

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310541

BARBARA REEVES

CLAIMANT

TRANSAMERICA LIFE INSURANCE CO.

RESPONDENT EMPLOYER

PACIFIC EMPLOYERS INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED SEPTEMBER 15, 2004

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA ROSS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on August 18, 2004. A prehearing conference was held on June 22, 2004, and a prehearing order was filed on June 24, 2004. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed on the following stipulations:

1. There was a September 4, 2002, compensable shoulder injury.
2. The compensation rates are \$352/264.
3. The respondents have accepted a 4% permanent impairment rating.

The claimant contends she is entitled to wage loss benefits in excess of the 4% permanent impairment rating she has been assigned as well as attorney's fees.

The respondents contend the claimant was released to return to work on full duty on December 16, 2003, with no restrictions and she did return to work. The respondents contend that the claimant cannot show entitlement to wage loss benefits and all other benefits have been paid.

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. There was a September 4, 2002, compensable shoulder injury.
2. The compensation rates are \$352/264.
3. The respondents have accepted a 4% permanent impairment rating.
4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to wage loss disability benefits.

DISCUSSION

The claimant, 39 years old, sustained a right shoulder injury that was accepted as compensable. The claimant had surgery, received a 4% permanent impairment rating and returned to work about mid-December 2003. Before the claimant's injuries, she was a supervisor for the respondent and had worked for the respondent about 10 years. The claimant did not like being a supervisor and requested to be placed in

another position and was working in the contract analyst position at the time of her shoulder problems.

The claimant remained off work about three months following her surgery and returned about mid-December 2003. According to the claimant, she returned to work on Wednesday and by Friday, she had to resume her pain medication. As a contract analyst, the claimant testified that she would put contracts together, which included finding the right forms on the computer, typing in information and then printing documents and mailing these out. The claimant began experiencing the dull, aching and sometimes sharp pain in her shoulder. Finally, on April 15, 2004, she quit after inquiring if there was a different job she could undertake. The claimant confirmed she has not applied for other employment elsewhere.

The claimant verified that her office had moved and she had a new desk and computer mouse and the equipment was ergonomically correct. The claimant confirmed that she was mostly working on amendments when she returned to work and this involved looking up documents in the computer. The claimant confirmed that she was not interested in being a supervisor and that she does not want to work now or learn any new skills.

Jean Stefaniak, chief underwriting officer for the respondent employer and a department manager, testified that in addition to the ergonomically correct desk, the claimant was allowed to work a few days and take off a day in between as an accommodation. Ms. Stefaniak testified that the claimant had applied for another position in the company but she believed that position was not filled and was being re-evaluated.

In considering a claim for permanent disability based on incapacity to earn, the Commission is required to consider all competent evidence, including the claimant's age, education, medical evidence, work experience, and other matters reasonably expected to affect earning power. Ark. Code Ann. §11-9-522(b)(1); See, *Buford v. Standard Gravel Co.*, 68 Ark. App. 262, 5 S.W.3d 478 (1999).

The claimant was 39 years old with a GED with 10 years of experience working for the respondent employer. She sustained a compensable shoulder injury and was assessed a 4% permanent impairment rating. The claimant was allowed to resume her normal duties without restrictions and did return to her former job with her employer. The claimant resigned her position because the work was causing her to have shoulder pain.

Ark. Code Ann. §11-9-522(b)(2) provides:

However, so long as an employee, subsequent to his 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 average weekly wage at the time of the accident, he 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.

I find the claimant has failed to prove by a preponderance of the evidence that she is entitled to wage loss benefits. The respondent employer returned the claimant back to work, made ergonomically approved changes in her work station and equipment and even accommodated her on time away from work. I find that the employer has satisfied Ark. Code Ann. §11-9-522(b)(2) requirements and are not liable

for permanent partial disability benefits in excess of the permanent impairment rating that has been accepted.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to wage loss disability benefits. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**