, typically, in your job?

A. I loaded the kiln and unloaded the kiln. So, we put the boards on.....The units of boards on little train cars and run them through a box that dries the wood, and it goes in this door and my friend on the other end of the building sends me one from his side, so we pass them to each other, and I unload the dry stuff from his side. He unloads the dry stuff from my side. We do that in two different boxes. But my job was to unload and load both.

At the time of the claimant's injury, his hourly rate of pay was \$28.50. The claimant worked the night shift. His normal working hours were from 5:00 p.m. until 5:00 a.m. According to the claimant, his shifts were normally twelve-hour shifts. His supervisor was Tracey Sutherland. However, Mr. Sutherland worked on the day shift. According to the claimant, Mr. Sutherland communicated with them by staying later to talk to them if he needed to discuss something with them. The claimant explained, "... Other than that, we're grown men. We just go to work. We know what we're supposed to do, we know when we're to be there."

He confirmed that office personnel were not present during the night shift. The claimant further confirmed that at the time of his alleged injury that overall, his general health was good. He testified that prior to going to work for Potlatch in 2020, he had worked as a welder for 30 years. The claimant retired from welding while living in California. However, the claimant testified that he returned to the workforce because he had to pay off a cancer bill totaling \$40,000.00. According to the claimant, he was diagnosed with colon cancer, for which he underwent surgery and got a clean bill of health. Per the claimant, seven days out of the hospital, he was cancer free.

Upon re-entering the workforce, the claimant worked at SeaArk for two years, and then he began working for Potlatch. The claimant denied taking any medications on a regular basis prior to November 4, 2023. He further denied any prior symptoms or problems with his back or legs. As far back as the claimant could recall, he has never injured his back. The claimant confirmed

that during his deposition testimony, he stated that around the age of 20 or 30, he pulled a muscle in his back. However, he denied having undergone an MRI or x-rays to his back prior to November 4, 2023. Nor has the claimant ever sought medical treatment from a chiropractor for his back.

On the night of the claimant's alleged injury, he was assigned to work in the kiln department. At the beginning of the claimant's shift, a coworker fainted due to blood pressure problems and was taken away by ambulance. As a result, the claimant was given some different instructions as to what his employment duties were to be for that night. These directives were given to the claimant by Ulysses, the manager of the planer mill (which was the building next door). According to the claimant, Ulysses instructed him to drive for the sawmill that night because he was the low man on seniority of the three drivers there that night. The claimant's position was classified by a union contract.

He explained what the job required him to do that night:

A. When they make the new wood, you pick it up, mark what it is, put the four bys on top and then drive it out to the green yard and drop it off.

Q. And when you say you pick it up, you're talking about with your equipment?

A. With the forklift, yeah. You have the machine pick it up, set it down, mark what it is and then take it up to the green yard and put it in the pile for everybody else.

The claimant confirmed that he was transporting wood from one area of the mill to another. He confirmed that the distance he had to travel was anywhere from an eighth of a mile to three-eighths of a mile to the far end of the yard. That particular night, the claimant worked in the sawmill from 6:00 p.m. to 5:00 a.m., which amounted to an 11-hour shift. During the claimant's shift, he transported from 80 to 90 loads, as he went back and forth that night. He described the road that he had to travel on with this piece of equipment, as being "some concrete, some gravel, some dirt." The claimant testified that the transitions over the road were extremely rough.

Specifically, the claimant testified:

Q. As you were transporting this product back and forth across this road that evening, do you recall a specific event occurring where you complained of or felt problems in your back?

A. Yes, sir.

Q. Tell us about that.

A. About 11:30, I was coming out of the sawmill, and the forklift was ten feet wide. The road is only so wide, and the wood I'm carrying is twenty feet wide, so really you can't go over here to get around some stuff. You have to stay right here, so you have to run over whatever's in the road, the potholes are in the road, because we ride over them eighty times a night.

Q. All right. So, you're describing in the middle of the road, you just said the word pothole.

A. The potholes are in the road.

Q. All right.

A. We can't really avoid them for the width of the lumber. You can't hit anything with this fork (forklift), or you get in major trouble.

Upon further questioning, the claimant confirmed that the width of the wood is much wider than the width of the forklift, which causes the wood to hang out from the forklift. The claimant testified that the pothole he hit was about "three feet around and eight inches deep." According to the claimant, it was concrete, so it did not drop off and come back up. Instead, the claimant further testified that it went straight down and then straight back up. He testified that the concrete was "broken out" and there was a piece of concrete missing in the road. The claimant's incident occurred around 11:30 that night. After his incident, the claimant was extremely uncomfortable in his right hip and lower back. He agreed that he was in pain after the hitting the pothole. The claimant testified that he continued working because they were already one man down.

According to the claimant, he was extremely sore when he left work around 5:00 a.m. that morning. The claimant testified that he sent Tracey (Sutherland) a text on Saturday, November 4, 2023. He was asked to read the text aloud, which states, “Morning, sir. Drove for the sawmill last night. Woke up, my back locked up on me, right leg numb.” He sent this text at 1:06 p.m. The claimant testified that he typically went to sleep at 6:00 a.m., and would get up roughly around 1:30 p.m. However, Mr. Sutherland did not respond at once. Per the claimant, he then sent another text saying that he could not move particularly good. Mr. Sutherland responded to his second text stating that he would call him in about 15 minutes.

The claimant explained:

Q. Can you tell us or recall, as best you can, what you and Tracey..... What you and Mr. Sutherland talked about in that conversation?

A. Hitting the pothole, my back went pop. I need to go to the doctor, I guess, because now my whole side is numb. I’m not going to be able to make it to work.

At that time, the claimant testified that “he was humped over like an *old man*.” According to the claimant, his entire right side was numb, including his leg, arm and everything on that side was numb. The claimant testified that he could hardly pick up his legs and feet at that point. He agreed that he was in severe pain. The claimant denied that there was any conversation about completing workers’ compensation paperwork. Nor did Mr. Sutherland give the claimant instructions on going to the doctor.

He confirmed that he saw his primary care physician, Dr.<sup>2</sup> Jesse Bone, on November 7, 2023. After that appointment, the claimant sent Mr. Sutherland another text letting him know that he needed to be off for another couple of days for the swelling to go down.

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<sup>2</sup>Although Jesse Bone is referred to as Dr. Bone throughout the claimant’s attorney confirmed, and the medical records show that Bone is in fact an APRN .

Next, the claimant was questioned about Bone's medical notes from November 7. Specifically, the claimant denied having told Dr. Bone his pain started five days ago. He further denied having any problems before he went to work on November 4, 2023. The claimant agreed that it is not a correct statement that his pain started five days before he saw Dr. Bone. He denied telling Bone he saw a chiropractor for two visits, with no improvement. In fact, the claimant stated that he has never seen a chiropractor in his life. However, he explained that his wife saw a chiropractor after her stroke. Although Bone noted that the claimant was driving a forklift at work and reported that the roads were very rough, he goes on to note that the claimant denied any fall or injury. The claimant agreed that he did not fall out of the forklift. However, the claimant disagreed with the statement of him having denied an injury because he was there because his back was hurting. He testified that he told Bone the same thing, which he was driving a forklift at work and hit a pothole and his back "went pop."

According to the claimant, no one would believe him until he saw Dr. Simpson. The claimant confirmed that he told him the same story of hitting the pothole. Dr. Simpson gave the claimant some hydrocodone pills and muscle relaxers, but he did not recall getting a shot. He also pulled the claimant out of service. According to the claimant, he gave the note to either Mr. Sutherland or Michelle, who works in the front office.

At that point, Michelle gave the claimant the FMLA phone number for him to call. However, she did not give him any paperwork to complete. The claimant testified that he had a phone interview with a lady from Arizona concerning his work-related incident. According to the claimant, she asked him some questions and told him his check was in the mail. He confirmed that the FMLA lady was with a place called Matrix, which is part of the respondents' non-medical packet. He denied having typed the answers to the questions on the form. Per the claimant, he

told the lady the same thing, which was he got hurt on the forklift at work. The claimant denied that he was given the form for his review. He confirmed that he began receiving short-term disability.

The claimant confirmed that after he saw Bone a second time, he recommended that he undergo an MRI. Per the claimant, after he got the MRI, Dr. Bone discussed the results with him. He referred the claimant to a specialist, Dr. P.B. Simpson. At that time, the claimant was paying for his doctors' visits with his own personal health insurance, which was through Potlatch. He confirmed seeing Dr. Simpson on December 20. According to the claimant, Dr. Simpson was the only person that listened. Per this medical note, the claimant reported to him that he felt a pop in his back while at work while operating heavy equipment. The claimant complained of right lumbar back pain that extended to his right lateral lower extremity. He consistently reported to Dr. Simpson that the next day after his incident, he had severe pain in his back and anterior lateral right thigh pain. The claimant stated that he provided the same history to Dr. Bone. He also confirmed he provided this same history to his supervisor, Mr. Sutherland.

However, the claimant denied that Dr. Simpson performed his back surgery. Instead, his partner, Dr. Bahgat performed his back surgery. He continued to extend the claimant's off work status, which he provided to his employer. The claimant continued to receive short-term disability. He had surgery on March 4, 2024. According to the claimant, the surgery relieved 90% of his symptoms.

He confirmed that Dr. Simpson released him to return to work on April 24, 2024. The claimant returned to work for Potlatch, but not immediately. The claimant had to undergo a functional capacity evaluation/FCE before returning to work. He underwent that physical exam on April 30, 2024, and returned to work on May 9.

Next, the claimant was shown the Form N at page 53 of his exhibit. The claimant confirmed that he signed this document on May 28, 2024. According to the claimant, this document came from Little Rock rather than from his employer. The claimant confirmed that he is aware that his employer is alleging he did not give notice of his injury until May 17, 2024. He admitted that he put the wrong date of injury on this form. The claimant admitted to mistakenly putting November 13, 2023, instead of November 4.

According to the claimant, Potlatch instructed him to contact his supervisor if he was ever injured at work. He confirmed that when he returned to work, Mr. Sutherland was no longer working for them. The claimant left his employment with Potlatch on February 9, 2025, because he retired altogether.

The claimant confirmed that as part of his medical packet, he provided unpaid bills for the surgeon, Dr. Bahgat, that have not been paid in the amount of \$7,389.00 and the hospital bill totaling \$31, 321.50. He confirmed that his health insurance did not pay those bills. However, the claimant denied he has received any unpaid bills from his PCP, Dr. Simpson, or for the MRI.

He denied having ever physically seen Dr. Calhoun for an office consultation. However, Dr. Calhoun reviewed the claimant's medical records and assigned him an 8% impairment rating. The respondents have not paid this rating. The claimant confirmed that he is asking for payments for unpaid TTD benefits, the impairment rating, medical benefits, and a controverted attorney's fee.

On cross-examination, the claimant confirmed that his deposition was taken in 2024. The claimant admitted that he told Dr. Simpson he was ready to get back to work, because he believed that he could do his job. He verified that he returned to work for Potlatch and received a pay raise for a couple of dollars in December under his union contract. As of the date of his deposition and

at present, the claimant does not have any return medical visits for his back with a medical provider. The claimant confirmed that he does not take any medication for his back, except over-the-counter medication for occasional soreness. He confirmed that his deposition testimony reflects that his symptoms were at a one out of ten on a ten-point scale, which is still the case.

The claimant confirmed that it was important for him to be truthful with his medical providers when talking to them about what happened or caused his injury. Likewise, he agreed that it is important for him to be truthful and thorough with his employer and short-term disability administrator when talking and reporting to them.

Under further questioning, the claimant admitted that Tracey (Sutherland) was his supervisor and if they were not working the same shift, if he had a problem, he was supposed to call him about it. The claimant confirmed that if he reported anything in this case, he reported it to Tracey. He admitted that his text message of November 5, 2023, to Tracey does not say anything about him hitting a pothole or his back popping. The claimant further admitted that in his text there is no mention of any specific incident involving his back at work. He agreed that the text message says he woke up at home with symptoms.

According to the claimant's deposition testimony, he testified that with the exception of his allegation regarding Tracey, up through May 17, 2024, as far as the folks at Potlatch knew, he was treating for a non-work-related condition through his private health insurance. The claimant agreed he made a formal request for a workers' compensation claim when he went to Josh Harris. He admitted that he reported an injury to Josh, and they turned the claim over to Sentry, but they investigated the claim and denied it. He admitted that his May 17 visit with Josh occurred after he had returned to work on May 9. The claimant further admitted that his visit with Josh was after

he undergone his back surgery in March. This was also after his April 24 release from care by Dr. Simpson.

The claimant explained that what happened was down the road, someone asked him from the insurance company what had happened, and he explained it to them. At that point, his health insurance company told him they would not be paying for the surgery because it was a workers' comp claim. Therefore, the claimant contacted the administration at Potlatch to start a formal workers' compensation claim.

During his deposition testimony, the claimant denied that he had any problems, complaints, criticism, issues, or communication problems with the doctors at Mainline, specifically none with Dr. Bone. He agreed that his first medical visit after talking to Tracey was on November 5, with Nurse Bone. The claimant denied having reported to Dr. Bone his pain started five days ago (which was on November 7), which would put his date of injury to November 2. He further denied making the statement to the people in radiology that he did not have an injury.

He admitted to seeking treatment from Dr. Bone in 2019 for some hurt ribs, and in 2021, when he had a knee pop out of place while at work. The claimant agreed that Dr. Bone documented these office visits correctly. He admitted to using his private health insurance to pay for his medical care under Drs. Simpson and Bahgat. The claimant further admitted that his insurance paid for everything up to time for his surgery.

Under further questioning, the claimant explained:

*Q. And before that May 17, 2023, encounter where you come in and formally request workers' compensation benefits, you had not told anyone at Potlatch that you wanted workers' comp benefits, had you?*

*A. I didn't know what they were. I didn't know. No, I didn't tell anybody.*

The claimant confirmed that he applied for both short-term disability and FMLA. He also

agreed that both are administrated by Matrix on behalf of Potlatch. The claimant confirmed that he was truthful when talking with the representative from Matrix when providing information for his application, which was done over the telephone.

He testified that after his insurance carrier denied the surgery, they sent him a Form N to fill out, and he simply did what he was told to do. The claimant admitted that he went to Dr. Bone's office and had a conversation with the folks in his office about how his office visit was documented in the medical report. However, he testified that their conversation and what Dr. Bone wrote down does not sound like the discussion they had during his office visit.

Specifically, the claimant explained:

Q. Well, if it was understood by everyone that you had this specific work incident involving a pothole, why would you need to go back and get the visits reclassified or rephased...

A. I just asked him about workman's comp, he said all he does is check a box on the top of his computer.

The claimant confirmed that he did not challenge Nurse Bone's statement about him treating with a chiropractor; or the November 2 onset date; and that his condition was considered non-work-related condition. However, the claimant testified that those are all wrong. According to the claimant, he did not know that they had written any of this down until his attorney told him about it. Again, the claimant denied challenging anybody. Instead, he testified that when he went in for another office visit with Bone, and he asked about "workman's comp." The claimant explained: "I didn't tell him what he had to do it."

He confirmed that he was injured by a specific identifiable occurrence and that he described the crater as being six to seven feet across. The claimant admitted that he testified during his deposition that all his symptoms started with the pothole at a specific time doing a specific activity. He maintained that he consistently told administration and medical providers about his specific

incident. According to the claimant, no one would listen to him until he saw Dr. Simpson. However, the claimant readily admitted that he did not have any explanation for why no one would listen to him. He specifically stated that he was in the doctor's office curled over telling them that he was hurting and his back popped in the forklift, but he does not know what they reported. The claimant testified that he told the doctor he hit a pothole, his back popped, and he had an immediate onset of pain with electrical shock.

With further questioning, the claimant agreed that it was an incredible coincidence that all three (Dr. Bone, Matrix, and the radiologist) reported that he denied a work-related injury.

On redirect examination, he testified that he told Mr. Bone, Dr. Simpson, and his supervisor, the same story about hitting the pothole and feeling something pop in his back. However, the claimant explained that Dr. Simpson was the only person that listened to him throughout the whole ordeal. According to Dr. Simpson's report, the claimant reported feeling something pop in back while at work operating heavy machinery. He confirmed that he worded it exactly like that to Mr. Sutherland and Dr. Bone. The claimant confirmed that he testified in his deposition that he used the word "moon crater" with Dr. Simpson, but the word is not mentioned in his report. However, the claimant agreed that if he used the word "moon crater," it is described in a different way because "a hole in the ground is a hole the ground."

The claimant confirmed that when he sent Tracey Sutherland the text message on the morning of November 4, he told him he drove for the sawmill last night. He confirmed that he drove 11 hours for the sawmill that night. The claimant agreed that the purpose of the text was to let Sutherland know that he had been injured in his forklift and needed to go to the doctor. He agreed that he did not say that specifically in the text, but in a later conversation they talked about

went down. The claimant confirmed that he believes when he talked to Tracey, he told him about the pop in his back.

On re-cross examination, the claimant testified that he that he would agree that the text to Tracey has no mention of a pothole or his back popping. The claimant was asked to explain why his text message to Tracey was vague when putting it in writing. He replied: “*Because I don’t text. I use one finger really slow.*”

THE COURT: I asked the claimant to clarify his testimony regarding him having hurt some ribs in an on-the-job injury while working for another employer/SeaArk, in the boat yard. He denied having received any paperwork from his employer stating that he needed to report this as a work-related injury. However, the claimant testified that he injured his kneecap while working for Potlatch. The claimant confirmed that he reported the injury to his boss, and he got his knee fixed on his own. According to the claimant, he used his own private health insurance to pay for medical care. The claimant specifically denied ever having a work-related claim before this incident.

On recross- examination, the claimant confirmed that he has not had any problems with his back since his release after surgery in 2024.

Mrs. Debra Wylie

Mrs. Wylie testified on behalf of her husband. They have been married for 43 years. She confirmed that before November 4, 2023, her husband was healthy and active. She denied that he had any problems performing his twelve-hour shifts. Mrs. Wylie testified that she did recall the claimant having a problem within the first year of his employment with Potlatch. She stated that he hurt his knee climbing in and out of the forklift and had to have surgery.

Following the November 4, 2023, incident, Mrs. Wylie testified that the claimant was in extreme pain. Per Mrs. Wylie, she had never seen her husband in that type of pain, other than years ago when he had cancer. She testified that she had put him to bed that morning, which was hard for her to do because she could not get him on the bed, since she is a stroke survivor. According to Mrs. Wylie, her husband screamed so, until she cried. Following the incident, she agreed that the claimant's condition dramatically changed.

She confirmed that she went on the first doctor's visit with him on November 7, 2023, under the care of Dr. Bone. Mrs. Wylie denied that the claimant ever treated with a chiropractor before. The claimant testified that they told Mr. Bone that she was just leaving an appointment that morning with her chiropractor. She confirmed that Dr. Bryant is her chiropractor. Mrs. Wylie confirmed that her husband told Dr. Bone that he was driving the forklift at work and hit a pothole and it twisted his back, and after that he felt a surge of pain.

Mrs. Wylie confirmed that she went to the claimant on his office visit with Dr. Simpson. She confirmed that as she recalls it, a correct history of what was provided to him is in the medical. Specifically, according to this record, the claimant reported feeling something pop in his back while at work operating heavy machinery.

On cross-examination, the claimant denied that she was aware that the radiologist's report shows no injury. She further denied that she was aware that his Matrix application for short-term disability and request for FMLA denies that he had a work-related injury. Mrs. Wylie admitted that she was not present when her husband made statements over the telephone about either application.

She admitted that they found out after her husband's back surgery, that it fell under workers' comp. Mrs. Wylie confirmed that up to that point, everything was paid for by his private

health insurance. She admitted that she did not know specifically what happened because she was not there with him when the incident occurred. According to Mrs. Wylie, she heard from her husband and other forklift drivers how bumpy the roads are at his workplace.

On redirect examination, Mrs. Wylie testified that when the claimant left for work that morning, he was in good health. However, when he came home from work that day, he was in a lot of pain, the kind of pain she had never seen him in before.

On further redirect examination, Mrs. Wylie testified that the claimant was supposed to have gone to work but was unable to do so. She confirmed that on the day the claimant left for work, he seemed to have been in perfect health.

Under further cross-examination, the claimant testified she was awake and up when the claimant came home at 5:00 a.m. She confirmed that he was displaying symptoms at that point. According to Mrs. Wylie, she was aware that the claimant was in pain, but she did not know anything about the numbness. She denied knowing anything about the text message the claimant sent to Tracey on the morning of the November 5.

#### Tracey Sutherland

The respondents called Mr. Sutherland as a witness. He confirmed that he worked for PotlatchDeltic in November 2023. Mr. Sutherland confirmed that he is employed elsewhere. He confirmed that he does not have any ties or affiliation with PotlatchDeltic.

Mr. Sutherland testified that he was the kiln supervisor when he worked for Potlach. He was the claimant's supervisor, and the person, he was supposed to report a work injury or incident. Mr. Sutherland maintained that the claimant would not get in trouble if he reported an injury to anybody other than him. He agreed with the claimant's testimony about them working different shifts. However, Mr. Sutherland agreed that it was not uncommon for someone to contact him to

to report an injury when he was not on the premises.

He confirmed that he interacted with the claimant on November 4, 2023 (which was on a Saturday) about some back problems. He testified:

A. Saturday? Okay. Yeah. So, Mr. Wylie called me on Saturday morning and said that he had to find coverage ..... That I needed to find coverage for him for that night, the next night, because of all of the up and down, so Mr. Wylie was actually pulling double duty on the job, because we had a man go home that night, so he was actually ..... He was the kiln forklift driver, so he was having to pull from the sawmill and the kilns.

Q. Okay.

A. So, he was doing a bunch of getting up and down on the forklift.

Mr. Sutherland explained by coverage he meant “getting someone else to work in his place that night.” However, Mr. Sutherland admitted that they had a conversation, but the claimant did not mention anything to him about hurting himself after driving over a pothole in the forklift. According to Mr. Sutherland, the claimant told him his problems were not work-related or were related to something else. He testified that best as he recalls, the claimant told him his problems were related to a past injury to his back. Mr. Sutherland denied that the claimant indicated to him he needed to pursue a workers’ compensation claim. He further denied that the claimant ever came back to him and tried to remind him of a supposed reporting of a back injury at any point after November 4.

Per Mr. Sutherland, had the claimant reported a work-related injury that would have prompted him to do an investigation He denied being reprimanded or fired or anything dealing with the handling of the claimant’s workers’ compensation claim. *However, Mr. Sutherland testified that he called Josh Harris and explained the situation to him, and at that point it was kind of out of his hands. He confirmed that it was his duty to take the report, do an incident report and contact safety.*

Mr. Sutherland testified:

Q. Okay. Had you done that in the past when employees had reported alleged work-related injuries?

A. Yes, sir. Several, several, several different times.

Q. And do you make any determination about whether this is a legit report or not?

A. No, sir.

He denied getting any type of bonus from PotlatchDeltic while working as an employee, for not reporting a work comp claim. Mr. Sutherland confirmed that he has no employment affiliation with them anymore. He denied that he heard anything from the claimant about hitting a pothole while driving a forklift and having a pop in his back prior to the filing of his claim. He further denied that the claimant ever contacted him between November 4 and May 17 when he formally started pursuing a workers' comp claim. Mr. Sutherland officially retired from PotlatchDeltic on August 9, 2024. He admitted to calling the claimant to see what was going on after he received the subpoena to appear for the hearing. According to Mr. Sutherland, during this telephone conversation, the claimant told him about his back injury and that workers' comp was not wanting to pay for it. He denied that the claimant reminded him during their conversation that he had reported a work-related injury to him. Specifically, Mr. Sutherland testified they talked about motorcycles and stuff and that was it.

On cross-examination, Mr. Sutherland testified:

Q. If I'm understanding you sir, you don't recall anything about a text between you and Mr. Wylie back on November 4, 2023?

A. I don't recall it sir.

Next, Mr. Sutherland was shown a copy of the text message that the claimant sent him on the morning of November 4, which read, "Drove for sawmill last night. Woke up and my back

locked up. Right leg numb. Mr. Sutherland confirmed that now that he has seen the text message, it does ring a bell. He confirmed that his reply to the claimant's text was: "I'm just seen this message." Ultimately, Mr. Sutherland told the claimant he would call him.

Under further questioning, Sutherland testified:

Q. So let me ask you, what's your interpretation of that text when he wrote to you that morning, drove for the sawmill last night. Woke up and my back locked up, right leg numb. What does that mean to you, sir?

A. *It sounds like a back injury.*

Q. How would you say that you thought he was saying that he injured his back?

A. So, during our phone conversation, when I did call him, his response was that, you know, he had to get up and down off the forklift a lot, and I understood that because that's a fact.

Q. So, as you're recalling it, you thought it was because of him getting up and down from the forklift?

A. Yes. Yes, sir.

\* \* \*

Q. You actually were telling him you'd better wait and do that .....

A. And I was like, yes, sir, I was like please wait on that. I said let's talk to Mr. Josh and we'll go from there.

According to Mr. Sutherland, he ended up calling Josh and telling him what the situation was and after that it was out of his hands. He went on to explain:

Q. Okay. So do you know whatever transpired after that as far as anything Mr. Josh might have done?

A. No sir.

Although Mr. Sutherland was employed with Potlatch until August 9, 2024, he did not recall being asked to review the paperwork that the claimant filed on May 28, 2024, for workers' compensation benefits. He further testified that he honestly did not remember, or recall being

asked to review or write any statements or give any information as the claimant's supervisor with respect to the filing of his claim in May 2024. Yet, he further testified, "*They may have called me back in there and I just repeated what little bit I knew about the situation.*"

However, on redirect examination, Mr. Sutherland agreed that when he called Josh Harris back, he told him that the claimant was not saying he had a work injury. Mr. Sutherland also stated that it seems like that is reason they did not go any further.

Mr. Sutherland maintained that after his conversation with the claimant and what he relayed to Mr. Harris, he did not know anything about a workers' comp claim being pursued or that anything was going on. According to Mr. Sutherland, after that, it was kind of above his pay grade so to speak, and if anything had been happening, it would have been between the claimant and Josh.

On recross-examination, Mr. Sutherland testified that the claimant was a good worker and worked twelve-hour shifts regularly up until November 4, 2023. He also agreed that after looking at the text message (Woke up. My back locked up. Right leg numb.) that morning, he interpreted that as meaning that the claimant had hurt himself working at the sawmill.

Counsel for the respondents had further redirect examination of Mr. Sutherland. He was specifically asked if he had come out of the conversation with the understanding that the claimant was not saying he had a work-related problem. He answered: "At that point, that was understanding and that is what I relayed to Josh."

Mr. Sutherland specifically agreed that when he talked to the claimant, there was absolutely no mention of him hitting a crater or pothole or a crack in the concrete with his forklift and having his back pop. He admitted that there are a lot of potholes, but not "six feet" as what the claimant described. Next, Mr. Sutherland denied that the claimant reported an injury to him over the phone.

Under further recross examination, Mr. Sutherland confirmed that the road that the claimant had to go back and forth on was made of concrete. He admitted that there were rough spots in the road but denied that they were eight inches deep and several feet wide. Per Sutherland the claimant was able to do his job regularly and routinely up until November 4, 2023.

Specifically, Mr. Sutherland tried to explain:

Q. Now, but in some form or fashion after, you're saying that you had this conversation with him on November 4<sup>th</sup>, you somehow got the impression that he was saying that, in spite of what he told you, his back was hurting from something that was not work-related?

A. To the best of my recollection ..... I mean, the best way I can remember it is I asked him was it was job related, and he said no, but I went ahead and called Josh because I didn't know ..... I knew that if he was going to the doctor that we needed to involve Josh, so that part if there.

Mr. Sutherland agreed that if you read further in the claimant's text messages, it states that he needed a couple of days for the swelling to go down. He agreed that it was clear that a doctor was involved. Mr. Sutherland agreed that at that point, he thought there would have been Josh's involvement with some paperwork. However, Mr. Sutherland admitted that the claimant was not given paperwork for a workers' comp. claim.

Next, Mr. Sutherland provided the following information regarding the claimant's prior work-related knee injury with Potlatch.

THE COURT: Do you remember when he had an injury with his knee?

A. Yes, I do.

THE COURT: Was that a work-related injury?

A. Yes. I believe it was.

THE COURT: Was it reported as a work-related injury?

A. Yes.

On further redirect examination, Mr. Sutherland testified that the claimant did not indicate that he was going to the doctor on his own. According to Mr. Sutherland, that was their final conversation, and then he immediately called Josh to inform him of what was going on. At that point, he maintained that he was kind of done from that point on. Mr. Sutherland confirmed that in November 2023, the claimant never told him that he called Josh and a conversation took place.

The following exchange took place:

THE COURT: My other question is what happened in 2021? What was the protocol for this knee injury that you ..... What steps did you take?

A. Well, I believe, that was right as I was transferring into the kiln department, and so I actually had nothing ..... I didn't have anything to do with that, ma'am. It was already in progress when I took over being the supervisor in that department.

THE COURT: So, you're changing your testimony now? You were not the supervisor?

A. I might have been, ma'am. I don't really remember. I do not have the exact date that I went to that area, but I knew that he was having the knee surgery.

THE COURT: And it was reported as a work-related injury?

A. I'm not sure, ma'am, to be honest.

Josh Harris

Mr. Harris testified on behalf of the respondents. He confirmed that he is the Safety Manager for PotlatchDeltic. He confirmed that he worked in this position in November 2023. Mr. Harris began working there in May 2023. According to Mr. Harris, he first heard in May 2024 that the claimant was contending he hit a pothole in a forklift and injured his back. Per Mr. Harris, Tracey called him Saturday and stated that the claimant needed to go to the doctor because his back was hurting. However, he maintained that Tracey told him the claimant was saying he hurt his back in a previous injury.

He agreed that if a person indicates their condition is not work-related, he does not need to do anything, paperwork-wise, for work comp purposes. Mr. Harris denied having heard from the claimant after his conversation on Saturday with Tracey. He further denied hearing from the claimant before May 17 about him maintaining that he had a work injury. In fact, Mr. Harris testified that the first time he spoke with the claimant was in May 2024, which was in the investigation of him starting a comp claim. Mr. Harris confirmed that there were supervisors and lead employees on the overnight shift who could have received a workers' comp claim if someone had an injury.

Per Mr. Harris, he talked with the claimant once he started pursuing a work-related claim, on May 17, 2024. Per Harris, he asked the claimant to describe the incident and that is when he told him the incident happened on November 3, 2023, between 11:00 p.m. and 11:30 p.m. Per Mr. Harris, the claimant told him he hit a bump in the road, and "his leg went numb." The claimant told him the incident occurred "somewhere between the green yard and the stacker. However, Mr. Harris testified that he asked the claimant if he reported the incident and he said, "No, that there was no one available to the report the incident to." Mr. Harris also maintained that the claimant told him that he did not report the incident to Tracey. According to Mr. Harris, he asked the claimant what had changed since November 3, 2023, until then, and that point, the claimant informed him that he received a letter in the mail from his personal health insurance company asking questions and stating that his condition should be filed under workers' comp. Mr. Harris denied that the indicated he had no other way to pay for his medical bills.

Mr. Harris confirmed that if a person suffers a work-related injury, typically that will result in a denial of short-term disability. He denied that there are six-foot potholes with six to eight inches of depth at Potlatch. However, Harris admitted that there may be some rough or bumpy

roads, but there are not any moon craters six foot wide. He confirmed that they have a protocol for maintaining the roads and keeping everything level. According to Harris, they keep a load of crushed asphalt and a load of SB2 on location. He also pointed out that if there are an potholes of that nature, it would be the employee's job to report that to a supervisor and then they would follow up with a work order, and then that work would be completed by one of the maintenance personnel.

However, Mr. Harris denied that he was aware of any incidents where the holes would fill up with water because mains were being driven over. He confirmed that the forklift itself is equipped with a safety feature on the forklift that would address a situation such as someone hitting a pothole or running over something. According to Mr. Harris, all the forklifts are equipped with air ride suspension seats that float with the equipment for going over rough terrain. He specifically testified that the forklifts are the same model and manufacturer used in the kilns and shipping departments and are equipped with that particular safety feature.

About the claimant's prior work-related knee injury, Mr. Harris confirmed that he does not have any knowledge of the 2021 knee claim. According to Mr. Harris, if Tracey had indicated to him that the claimant was saying he had suffered a work-related injury, the first step would be for him to gather a statement from the claimant. The next thing would have been for him to contact the workers' compensation carrier to start initiating the claim and then conduct the investigation. He confirmed that he took action to initiate the claim when the claimant came to him on May 17, 2024. Mr. Harris confirmed that he did not any contact with the claimant on that Saturday (in November 2023).

On cross-examination, Mr. Harris maintained that Mr. Sutherland never explained to him that he had a written text message from the claimant reporting a work-related injury. Mr. Harris further maintained that Mr. Sutherland just told him that the claimant had called and said that his

back was hurting and he needed to go to the doctor. According to Mr. Harris, Tracey asked him what he needed to do, and he asked him if the claimant was claiming that the incident was work related. Per Harris, Tracey replied, “No.” However, he denied that Tracey informed him that he had a text from the claimant indicating that he had a work-related injury.

Next, counsel for the claimant showed Mr. Harris the text that the claimant sent to Tracey on November 4, 2023, and asked him to read it aloud, which he did do. He specifically stated that he interpreted it as the claimant “woke up” with his back locked up and his right leg was numb. Mr. Harris agreed that the claimant also stated that he had been driving for the sawmill that night. He denied that he interpreted the claimant’s text as an attempt to provide his supervisor with a written report about a work-related injury. Mr. Harris explained that it just appeared to him that the claimant was making a notification to his supervisor that his back was hurting after he woke up. Counsel for the claimant asked whether it was because the claimant had been driving for the sawmill all last night; and Mr. Harris answered, “There’s nothing specific that says, “Hey, while I was at work, I hit a bump and my back is hurting because of hitting a bump while at work.” However, Mr. Harris finally agreed that he interpreted the text message to say that *something occurred at work*.

With further questioning, Mr. Harris confirmed that after the claimant reported an injury on May 17, 2024, an investigation of the claim was conducted. He testified that Mr. Sutherland was called in to provide a written statement, although the statement was not given to the claimant’s attorney for his review.

The following exchange took place:

THE COURT: If a person or employee is going to the doctor for a reason unrelated to work, is it the norm for you to be involved in the process?

A. If they're going to the doctor for a reason unrelated to work, then no.

THE COURT: So why were you involved in this instance?

A. I was asked about what to do from the supervisor so after the phone call....

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THE COURT: And how long had Mr. Sutherland worked for the company?

A. From my understanding, Mr. Sutherland had [sic] been with the company forty or so years.

THE COURT: Okay. So, he was well aware of the process then?

A. Yes, ma'am.

THE COURT: But yet he still called you and asked you what to do?

A. Any time that there is an incident, they have to report those through management and safety .....

THE COURT: An incident?

A. .... because we'll lead the investigation. We initiate the claims. The supervisor will not be part of initiating the workers' comp claim.

THE COURT: So, there was an incident for you to be involved?

A. There would have to be an incident for me to be involved, and that incident would need to be work-related.

However, on re-direct examination, Mr. Harris explained that Mr. Sutherland was contacting him and just asking for advice. He again maintained that Tracey told him that the claimant said his back was hurting and he needed the doctor. According to Mr. Harris, it was his understanding that Mr. Sutherland wanted to know if there was anything he needed to do. Mr. Harris continued to maintain that the claimant was saying his back condition was not work-related. As a result, Mr. Harris testified that he informed Mr. Sutherland that there was nothing else that needed to be done about the matter.

Medical Evidence

On November 4, 2023, the claimant sought initial medical treatment for his back from APRN, Jesse Bone at Mainline Health Systems. His chief complaint was pain in his right hip that radiated into the right lower extremity that started five days. He denied an injury. This office note says that the claimant had been seen by a chiropractor twice with no improvement. Bone specifically noted that *the claimant drives a forklift at work and reports the road is very rough but denied any fall or injury*. He provided a history of no previous back injuries. The claimant reported not being able to find a comfortable position, worse with sitting or standing for extended periods, with no relief of symptoms with over-the-counter pain medications. Nurse Bone assessed the claimant with: “1. Midline low back pain with right-sided sciatica, unspecified chronicity. M54.41(Primary) 2. Benign essential hypertension,” for which therapeutic injections were given on the left gluteus.

Pursuant to a medical note authored on November 7, 2023, Nurse Bone wrote, in relevant part, “Please excuse the above name patient [David Wylie] who was seen in our clinic today. He may return to work on Monday, November 13 (2023).” On that same day, the claimant underwent x-rays of the lumbar spine with an impression of “Mild lumbar degenerative disc disease.”

The claimant returned for a follow-up with Nurse Bone on November 13, 2023, due to a chief complaint of severe lower back pain with radiation down his right leg. The claimant reported no improvement since his last visit. His assessments were, “1. Midline low back pain with right-sided sciatica, unspecified chronicity. M54.41 (Primary). 2. Degenerative lumbar disc – M51.36,” for which he was referred to Drew Memorial Hospital for an MRI of lumbar of his lumbar spine. At that time, Bone excused the claimant from work until November 20, 2023.

An MRI of the claimant's lumbar spine was performed on November 19, 2023, with the following impression:

1. Mild distal vertebral body heights with normal alignment.
2. Degenerative disc disease at all levels of the lumbar spine with mild canal stenosis L1/L2, moderate canal stenosis at L2/L3, L3/L4 and L5/S1 with severe canal stenosis at L4/L5.
3. The neural foramina are patent at all levels with the existing nerve roots being normal.

The claimant returned to Nurse Bone on November 22, 2023, to discuss his MRI results. His MRI showed multilevel degenerative disease and spinal stenosis, canal stenosis severe at L4/L5. He has been unable to work due to ongoing back pain. Therefore, Bone instructed the claimant to remain off work until he could be evaluated by neurosurgery.

On December 20, 2023, the claimant underwent initial evaluation by neurosurgery. Dr. Pervie Blanton Simpson evaluated the claimant for lower back pain, extending into his lower extremity worse in the right hip since November 2023. He reported feeling something pop in his back while at work operating heavy machinery. The claimant had severe back pain and anterior shin area down to his ankle. He reported the buckling of his right knee when he tried to go up and down stairs. Per this medical note, the claimant had no left-sided symptoms. However, the claimant's symptoms had mildly improved although he had not had any physical therapy. Dr. Simpson stated that he had reviewed the MRI. Specifically, he opined that the claimant had a large, extruded fragment down below the space at L3-4 on the right. He could see the upper edge of it on the axial image. Dr. Simpson opined that the claimant had symptoms with an absent patellar reflex on the right side compared to +2 on the left side and weakness of his quadriceps. He went over the MRI with the claimant and his wife. Dr. Simpson explained to them that he recommended the claimant undergo surgical intervention in the form of a discectomy for removal

of what he believes was “*an extruded free fragment.*” His assessment was “lumbar radiculopathy on the right, with right leg weakness.”

The claimant underwent an evaluation for physical therapy on January 22, 2024, at South Arkansas Rehabilitation due to his back injury.

On February 29, 2024, the claimant saw Dr. Bahgat for an office visit at BH Neurosurgery Drew County Memorial due to a chief complaint of pain and discomfort in the right leg down to his foot. At that time, the claimant had continued complaints of numbness and paresthesia in his lower extremity. His diagnoses included “Primary lumbar disc herniation with radiculopathy and spinal stenosis of lumbar region without neurogenic claudication.” Dr. Bahgat recommended that the claimant plan for right L3-4 discectomy and right L4-5 lateral recess decompression.

The claimant underwent an evaluation by Dr. P.B. Simpson on March 20, 2024, for a six-week post-operative office visit, per Dr. Bahgat’s recommendation. At that time, the claimant reported that his lower back pain and symptoms had mostly resolved. Also, during that office visit the claimant reported that he did not need pain medication. Dr. Simpson stated that he would keep the claimant off work until his next visit in five weeks. His primary diagnoses were: “Primary lumbar disc herniation with radiculopathy and spinal stenosis of lumbar region without neurogenic claudication.”

On April 24, 2024, the claimant returned for a post-op follow-up visit under the care of Dr. Simpson. At that time, the claimant was diagnosed with S/P lumbar laminectomy and decompression on March 4, 2024. The claimant reported to Dr. Simpson during this office visit that he was doing well enough to return to his normal job activities. Dr. Simpson released the claimant from his care per his request but excused him from work that day.

The claimant presented to the Functional Testing Centers on April 30, 2024, for the purpose of undergoing a Functional Capacity Evaluation/FCE to figure out his current functional status. The results of this evaluation show that the claimant put forth a reliable effort. Analysis of the data collected during this evaluation shows that the claimant put forth a consistent effort and passed all criteria for a reliable effort indicating that a significant degree of effort was put forth. He showed the ability to perform an occasional bi-manual lift/carry up to fifty pounds. Hence, the claimant completed functional testing on the above date with reliable results. Overall, the claimant demonstrated the ability to perform work in the *MEDIUM* classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal 8-hour workday with limitations as listed above. When comparing the shown physical abilities with that of a written job description for the position of Kiln-Head Forklift Driver with Potlatch, the evaluator opined, "he DOES MEET all of the physical demands of this position as described."

On July 21, 2025, the claimant's attorney wrote a letter to Dr. J. Micheal Calhoun asking that he address what the appropriate impairment rating is for the claimant pursuant to *AMA Guides, 4<sup>th</sup> Edition* based on the medical history provided.

Dr. Calhoun sent the following response to the claimant's attorney in a letter on July 22, 2025:

I have reviewed the available medical records on David Wylie. Mr. Wylie was injured on the job on November 4, 2023. He underwent a lumbar MRI on November 17, 2023. Initially, the interpreting radiologist missed a large right L3-4-disc fragment inferior to the L3-L4 disc space. The interpretation was subsequently corrected with an addendum.

The patient was evaluated by Dr. P.B. Simpson on December 20, 2023, who identified the right L3-4 extruded fragment and the severe stenosis at L4-5. He contacted the radiologist to correct his interpretation.

The patient underwent a right L3-4 discectomy and L4-5 decompression with Dr. Bahgat.

He did well and underwent a Functional Capacity Evaluation/FCE which showed a reliable effort. He has returned to work.

The patient suffered a right L3-4-disc herniation which required surgery. Because he underwent surgical treatment with residual symptoms, he is awarded an 8% impairment of the whole person. This is according to Table 75, page 113, of the Fourth Edition of the AMA Guides to the Evaluation of Permanent Impairment.

On November 4, 2023, the claimant sent a text message to his supervisor, Tracy Sutherland. Both gave extensive hearing testimony relating to the messages and their telephone conversations concerning the claimant's back injury.

### **Adjudication**

#### **A. Compensability/low back**

In that regard, for the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A compensable injury must be proven by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and their employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.*

If the claimant does not establish by a preponderance of the evidence any of the requirements for showing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means evidence that has greater weight or more 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).

Based on my review of the record as a whole, and without giving the benefit of the doubt to either party, I find that the claimant has proven by a preponderance of the credible evidence that he sustained a compensable back injury on November 4, 2023, during and in the course and scope of his employment with the respondent-employer/Potlatch while performing his job duties.

The claimant worked as a welder for the respondent-employer. He is 63 years of age and in good health after having fully recovered from colon cancer.

On November 4, 2023, the claimant was told by management to work at the sawmill after a coworker collapsed on the jobsite and had to be transported to the hospital. The claimant credibly testified that his back popped when he hit a pothole while driving a forklift on November 4, 2023. His testimony shows that he promptly reported his injury to his supervisor. While there was extensive testimony elicited from the claimant and his supervisor in this regard, the credible evidence shows that claimant reported the injury to Mr. Sutherland via text messages and during their telephone conversation that morning. I am convinced that there were some discussion and indication of an injury based on the fact that Mr. Sutherland had to check with the safety person prior to the claimant seeking medical treatment. I did not find Mr. Sutherland's credible. He at one point testified that the claimant reported an injury, and at other times in his testimony maintained that the claimant told him his problems were due to an old injury. For these and all the above noted discrepancies in Mr. Sutherland's testimony, I am persuaded the claimant sustained

and reported an injury to him the morning after his November 4, 2023, incident. The Claimant's testimony shows that he is not proficient with text messaging, which is illustrated by his use of one finger to text. However, his text message clearly infers that his back pain and numbness of the leg resulted from driving at the sawmill. I thus find that the claimant told Mr. Sutherland during their telephone conversation that he hurt his back after hitting a pothole with his forklift at work the previous night.

Furthermore, although Nurse Bone's medical notes say that the claimant reported that he did not sustain an injury, which could be logically reasoned in the claimant's mind. Bone also documented in his clinical notes that the claimant reported that he did not sustain an injury such as a fall, which is correct. However, the claimant offered a reasonable explanation for the denial of an injury in the traditional sense. He essentially testified that he did not have an injury, such as in the form of physical trauma involving a cut, bruising of the skin, wound, or fracture.

Bone's medical notations have other portions of it incorrectly documented. Particularly, the claimant credible denied having reported to Bone that his pain started five days ago. I found him to be credible in this regard, and this medical note is not consistent with his text message and other portions of this medical report wherein the claimant indicated that his pain resulted from driving the forklift. Also, there is a medical report authored by Bone showing that the claimant had been treated by a chiropractor for his back, both the claimant and his wife credibly testified that the claimant has never received any chiropractic treatment for his back. Instead, they both credibly testified that the claimant's wife sought chiropractic treatment following her stroke. The record before me is void of any evidence whatsoever showing that the claimant had any type of complaints or medical treatment for his back. The most significant medical condition for which the claimant sought prior medical treatment was colon cancer, which is now in remission. The

claimant's wife testified that they told Bone they had just left her appointment with the chiropractor before coming to see him. I found Mrs. Wylie very credible, and she displayed mannerisms and residuals of a stroke. Hence, Mrs. Wylie offered a reasonable explanation for this inaccuracy.

Nevertheless, the claimant did not find out his claim was being denied by his health insurance company until after his surgery of March 2024. However, when the claimant saw Dr. Simpson in December 2023 which was clearly prior to any indication that his surgery was being denied; he provided a history of having hit a pothole while operating a forklift at work, caused his back to pop, which was accompanied by an immediate onset of back pain. I found that the claimant's testimony concerning his prior work-related injury at Potlatch to be extremely credible. The evidence shows that his prior knee injury was handled by both the claimant and management at Potlatch as a nonwork-related claim, in a remarkably similar manner as this matter, except in that instance, his private health insurance carrier never questioned the validity of the claim. The claimant credibly testified that he did not know what a workers' compensation claim was prior to now. Mr. Sutherland and the claimant's testimony clearly establishes that the claimant was an exemplary employee who did not call in off work. I am persuaded that the claimant's underlying concern was the repair of his back so he could get back to work. The above reasons also would account for the reporting of a non-work-related injury being made to Matrix.

The record is replete with objective medical finding of a back injury. In that regard, the claimant's underwent a lumbar MRI on November 17, 2023, which revealed a large right L3-4-disc extruded fragment inferior to the L3-L4 disc space. Ultimately, after conservative care failed, Dr. Bahgat performed a right L3-4 discectomy and L4-5 decompression. Here, the instant claimant has never experienced any prior problems with his back. Prior to this incident, the claimant had been able to perform laborious employment activities without any problems or complaints.

Considering the afore facts, I am compelled to find that these MRI findings are causally related to the claimant's work-related incident of November 4.

The claimant underwent surgical intervention for his back, in March 2024, with satisfactory results. Following his back surgery, on March 20, 2024, Dr. Simpson assessed the claimant with: "Primary lumbar disc herniation with radiculopathy and spinal stenosis of lumbar region without neurogenic claudication." Ultimately, Dr. Simpson released the claimant to return to work in April 2024, at his request.

Accordingly, the claimant has proven by a preponderance of the evidence all the necessary elements to prove he sustained a compensable back injury when his forklift hit a pothole while performing his employment duties for Potlatch on November 4, 2023.

B. Lack of Proper Notice of Injury

Here, the claimant contends that he gave proper notice of his injury to his supervisor, Tracy Sutherland the morning after his injury, via a text message and a telephone conversation. Specifically, the claimant sent the text and talked with his supervisor in this regard on November 4, 2023.

The respondents contend that they did receive notice of the claimant's alleged back injury until May 17, 2024. As such, they contend that they are not responsible for payment of any benefits before receiving proper notice of the work-related injury.

The applicable statutory provision is found at Ark. Code Ann. §11-9-701 (Repl. 2012), which provides:

(a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for

disability, medical, or other benefits prior to receipt of the employee's report of injury....

(b)(1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

The credible evidence before me clearly shows that the claimant gave proper notice of his back injury to his supervisor, Tracey Sutherland, the morning after his work-related incident of November 4, 2023. I found the claimant's testimony to be extremely credible in this regard.

Hence, the claimant's testimony is significantly corroborated by the contemporaneous medical records, namely, that of Dr. Simpson's medical report of December 2003, and is pointedly bolstered by the testimony of Mr. Sutherland, whom I did not find to be a credible source.

My inference in this regard is established via the text message and the testimony elicited by both parties during the hearing regarding their telephone conversation. Mr. Sutherland conceded that he did not recall the details of their conversation, while admitting that he told the claimant he needed to talk to management before he could seek medical attention. This statement within itself indicates to me that the claimant reported an injury. Otherwise, there would not have been any rational reason for Mr. Sutherland to seek guidance from management before the claimant could see a doctor. Mr. Sutherland admitted that it is not customarily a prerequisite for him to tell an employee he needs to speak with management before they seek medical attention when they call in due to a personal illness such as a cold, or the flu. He confirmed that it is only when there is a suspected work-related injury that an employee is instructed to wait before seeking medical attention. Considering that Mr. Sutherland gave conflicting and confusing testimony regarding the

reporting of an injury, I found his testimony to be incredulous, self-contradictory, and unworthy of belief. The evidence preponderates that the claimant promptly and properly reported an injury per his employer established policy before he sought medical attention for his back injury.

