

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F009923**

<b>DEXTER A. FLENORY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>KLIPSCH, LLC, EMPLOYER</b>	<b>RESPONDENT</b>
<b>WAUSAU BUSINESS INSURANCE CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED NOVEMBER 30, 2004**

Submitted on the record before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE NELSON V. SHAW, Attorney at Law, Texarkana, Texas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of additional permanent partial disability benefits and attorney's fees.

At issue is the extent of the claimant's wage loss as defined by Ark. Code Ann. §11-9-522 and §11-9-505, and §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on March 26, 1999 at which time the claimant sustained a compensable injury at a compensation rate of \$228.00/\$171.00. Medical expenses, temporary total disability benefits and a 10% permanent impairment rating to the neck as assessed by Dr. Giles, have been paid.

This claim has been the subject of a previous hearing with opinions entered July 30, 2001 by Judge Blood and September 5, 2002 by the Full Commission.

The claimant contends that he is entitled to wage loss and attorney's fees.

The respondents contend all appropriate benefits have been paid on the compensable neck claim. The claimant's other health problems (tremors, back and leg pain) have been adjudicated as unrelated to the compensable injury.

The claimant, age 48 (D.O.B. October 5, 1955), has a high school education. He has worked for the respondent-employer since 1978 as an inspector and repairman of damaged speakers. His job duties include lifting up to 115 pounds, loading and unloading trucks and pulling orders. The claimant also has work experience as a carpet puller, forklift driver and supervisor. His health history includes a May 1998 back injury, high blood pressure, depression and seizures. He has been diagnosed with mild carpal tunnel syndrome (CTS) and a degenerative disc at L4-5.

The claimant stated that he remained symptomatic and is physically unable to return to work. He complained of neck and left shoulder pain, sleep disturbance, facial numbness, weakness on his left side from his back down to his feet, headaches, and left arm pain. His symptoms affect his ability to sit, stand and walk. He is able to lift up to 10 pounds. His medication leaves him drowsy.

The claimant's injury occurred in March, 1999 but he was able to continue working for a year and four months. He received medical treatment with Dr. Findley in July, 2000, before being referred to Dr. Giles in October 2000. Due to lay offs, the claimant filed for unemployment benefits on two occasions in July and September 2000, indicating on the forms that he was physically capable of working. The claimant continued to work for the respondent-employer until his surgery in

November, 2000.

As of April, 2001 the claimant was capable of performing household chores, washing dishes, sweeping, doing the laundry, and driving. Several months after his surgery, the claimant began complaining of back and leg symptoms. Dr. Giles ran diagnostic testing (myelogram, MRI scan, EMG/NCV study) but found no objective medical evidence to substantiate the claimant's symptoms. Dr. Giles released the claimant on February 26, 2001 and opined that he was capable of returning to work.

The claimant was also examined by Dr. Sonia Williams who also found no medical evidence to substantiate the claimant's symptoms of left-sided weakness and tremors. Dr. Schmidely prescribes medication for the claimant's seizures which were described as hiccup-like jerks.

The claimant has not looked for work since his release from Dr. Giles. The claimant receives Social Security disability benefits (\$1,106.00 per month), and Medicare. He is still able to perform his woodworking hobbies in a shop next to his home, building tables, gun cabinets, shelves and clocks.

### **MEDICAL EVIDENCE**

The claimant's medical history was summarized in the previous opinions and will not be repeated here. It should be noted, however, that Dr. Giles described the claimant's neck condition as stable and he did not assess any specific work restrictions.

At the present time I cannot find a neurosurgical reason for his present complaints. His previous disc problems are no longer present, with a very solid fusion mass.

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I would feel from my standpoint that he has reached maximum medical improvement as of March 1, 2001, and is employable.

### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717.

Wage loss is the degree to which the compensable injury has affected the claimant's earning capacity. The extent of disability is a question of fact for the Commission. Cross v. Crawford County Memorial Hospital, 54 Ark. App. 130, 923 S.W.2d 886 (1996). Factors to be considered in assessing wage loss include the claimant's, age, education, work experience, medical evidence and other matters which may reasonably be expected to affect the workers' future earning power such as motivation, post-injury income, bone fide job offers, credibility, or voluntary termination. Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946 (1984), Curry v. Franklin Electric, 32 Ark. App. 168, 798 S.W.2d 130 (1990), and Oller v. Champion Parts Rebuilders, 5 Ark. App. 307, 635 S.W.2d 276 (1982).

The respondents can mitigate wage loss benefits by showing the claimant can return to work at wages commensurate to his pre-injury earnings, Ark. Code Ann. §11-9-522. The claimant in this case testified he didn't feel he could return to work and that he was eventually terminated after two years.

Additionally, wage loss benefits can be affected by the claimant's participation in vocational rehabilitation, Ark. Code Ann. §11-9-505. I find nothing in the prehearing order or the hearing transcript indicating the claimant has requested a rehabilitation evaluation or that he has submitted

a plan for rehabilitation.

After reviewing the lay testimony, expert medical evidence, and previous hearing transcript, I find the claimant is not entitled to additional benefits. He has no work restrictions, he is not motivated enough to attempt to return to work or seek rehabilitation, he is physically capable of performing his hobby of light carpentry which is a transferable skill, and he has other health problems which are the major cause of any disability.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on March 26, 1999 at which time the claimant sustained a compensable neck injury at a compensation rate of \$228.00/\$171.00. Medical expenses, temporary total disability benefits and a 10% rating have been paid.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that the compensable injury is the major cause of any disability.
3. The respondents have paid all appropriate benefits.

This claim for additional permanent partial disability benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge