

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406902

TERRI D. FROST, CLAIMANT	CLAIMANT
ASHDOWN PUBLIC SCHOOLS, EMPLOYER	RESPONDENT
ARK. SCHOOL BOARDS ASSOCIATION WCT, CARRIER RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED NOVEMBER 28, 2005

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on September 1, 2005, at Texarkana, Miller County, Arkansas.

Claimant was represented by HON. GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents were represented by HON. BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 1, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on May 25, 2005, and a pre-hearing order was entered on May 26, 2005. At the hearing the parties confirmed the stipulations, issues, and respective contentions, as modified at the hearing, were properly set forth in the prehearing order.

The parties stipulated to the following at the full hearing:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times, including May 7, 2004.
- 3) The applicable compensation rates are \$453.00, and \$340.00 for TTD and PPD, respectively.

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- 4) On May 7, 2004, the claimant sustained a compensable injury to her right shoulder.
- 5) That an 8% impairment rating to the body as a whole was assigned to the claimant as a result of the May 7, 2004 compensable injury, for which the respondents accepted and are paying benefits.
- 6) The claimant's cheerleading contract was \$3,808.00. (See Transcript pg. 6, lines 14-21)

The parties agreed at the hearing that the sole issue to be presented for determination was whether the claimant has sustained wage loss in excess of her assigned anatomical impairment rating.

In that regard, the claimant contended she is entitled to wage loss disability in excess of the 8% anatomical rating. That prior to her compensable injury, the claimant was employed by the Ashdown Public Schools as a cheerleading coach and had a separate contract in the amount of \$3,808.00. That as a result of the compensable injury and a subsequent functional capacity evaluation, she has been limited to the extent that she could not return to doing those duties and this has caused her a reduction in income.

The claimant contended that in the past she has also had separate contracts as a basketball and track coach at a different school, which she had intended to pursue as sources of income with the Ashdown Public Schools, but that she is now precluded from doing that as well.

The claimant further contended she is entitled to attorney fees as provided under Arkansas Law.

Respondents contended at the hearing the claimant has been provided all appropriate benefits to which she is entitled. That respondents have paid claimant's medical expenses, TTD and are currently paying PPD benefits for the 8% anatomical rating to the body as a whole

The respondents contended they are unaware of any additional benefits to which the

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claimant would be entitled, that claimant's functional capacity assessment indicates she can work in a light physical demand category and the vocational evaluation obtained by the respondents indicates the claimant has continued to work as a teacher for the Ashdown Public Schools.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with A.C.A. §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) Stipulations agreed to by the parties numbered 1 through 5 herein, are reasonable and are hereby accepted as fact.
- 3) The claimant has proved by a preponderance of the evidence that she has sustained wage-loss in the amount of 2% over and above her permanent anatomical impairment of 8%
- 4) The respondents have controverted all benefits regarding wage loss disability.

DISCUSSION

I. History

The claimant, age 39, holds a Bachelors Degree from Henderson State University. Additionally she is certified for teaching grades seven through twelve in all areas of sciences, as well as coaching. At the time of the hearing the claimant was employed as a ninth grade physical science teacher with the Ashdown Public Schools. The claimant testified she had been so employed since 2002. Prior to working in Ashdown, the claimant was employed in the Murfreesboro and Spring Hill School Districts as a teacher. Also prior to teaching in Ashdown, AR, the claimant worked as an alternative learning environment instructor for Cossatot State

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College and Caddo Hills School District. The claimant testified that while employed as a teacher in the Spring Hill School District, she also had a separate contract for basketball and track duties.

While employed with Ashdown Public Schools on May 7, 2004, the claimant sustained a compensable injury to her right shoulder. As a result of the injury, the claimant sustained an 8% permanent impairment rating to the body as a whole. The claimant underwent surgery to her right shoulder on June 25, 2004. After the surgery, Dr. Norris Knight stated “she has taught P.E. and she is advised not to do this or recurrent overhead use of right upper extremity.” (JX-1, pg. 43)

For the 2003/04 school year, the claimant taught physical science and was the cheerleading coach. The claimant testified she received additional compensation for being the cheerleading coach. The claimant testified her duties as cheerleading coach consisted of the following:

- A. I was in charge of pep rallies, organizing fund raisers, organizing practices. I had to be there at the practices. I was responsible for the spotting position during stunt routines.
- Q. What does that mean when you say spotting.
- A. Involved in standing in front of the stunts as they were performed.
- Q. Why would you do that?
- A. In case there was a fall.
- Q. And if there was a fall, what would your purpose be?
- A. It was my responsibility, I would try to help the girl from hitting completely on the ground if possible.

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Q. You are going to try catch her at least?

A. Attempt to, yes.

Q. All right. Did your duties require you to do any demonstration as far as actual cheerleading type routines?

A. Yes, we would. I would demonstrate to the girls how to hold their arms, how to flex their arms, things of that nature, from the cheerleading coach book. (T. pg. 13, lines 2-23)

The claimant testified that her physical limitations due to her compensable injury is such that it precludes her from any type of coaching duties in the future.

ADJUDICATION

In considering permanent disability benefits in excess of a claimant's anatomical impairment rating, the Commission may consider "such factors as the employees age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity." A.C.A. §11-9-522(b)1). These "other matters" may include the claimant's motivation to return to work. Rice v. Georgia Pacific Corporation, 72 Ark. App. 148, 35 S.W. 3d 328 (2000). In summary, 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 claimant is relatively young at age 39, and has a Bachelors Degree. The claimant also testified she was in the process of obtaining her Masters Degree that would allow her to pursue administrative positions which could pay more money than what she is currently earning.

It is undisputed that the claimant was in fact the cheerleading coach at the time of the compensable injury. There was some dispute about the rate of compensation one would receive

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as the cheerleading coach. At the beginning of the full hearing in this matter, the parties stipulated the cheerleading coach contract was \$3,808.00; however, this examiner does not find that stipulation in line with the evidence presented at the full hearing.

Ms. Linda Johnson testified credibly as to the rate of pay for a cheerleading coach.

Q. At some point she signed up to be the cheerleading coach for the 2003-2004 school district?

A. Yes.

Q. How much does that position pay?

A. It is my understanding that it's 800. They are trying to get it raised right now, but that stipend, the higher stipend hasn't been approved.

Q. And you have heard testimony here today where she was receiving \$3,800. Was a portion of that because she was actually teaching or filled up her free period?

A. When someone gives up their prep period they are paid one-seventh of their entire salary is added in to make up for not have that. We would never force a teacher to do that. That's you know, they are willing to and that's what we are required to pay in addition to the 800.

Q. But just as a cheerleading coach you only get \$800?

A. (Witness Nods Head)

THE COURT: You will need to answer verbally. I'm sorry.

Q. I'm sorry, was that a yes?

A. Oh, I'm sorry. Yes, I'm sorry. (T. pgs 53 & 54, lines 15-25 & 1-12)

Later in the full hearing, the claimant herself acknowledged that \$800.00 was in fact the rate of

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pay for the cheerleading coach for the school year:

THE COURT: Okay. So you feel that 800 is correct?

THE WITNESS: I think that is correct, yes. (T. pg. 70, lns 16-18)

Based on the evidence presented, it seems that the other \$3,000.00 the claimant received in addition to her base 2003-2004 salary was due to the claimant giving up her planning period. The additional period the claimant taught did not have to be coaching. Ms. Johnson testified that sometimes, when the need presented itself, a teacher would give up her free period and receive an extra one-seventh of her salary to teach a class, such as language arts for example. Ms. Johnson testified a need is not always present. The extra one-seventh a teacher could get for giving up her planning period could be for teaching a class, and did not necessarily have to be for coaching. The claimant's impairment would not prevent her from teaching a classroom during her preparation period; it would just depend on the schools need at the time.

To this examiner the evidence is clear that the cheerleading coach's position paid the claimant an extra \$800.00 per school year. The extra \$800.00 represented a little over 2% of the claimant's total salary for the 2003/04 school year.

The evidence is also clear to this examiner, based on the claimant's testimony and the medical records, that continuing as a cheerleading coach is not an option for the claimant due to her physical restrictions as a result of her compensable injuries.

The evidence presented leads this examiner to question the claimant's motivation to return to work as a coach of any kind. The testimony indicates the claimant resigned her position as a cheerleading coach prior to any of her right shoulder injuries. Her apparent lack of motivation to coach may be due to her on-going pursuit of a Masters Degree, which is also another factor weighing against the claimant's request for wage loss. Undoubtedly, should the

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claimant obtain her Masters Degree, her wage earning capacity would actually increase. However, the claimant testified she had three more years to go on her Masters. It would be speculation to assume the claimant's earning capacity would increase due to the Masters Degree at the present time.

As stated, the extra one-seventh salary could be obtained by teaching a classroom course, if the school district had such an opening. Also, the fact the claimant resigned her position as cheerleading coach before her injuries is a definite factor; but the fact remains the claimant had in the past as well as at the time of injury engaged in extra coaching duties that would increase her pay. The claimant credibly testified she would pursue those opportunities now if not for her impairment.

The respondents have argued that because teaching jobs are available in other towns at a higher rate of pay that the claimant is not entitled to wage loss. However, if the claimant were to take those positions, she would still be precluded from cheerleading coaching; which even in another school district could increase her income.

After reviewing the evidence and weighing the appropriate factors, I find the claimant has proven by a preponderance of the evidence that she has sustained wage loss in the amount of 2% over and above her permanent anatomical impairment of 8% to the body as a whole.

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AWARD

The claimant has proven by a preponderance of the evidence that she is entitled to wage-loss disability benefits in the amount of 2% to the body as a whole. The respondents are hereby directed and ordered to pay benefits in accordance with the Findings of Fact and Conclusions of Law as recited herein.

Claimant's attorney, Mr. Gregory Giles, is hereby awarded the maximum attorney's fee on all indemnity benefits controverted, pursuant to A.C.A. §11-9-715.

All sums shall be paid in lump sum, without discount, and this award shall bear interest at the legal rate until paid pursuant to A.C.A. §11-9-809.

IT IS SO ORDERED.

Dale Douthit
Administrative Law Judge

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