Specifically, I find that the claimant gave his employer/ Mr. Sutherland proper notice of his injury on the morning of November 4, 2023. Therefore, the respondents are responsible for payment of benefits on this claim beginning on the date of injury.

C. Medical Benefits

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Repl. 2012). The claimant bears the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005).

After reviewing the evidence in this case impartially, without giving the benefits of the doubt to either party, I find that the claimant has met his burden of proving that all of the medical treatment of record that he received for his back injury, including the surgery performed by Dr. Bahgat and accompanying hospitalization, and all of the diagnostic testing was reasonably necessary in connection with the injury he received on November 4, 2023.

Specifically, the treatment modalities utilized were ordered for the purposes of diagnosing, evaluating, and treating his back condition. The claimant had no symptoms in his back prior to his November 4 injury that were causative and the reason for his current back problem and need for treatment. I expressly find that the medical treatment provided for the claimant at the level of L3-4 was reasonably necessary in connection with the claimant's compensable injury. Of importance is the fact that the claimant received significant relief of his back pain and related

symptoms from the back surgery. There is no evidence whatsoever showing that the claimant had any prior complaints with his back before his work accident. The claimant proved by a preponderance of the evidence that all the medical treatment of record is causally connected to the work-related back injury received by him on November 4, 2023.

Hence, the evidence preponderates that the medical treatment of record received by the claimant for his back was reasonably necessary in accordance with Ark. Code Ann. § 11-9-508(a). The respondents are liable for payment of all the claimant's medical treatment for his compensable back injury of November 4, 2023.

D. Temporary Total Disability Compensation

Here, the Claimant contends that he is entitled to temporary total disability benefits for his low back injury beginning November 5, 2023, and continuing until the date he was released from medical care of his back surgery, by Dr. Simpson, occurring on April 24, 2024.

The claimant suffered a back injury, which is an unscheduled injury. An injured employee for an unscheduled injury is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated from earning wages. *Arkansas State Highway and Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will allow. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Temporary total disability cannot be awarded after the claimant's healing period has ended.

In the present case, the claimant sustained a compensable back injury on November 4, 2023. He initially sought medical treatment from his primary care provider for his back condition, Jesse Bone, APRN. The claimant was given off work slips by Nurse Bone. When the claimant's condition did not improve, Bone recommended that he undergo a lumbar MRI, which was performed on November 17. This MRI revealed that the claimant sustained a "right extruded free fragment," and severe right L3-4 disc herniation, accompanied by severe stenosis at L4-5 on the right side. On November 22 Bone referred the claimant to a neurosurgeon, and he also restricted the claimant from working until he could undergo this evaluation. The claimant was evaluated by Dr. Simpson on December 20, and he diagnosed the claimant with a large extruding fragment down below the space, and a severe herniated disc at L3-4, for which he recommended surgical treatment. The claimant underwent back surgery on March 4, 2024, by Dr. Bahgat. This surgery rendered the claimant physically unable to perform his regular job duties at Potlatch until April 24, 2024. At that point, the claimant was released from care by Dr. Simpson at his request to return to work.

The claimant credibly testified that he was unable to work following his work incident of November 4, 2023, until April 24, 2024. His credible testimony of his inability to return to work following his November 4 back injury due to severe back pain and related symptoms of the leg until his release from care is corroborated by the medical evidence of record. The parties stipulated that the claimant reached maximum medical improvement for his back condition/injury on April 24. Temporary total disability compensation cannot be awarded after the claimant's healing period has ended.

Accordingly, based on all the foregoing, I find that the claimant proved his entitled to temporary total disability compensation from November 5, 2023, until April 24, 2024.

E. Permanent Anatomical Impairment

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) to be used in assessing anatomical impairment. See *Commission Rule 099.34 (now codified at 11 C.A.R. § 25-129)*; Ark. Code Ann. §11-9-522(g) (Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the Claimant has proved he is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1) (Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i) (Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to prove a compensable injury, it does not follow that such evidence is required to establish each element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is needed is that the medical evidence be supported by objective findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

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(F)(ii)(a) (Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to a preponderance of the evidence. Ark. Code Ann. §11-9-102(14) (Repl. 2012). Preponderance of the evidence means the evidence that has greater

weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

The claimant contends that he sustained an 8% permanent impairment rating for his back for his compensable work-related back injury of November 4, 2023. The respondent contends that the claimant did not sustain an anatomical impairment due to his work-related injury.

I am persuaded that the claimant proved by a preponderance of the evidence that he is entitled to an award of an 8% permanent anatomical impairment to his low back due to his work-related injury of November 4, 2023. The basis for my determination of the existence of this impairment rating is outlined below.

Specifically, on December 20, 2023, Dr. Simpson recommended that the claimant undergo surgical intervention to remove an “extruded free fragment.” Dr. Simpson identified a right L3-4 migrating disc herniation as well as L4-5 right lateral recess severe stenosis following an MRI of the claimant’s lumbar spine, which was performed on November 17, 2023. The claimant underwent back surgery by Dr. Bahgat on March 4, 2024, in the form of a right L3-4 discectomy and L4-5 decompression.

On July 21, 2025, Dr. J. Michael Calhoun assigned the claimant an 8% permanent physical impairment for his work-related back injury, utilizing the *AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition*. Per his medical note, Dr. Calhoun assessed the claimant with an 8% impairment because he underwent surgical treatment with residual symptoms. There are no expert opinions to the contrary. Dr. Calhoun’s expert opinion is well reasoned and comports with my review of Table 75, page 3/113 of the *Guides*, which assigns “Whole Person Impairment Percents Due to Specific Spine Disorders.” Prior to his compensable injury of November 4, the claimant’s testimony shows that he had no history of any complaints or problems relating to his

back. I found his testimony to be extremely credible in this regard. In fact, the claimant's credible testimony regarding no prior back problems is corroborated by the lack of any medical evidence indicating a prior history of any medical treatment or diagnostic tests such as an MRI or x-rays having been performed on his back. There is no evidence whatsoever indicating that the claimant missed any work due to any ongoing complaints of the back and any related symptomatology. The evidence before me clearly proves that prior to his work injury, the claimant's pre-existing degenerative disc disease was asymptomatic. I am persuaded that Dr. Calhoun's expert opinion is correct and well-reasoned, with no evidence or expert opinions to the contrary. Therefore, I have attached significant evidentiary weight to Dr. Calhoun's expert opinion. For these reasons, I am also convinced that the major cause of the claimant's permanent anatomical impairment, which resulted from his work-related injury of November 4, 2023.

F. Attorney's Fee

The parties stipulated that the respondents have controverted this claim in its entirety. As such, the claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein to the claimant, pursuant to Ark. Code Ann. §11-9-715 (Repl. (2012)).

**AWARD**

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

All accrued sums shall be paid in lump sum without a discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012).

Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein.

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This fee is to be paid one-half by the insurance carrier and one-half by the claimant.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**