

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F213807

TAMMIE MILLER, Employee	CLAIMANT
J.R.'S TRUCKING, Employer	RESPONDENT
AIG CLAIM SERVICES, Carrier	RESPONDENT

OPINION FILED OCTOBER 25, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by DAVID HARP, Attorney, Fort Smith, Arkansas.

Respondents represented by JOHN P. TALBOT, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

On October 3, 2005, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 3, 2004, and a pre-hearing order was filed on September 7, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her cervical spine on October 26, 2002.
4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$425.00 for temporary total disability benefits and \$319.00 for permanent partial disability benefits.
5. Respondent has accepted and is paying claimant permanent partial disability

benefits based upon a 6% rating to the body as a whole.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to permanent partial disability for wage loss.
2. Additional medical treatment for claimant's compensable injury.
3. Attorney fee.

The claimant contends that she has suffered a wage loss over and above the 6% impairment rating by Dr. Standefer and that she is entitled to additional medical treatment.

The respondents contend the claimant is not entitled to any additional benefits.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 3, 2004, and contained in a pre-hearing order filed September 7, 2004, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she has suffered a loss in wage earning capacity as a result of her compensable injury.
3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury.

FACTUAL BACKGROUND

The claimant is a 47-year-old woman who began working for the respondent in September 2002 as a long haul truck driver. Claimant suffered a compensable injury to her cervical spine on October 26, 2002 when her truck was struck by another 18-wheeler

from behind. Following her injury the claimant eventually came under the care of Dr. Standefer, a neurosurgeon, who treated claimant conservatively. After Dr. Standefer's conservative treatment he released claimant with a permanent physical impairment rating in an amount equal to 6% to the body as a whole. The respondent has accepted claimant's injury as compensable and paid compensation benefits including the 6% impairment rating and medical treatment through a visit with Dr. Standefer on May 26, 2004.

Claimant has filed this claim contending that she is entitled to permanent partial disability benefits over and above her 6% impairment rating for a loss in wage earning capacity. In addition, claimant contends that she is entitled to additional medical treatment for her compensable injury.

ADJUDICATION

Wage loss is the extent to which a compensable injury has affected a claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W. 3d 848 (2001). In considering claims for permanent partial disability benefits in excess of the permanent physical impairment, the Commission may take into account various factors including the percentage of permanent physical impairment as well as the claimant's age, education, work experience, and all other matters reasonably expected to affect their future earning capacity. A.C.A. §11-9-522(b)(1).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she has suffered any loss in wage earning capacity as a result of her compensable injury.

As previously noted, the claimant is 47 years old and she has a ninth grade education. For the last 15 years claimant has primarily been employed by various

companies as a long haul truck driver. In addition to working for other companies the claimant also owned a trucking company for some five to six years. Prior to her employment as a truck driver the claimant performed various jobs including work as a waitress, cook, laborer at an electronic's company, carpet layer, construction worker, and painter.

Since her employment ended with the respondent claimant has worked for several other trucking companies. In addition, the claimant also worked for Haliburton driving trucks in Iraq. According to claimant's testimony she performed this job for approximately six months and made \$40,000.00.

It is claimant's contention that she has suffered a loss in wage earning capacity as a result of her compensable injury because she can no longer perform long haul trucking. Claimant testified that the long haul driving hurts her neck and back; therefore, her truck driving ability is limited to short haul driving which does not pay as much as long haul driving.

While it is claimant's opinion that she is limited to short haul trucking, that is not the opinion of her treating physician, Dr. Standefer. A review of Dr. Standefer's medical reports indicates that claimant on numerous occasions had reservations about her ability to return to work as a truck driver. However, Dr. Standefer has clearly indicated in his medical reports that claimant is capable of returning to work without restrictions. Specifically, Dr. Standefer completed a form for the respondent indicating that claimant could return to work without restrictions as of May 7, 2003. Furthermore, Dr. Standefer in his report of June 12, 2003 indicated that there was no reason the claimant could not return to work driving a truck.

She does not feel that she will be able to resume her previous job. I have advised her from the medical standpoint there is no contraindication to resumption of employment. No specific restrictions need be applied for her at this time. *** Once again, from the

medical standpoint, there is no contraindication for this woman to do truck driving.

Thus, while claimant believes that her physical condition limits her to short haul truck driving, Dr. Standefer has repeatedly indicated that claimant could return to work without restrictions. Furthermore, in his report of June 12, 2003, Dr. Standefer indicated that there was no medical reason that claimant would not be able to return to her previous job which did involve long haul driving.

In summary, after reviewing the evidence presented, I find that claimant has failed to prove by a preponderance of the evidence that she has suffered a loss in wage earning capacity as a result of her compensable injury. While claimant feels that she is no longer capable of performing long haul driving which pays more than short haul driving, the opinion of her primary treating physician, Dr. Standefer, is that claimant could return to work without restrictions and there was no medical reason why she could not resume her prior employment which consisted of long haul driving. Given this evidence, which I find to be credible and entitled to great weight, I find that claimant has failed to meet her burden of proof.

The final issue for consideration involves claimant's contention that she is entitled to additional medical treatment for her compensable injury. Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Norma Beatty v. Ben Pearson, Inc.*, Full Commission Opinion filed February 17, 1989 (D612291).

In this particular case, claimant was last evaluated by Dr. Standefer on May 26, 2004. In his report of that date Dr. Standefer did indicate that claimant's condition remained stable and that he would advise a continued conservative approach. Dr. Standefer did not apply any specific restrictions but did indicate that claimant would need to use anti-inflammatory medication as her primary therapy. Given Dr. Standefer's opinion

that claimant's condition will require continued treatment in the form of anti-inflammatory medication, I find that claimant is entitled to additional medical treatment from Dr. Standefer for her compensable injury.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

AWARD

Claimant has failed to prove by a preponderance of the evidence that she has suffered any loss in wage earning capacity as a result of her compensable injury. Claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Standefer as a result of her compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE