

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211052

CLARA DIXON, EMPLOYEE	CLAIMANT
SOUTHEAST AREA AGENCY ON AGING, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES (TPA), INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 15, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 16, 2004, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Kenneth A. Harper, Attorney at Law, Monticello, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on April 16, 2004, to determine the claimant's entitlement to permanent disability benefits.

It was stipulated that the claimant sustained a compensable injury arising out of and during the course and scope of her employment on September 19, 2002.

It was stipulated that the claimant's weekly indemnity rates for temporary total disability and permanent partial disability benefits is \$78.00 weekly and that respondents accepted the claim as compensable and have paid appropriate periods of temporary total disability and medical benefits, as well as a 10 percent whole body physical impairment rating.

Claimant contends that as a result of her compensable injury of September 19, 2002, she has been rendered permanently and totally disabled. She seeks permanent total disability benefits.

Respondents controvert any permanent disability benefits in excess of the 10 percent whole body physical impairment rating, which has been accepted and is being paid.

STATEMENT OF THE CASE

At the time of claimant's injury, she was eighty years old, had a ninth-grade education, and had worked for respondent employer for seventeen years. Before her employment with respondent, she did domestic work for individuals. At the time of her injury, claimant was a kitchen worker for respondent employer, generally working five hours per day, five days a week, mostly helping to serve the dinners to the participants at the Agency. On September 19, 2002, as she was helping serve dinner, she fell and broke her hip. She was treated by Dr. Clark, who performed surgery on claimant's hip on September 20, 2002, as well as other doctors, including pain specialists and rehabilitative specialists over the following year and a half.

On March 18, 2003, claimant presented to Dr. Clark with no complaints of hip problems, although she did have a persistent limp. Dr. Clark released her at that point in time, noting that she had reached maximum medical improvement. Based upon his findings, Dr. Clark gave claimant a 10 percent physical impairment rating to the body as a whole, pursuant to the AMA Guide to Evaluation of Partial Permanent Impairment, Fourth Edition, for her injury and healing progress. Dr. Clark noted that claimant had other complaints, including arthritis in the right knee and low back pain; however, those complaints were noted by her medical and vocational case manager, Rhonda Fleming, R.N., to be unrelated to her work injury.

Ms. Fleming noted on April 3, 2003, in a progress report issued to Ms. Jill Johnson of the RMR/Aging Services Fund, that claimant "has had successful recovery from her right hip fracture which was repaired by ORIF on 9/20/02. Although [claimant] has been able to resume her normal activities, she has chosen to return to the Area Agency on Aging Senior Center [respondent employer] as a participant, instead of an employee." She observed that claimant had not returned to her part-time job with the Agency, as she was considering

retirement. Ms. Fleming then noted that, as no additional case management services were indicated, the file would be closed.

On August 20, 2003, J. Cary Bradshaw, D.O., of Bradshaw Medical Services, wrote a letter to the respondent employer Area Agency on Aging stating that “[d]ue to Ms. Dixon’s medical condition[,] she is unable to continue to work. She suffers from several medical conditions such as atrial fibrillation, transient ischemic attacks[,] and has had a broken hip. It would be in her best interest to no longer work.” By this time, claimant was nearly eighty-one, as her date of birth is September 13, 1921.

FINDINGS OF FACT

1. Claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled as a result of her compensable injury of September 19, 2002.
2. Claimant’s compensable injury has not affected her ability to earn a livelihood any more than any other factor already existing, notwithstanding her work-related injury.
3. No wage-loss factors exist that would warrant an increase in claimant’s anatomical rating.
4. Claimant’s 10 percent impairment rating to the body as a whole is appropriate.
5. Respondents have provided all appropriate benefits to which claimant is entitled.
6. There are no additional benefits to which claimant would be entitled.

DISCUSSION

Appellant's entitlement to permanent disability benefits is controlled by Ark. Code Ann. § 11-9-522 (Repl. 2002), which states in pertinent part:

(b)(1) 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.

Pursuant to this statute, when a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase the anatomical rating, and it can find a claimant totally and permanently disabled based upon wage-loss factors. See *Whitlatch v. Southland Land & Development*, CA 03-736 (Ark. App. 1-21-2004); *Cross v. Crawford County Memorial Hospital*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Eckhardt v. Wills Shaw Express, Inc.*, 62 Ark. App. 224, 970 S.W.2d 316 (1998). In considering factors that may affect an employee's future earning capacity, the court considers the claimant's motivation to return to work, since a lack of interest or a negative attitude impedes our assessment of the claimant's loss of earning capacity. *Ellison v. Therma Tru*, 71 Ark. App. 410, 30 S.W.3d 769 (2000).

In this case, the claimant is now eighty-two years old. Claimant's medical history and present health indicate that she suffered from a number of ailments prior to her work-related injury and that those ailments still exist, including arthritis in the right knee and low back pain, as well as atrial fibrillation and transient ischemic attacks. She has fully recovered from her work-related hip injury and, according to the testimony of respondent employer, is welcome to remain as an employee. However, claimant told her medical and vocational case manager, Rhonda Fleming, that she was considering retirement. Claimant has chosen to be a participant at respondent employer rather than an employee.

Based on the above, I find that claimant's compensable injury has not affected her ability to earn a livelihood any more than any other factor already existing, notwithstanding

her work-related injury. I find no wage-loss factors that would warrant an increase in claimant's anatomical rating, particularly since claimant is considering retirement. As such, I find that claimant's 10 percent impairment rating to the body as a whole is appropriate; that respondents have provided all appropriate benefits to which claimant is entitled; and, that there are no additional benefits to which claimant would be entitled.

As claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled as a result of her compensable injury of September 19, 2002, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge