

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F114190

JANET L. HENDRICKS, EMPLOYEE **CLAIMANT**

ST. BERNARDS BEHAVIORAL HEALTH SERVICES, EMPLOYER **RESPONDENT**

RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA **RESPONDENT**

OPINION FILED MAY 27, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on March 26, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Kristofer E. Richardson, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. S. Shane Baker, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on March 26, 2004, to determine the claimant's entitlement to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on January 28, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions relative to said issues were properly set out in the Prehearing Order. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant

times, including September 9, 2000; that the claimant sustained a compensable injury on said date; that she earned sufficient wages to entitle her to compensation rates of \$327.00 per week for temporary total disability and \$245.00 per week for permanent partial disability; that the claimant's healing period had previously ended; that the respondents had paid all appropriate temporary total disability to which the claimant was entitled, to date, and had also accepted, and paid, a ten percent (10%) whole body impairment; and that respondents had controverted claimant's entitlement to wage-loss disability.

Again, it is undisputed that the claimant was paid all appropriate temporary total disability to which she was entitled. At the prehearing conference, the parties were encouraged to stipulate to the end of the claimant's healing period so that any accrued, permanent disability benefits, if awarded, could be paid in lump sum. The parties were unable to agree on the date claimant reached maximum medical improvement. The claimant contended that the healing period ended on July 29, 2002, at which time she was assessed a ten percent (10%) permanent impairment. Respondents contended that the healing period ended February 29, 2002, at which time the claimant was released to return to work with a fifty (50) pound weight restriction. In fact, the claimant returned to work on February 29, 2002, as will be discussed further below. The parties agreed that the end of the claimant's healing period was of no consequence to the immediate issue, and that, in fact,

the earlier date proposed by the respondents would allow for a greater lump sum payment of permanent disability, if applicable. Accordingly, by agreement of the parties, the sole issue concerned claimant's entitlement to wage-loss disability.

Claimant contended, in summary, that she sustained wage-loss disability in excess of her anatomical impairment, in an amount to be determined by this Commission, and that a controverted attorney's fee should attach to any wage-loss disability awarded. Conversely, respondents maintained that the claimant did not sustain any wage-loss disability and was limited to her permanent impairment.

The claimant, Janet L. Hendricks, testified in her own behalf. Suzanne Herndon was called as a witness for the respondents. The record is composed solely of the transcript of the March 26, 2004, hearing containing a joint medical exhibit consisting of fourteen (14) pages.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over

this claim.

2. The stipulations of the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained any wage-loss disability as the result of her September 9, 2000, admitted injury.
4. Any issues not specifically addressed herein are reserved for future determination.

DISCUSSION

_____The facts in this case are basically undisputed. The claimant, Janet L. Hendricks, is forty (40) years old. She has a high school education, together with post-graduate schooling. The claimant has a degree as an LPN. She has also taken additional courses after receiving her nursing degree, including training in advanced cardiac life support (ACLS) and IV therapy. The claimant has worked in the nursing field since 1986. She worked at the Lawrence Memorial Hospital for approximately eight (8) years as a nurse. She left that hospital and moved to South Carolina. The claimant worked as a psychiatric nurse in an acute care facility in South Carolina for two (2) years before returning to Arkansas. She applied for, and went to work for the respondent as a psychiatric nurse on or about March, 2000. The claimant sustained an admitted cervical injury on September 9, 2000, while attempting to break up an altercation between a patient and some relatives. The claimant was initially

examined and treated by Dr. Michael Lack. The claimant was subsequently referred to Dr. Terence Braden who, in turn, referred her to Dr. Savu. Following a failed course of conservative treatment, the claimant was ultimately referred to Dr. Gregory F. Ricca, a neurosurgeon in Jonesboro, Arkansas. Dr. Ricca performed a cervical surgery, specifically, a discectomy at C5-C6 and C6-C7, as well as cervical fusion. The claimant was released by Dr. Ricca to return to full-duty work with a fifty (50) pound weight restriction, but otherwise no restrictions on February 19, 2002. In fact, the claimant returned to work for the employer herein on or about February 29, 2002, where she continued working for almost one year until the end of January, 2003, at which time she voluntarily terminated her employment with the hospital because the Director of Nurses changed her work-shift. The claimant voluntarily terminated her employment because, in addition to working for the hospital, she had a second job managing an apartment complex which prevented her from changing shifts. After leaving respondents' employment, the claimant went to work at the Walnut Ridge Nursing Center as an LPN. The claimant subsequently went to work for ProCare, performing in-home, patient care where she earned \$16.00 per hour on a part-time basis. The claimant earned \$12.00 per hour when working for the respondent. At the time of the within hearing, the claimant was not working for ProCare because her last job assignment had been completed, although the claimant could be recalled for additional duty, if

available. The claimant continued to work as an apartment manager.

Ark. Code Ann. §11-9-522 provides, in part:

(a) A permanent partial disability not scheduled in §11-9-521 shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury.

(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.

(2) However, so long as an employee, subsequent to his or her injury, has returned to work, has obtained other employment, or has a *bona fide* and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of the accident, he or she shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by a preponderance of the medical testimony and evidence.

Following the claimant's compensable injury, she returned to work for the employer herein, earning wages equal to those she earned at the time of her accident. She subsequently, voluntarily terminated her employment and went to work for other employers earning wages equal to or greater than those she earned at the time of her injury. The claimant has simply failed to prove, by a preponderance of the credible evidence, that she sustained any wage-loss disability as alleged.

I feel compelled to point out that the record reflects that, for some

unexplained reasons, the claimant's continuing medical care, including, but not limited to reimbursement of necessary prescription medications, has been paid either by the claimant, personally, or her private insurance carrier. Accordingly, by necessity, issues not specifically addressed herein must be reserved for future determination. Because the claimant is not longer employed by the respondent, the parties are encouraged to communicate in an effort to amicably resolve any remaining issues, if any, rather than pursue protracted litigation and appeals.

In view of the foregoing, it is herein concluded that the claimant has failed to prove entitlement to wage-loss disability. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge