BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H303473

ALFRED WATKINS, EMPLOYEE	**CLAIMANT**
NORTH LITTLE ROCK SCHOOL DISTRICT, EMPLOYER	**RESPONDENT**
AR. SCHOOL BOARD ASSOC., CARRIER/TPA	**RESPONDENT**

OPINION FILED SEPTEMBER 30, 2026

Hearing before Administrative Law Judge, Steven Porch, on September 1, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on September 1, 2026. A prehearing telephone conference took place on June 3, 2026. A prehearing order was entered on the same day, and subsequently entered into evidence as Commission Exhibit 1, with amendments[1]. The parties confirmed the stipulations and the issues at the hearing. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

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

2. The employer/employee/carrier relationship existed on April 20, 2023, when the claimant sustained a compensable injury to his left shoulder and arm.

3. The Claimant's average weekly wage of $739.47 entitled him to TTD/PPD benefits in the respective amounts of $493/$370.

4. The Claimant was assigned a five (5%) permanent partial impairment rating by his treating physician. This rating was accepted and paid by the Respondents.

[1] Respondents moved to amend their contentions to include Claimants refusal of vocational rehabilitation which removes eligibility for wage loss benefits pursuant to A.C.A. § 11-9-505(b)(3). I granted that amendment.

ISSUES

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Whether Claimant is entitled to wage loss benefits.

2. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant contends:

The Claimant contends that he sustained admitted compensable injuries to his left shoulder and arm on April 20, 2023. He was released following surgery with permanent restrictions. The Respondents indicated that they do not have work available within his restrictions. The Claimant contends he is entitled to a wage loss determination. This matter has been controverted for purposes of attorney's fees.

The Claimant's attorney respectfully requests that any attorney's fees owed by the Claimant on controverted benefits paid by award or otherwise be deducted from the Claimant's benefits and paid directly to the Claimant's attorney by separate check, and that any Commission Order direct the Respondent to make payment of attorney's fees in this matter.

Respondent contends:

The Respondents contend that they are in the process of investigating the claim for wage loss disability through discovery. They will state their position regarding the same upon completion of the same. *Amended at the hearing, by the request of the Respondents, the following: After completion of our investigation, Respondents further contend that Claimant's refusal of vocational rehabilitation removed his eligibility for wage loss benefits pursuant to A.C.A. § 11-9-505(b)(3).*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, and having the opportunity to hear testimony of the Claimant and to observe his demeanor, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has failed to prove by the preponderance of the evidence that he is entitled to wage loss benefits.
4. The Claimant's attorney is not entitled to a controverted attorney's fee.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, medical records, consisting of 236 pages and non-medical, consisting of 5 pages; Claimant's Exhibit 2, additional medical records, consisting of 115 pages; Respondents' Exhibit 1, medical records, consisting of 18 pages; Respondents' Exhibit 2, correspondence and work evaluation, consisting of 24 pages; Commission Exhibit 1, Pre-Hearing Order filed July 15, 2025, with amendments, consisting of 5 pages. Claimant and Respondents' post-hearing briefs were blue-backed and made a part of the record. The Claimant and Ms. Cecilia Brunson were the only witnesses testifying at the full hearing.

The Claimant was employed as a security guard for the Respondent Employer. The Claimant injured his left shoulder on April 20, 2023, torn rotator cuff, when he was breaking up a fight between two students. This injury was accepted as compensable by the Respondents and benefits were paid. The Claimant received a left shoulder arthroscopy with rotator cuff repair,

biceps tenodesis on July 31, 2023. Resp. Ex. 1, pp. 15-17. During recovery, Claimant was given light duty assignments such as monitoring security cameras and metal detectors for the remainder of the school year, excluding the last two weeks. TR-24-26. The Claimant reached maximum medical improvement, per Dr. Jonathan Wyatt, on May 21, 2024, with permanent restrictions. CL. Ex. 1, pp. 138-140. The Claimant received a 9% impairment rating to his upper left extremity and a 5% impairment rating to the body as a whole. *Id*. The Claimant was placed on modified work duty. Claimant's work modifications fell under the "U.S. Department of Labor medium classification of work. Specifically, he can perform occasional bimanual lift carry up to 50 pounds. He may lift and carry up to 20 pounds on a frequent basis. He may perform occasional right upper extremity lift up to 15 pounds from knuckle to shoulder level. He may perform occasional left upper extremity lift of 30 pounds from knuckle to shoulder" Resp. Ex. 1, pp. 15-17. These restrictions prevented the Claimant from performing the physical demands of his job, so Claimant was offered the opportunity to retire or be fired before the new school year began. TR-25-27, 155, CL. Ex 1, pp. 228-229. The Claimant chose to retire. TR-155.

Since Claimant's retirement, he has not sought other employment. TR-52. However, Claimant did apply and was approved for his Social Security disability benefits after retirement. TR-29-30. Claimant is a 59-year-old high school graduate that has attended 3 years of college, no degree. TR-18-19. The Claimant's 30-year career has been in school security which consists of breaking up fights, directing school traffic, bus duty, and other duties as assigned. TR-20-21, 42-43. The Claimant testified that he is right hand dominant, and that his left shoulder was considerably better since his surgery with Dr. Wyatt. TR-49. The Claimant admitted that he does not have any restrictions involving his right hand. *Id*. Claimant further admitted that he does not

have any restrictions on driving and that he can drive. TR-50-51. He has driven to Kansas City and the South Padre Island in Texas. *Id*.

Claimant's post-retirement everyday activities consist of getting up in the morning, going to the gym to do exercises in the pool, then spend time in the sauna, take walks (when able), and watch TV. TR-91-93. Claimant testified that he takes at least 1 hydrocodone a day for the past 2 years, not to exceed 3 a day. TR-90-91. Claimant also testified that some days he doesn't take that medication because he does not want to be addicted. *Id*. When asked at the hearing does he want to work his response was "I don't mind working…." TR-81-82. The Claimant testified that his body has deteriorated since his retirement. *Id*. The Claimant admitted that he has serious back pain, and his knees are bone on bone. TR-91, 97. The Claimant further testified that the hydrocodone pills are for his back pain. TR-91. But, again, the Claimant admitted that his left shoulder has improved and that he can work with it. TR-95. The Claimant could not raise his left arm directly above his head but could raise it to the top of his forehead as demonstrated at the hearing. TR-104-105.

Cecelia Brunson, Vocational Rehabilitation Consultant for Systemedic, reached out to Claimant for a meeting which took place on June 29, 2026. Resp. Ex.2, pp. 14-21, TR-109. The Claimant did not identify any roadblocks that would prevent him from working. TR-111. Ms. Brunson explained her role to Claimant and determined that he was capable of returning to work, and sent him two driving jobs, via email, during their in-person meeting, for a railroad company which he acknowledged were sent to him. TR-110, 112-113. Ms. Brunson testified that she encouraged him to apply for these positions. TR-147-149. Ms. Brunson had a follow-up conversation with Claimant on July 16, 2026, to inquire whether Claimant applied for the two driving jobs. The Claimant testified that he did not apply for the jobs because he was under the

weather. Resp. Ex. 2, pp. 14-23. Claimant, during the hearing, defined "under the weather" as his back was hurting and he had contracted a virus. TR-87-89. Claimant stated the virus lasted for 8 days but still did not apply for the jobs when the virus ended. *Id*. Claimant also admitted that he did not open Ms. Brunson's email containing the 2 driving jobs he received on June 29, 2026. TR-95-96. Ms. Brunson testified that on July 28, 2026, the Claimant informed her that he does not want any job placement services until after the September 1, 2026, hearing. TR-150.

The Claimant was recalled as a rebuttal witness but further admitted that he did not apply for those jobs because he had "ill feelings" towards the Respondent/Employer and felt that he was treated "unjustly" when they did not work with him concerning continued employment. TR-154-155. The Claimant further testified that he didn't fully cooperate with vocational rehabilitation. TR-156. The Claimant agreed that he did not know whether he would have been helped by vocational rehabilitation because he did not participate. TR-160-161. The Claimant has not applied for a job up to the date of this hearing. TR-52.

Adjudication

A. Whether Claimant is entitled to wage loss benefits.

The Claimant has asserted that he is entitled to wage loss disability benefits over and above his impairment rating. Respondents have argued otherwise. Claimant's entitlement to wage loss disability benefits is controlled by § 11-9-522(b)(1) (Repl. 2012), which states:

> In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

See Curry v. Franklin Elec., 32 Ark. App. 168, 798 S.W.2d 130 (1990). Such "other matters" include motivation, post-injury income, credibility, demeanor, and a multitude of other factors.

Id.; *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961). As the Arkansas Court of Appeals noted in *Hixon v. Baptist Health*, 2010 Ark. App. 413, 375 S.W.3d 690, "there is no exact formula for determining wage loss . . . ." Pursuant to § 11-9-522(b)(1), when a claimant has been assigned an impairment rating to the body as a whole, the Commission possesses the authority to increase the rating, and it can find a claimant totally and permanently disabled based upon wage-loss factors. *Cross v. Crawford County Memorial Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996).

To be entitled to any wage-loss disability in excess of an impairment rating, the claimant must prove by a preponderance of the evidence that he sustained permanent physical impairment as a result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). In considering factors that may impact a claimant's future earning capacity, the Commission considers his motivation to return to work, because a lack of interest or a negative attitude impedes the assessment of his loss of earning capacity. *Id*. The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). Finally, as discussed above, § 11-9-102(4)(F)(ii) provides that permanent benefits can only be given to a claimant if the compensable injury was the major cause of the disability or impairment. "Disability" is the "incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury." Ark. Code Ann. § 11-9-102(8) (Repl. 2012).

Dr. Wyatt assessed Claimant with a 5% impairment rating to the body as a whole. CL. Ex. 1, pp. 139-140. I credit Dr. Wyatt's impairment assessment. Again, the Claimant reached the end

of his healing period on May 21, 2025. Since then and following the end of his employment with Respondent/Employer, he has made no effort to gain any meaningful employment even when provided with assistance by Ms. Brunson. TR-52, Resp. Ex. 2, pp. 14-23. Ms. Brunson did an analysis of his work history and transferrable skills along with job market research and provided Claimant with two immediate job openings. *Id*. The Claimant took no action to seek employment since the summer of 2024, over two years. TR-52. The Claimant has testified that he did not even think about working while unemployed. *Id*. The Claimant has not demonstrated a willingness to work, a factor in determining wage loss, Thus, I find by the preponderance of the evidence that Claimant has failed to prove he is entitled to wage loss benefits.

Moreover, Claimant also has testified that he takes hydrocodone for his back and that his knees are bone-on-bone making it difficult for him to walk. TR-81-82, 91-93, 95, 97. He has testified that his back pain and the pain in his knees have been killing him. *Id*. He also testified that his left shoulder, his compensable injury, has improved since his surgery and would not stop him from doing driving jobs. TR-48-49, 95. Thus, I further find by the preponderance of the evidence that Claimant's compensable injury is not the major cause for Claimant's disability, rather it was his knees and back that were the major causes of his disability. Thus again, he is not entitled to wage loss benefits.

And finally, Arkansas Code Annotated § 11-9-505(b)(3) states, in pertinent part, that:

> "[N]o employee who waives rehabilitation or refuses to participate in or cooperate for reasonable cause with either an offered program of rehabilitation or job placement assistance shall be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by objective physical findings."

Ms. Cecilia Brunson, Vocational Rehabilitation Consultant, testified that she began trying to contact the Claimant in late May and early June 2026. TR-65-66, 109, Resp. Ex. 2, p. 13. The Claimant initially refused to talk to Ms. Brunson but eventually agreed to an in-person meeting. TR-112-113, Resp. Ex. 2, pp. 13-20. During the in-person meeting the Claimant was given two driving jobs. *Id*. Ms. Brunson testified that she encouraged him to apply for those positions. TR-147-149. Ms. Brunson had a follow-up conversation with Claimant on July 16, 2026, to inquire whether Claimant applied to the two driving jobs. The Claimant did not apply for the jobs because he was under the weather. Resp. Ex. 2, pp. 14-23. As mentioned earlier, Claimant defined "under the weather" as his back was hurting and he had contracted a virus. TR-87-89. Claimant stated the virus lasted for 8 days but still did not apply for the jobs after his sickness ended. *Id*. Claimant also admitted that he did not open Ms. Brunson's email containing the 2 driving jobs he received on June 29, 2026. TR-95-96. Ms. Brunson testified that on July 28, 2026, the Claimant informed her that he does not want any job placement services until after the September 1, 2026, hearing. TR-150.

The Claimant when recalled as a rebuttal witness further admitted that he did not apply for the jobs because he had "ill feelings" towards Respondent/Employer and felt that he was treated "unjustly" when they did not work with him concerning continued employment. TR-154-155. The Claimant further admitted that he did not fully cooperate with vocational rehabilitation. TR-156. The Claimant also agreed that he did not know whether he would have been helped by vocational rehabilitation because he did not participate. TR-160-161. The Claimant has not applied for a job up to the date of this hearing. TR-52. Based on the foregoing, I find by the preponderance of the evidence that the Claimant refused to participate in vocational rehabilitation and job placement, thus disqualifying him for wage loss benefits.

B. Whether Claimant's attorney is entitled to a controverted attorney's fee.

Based on the foregoing, the Claimant has not proven his entitlement to wage loss benefits. Thus, the Claimant's attorney is not entitled to a controverted attorney's fee.

CONCLUSION AND AWARD

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

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Hon. Steven Porch
Administrative Law Judge