

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F312187**

<b>LORI TABER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>SOUTHWEST E.M.S., INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>COMMERCE &amp; INDUSTRY INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MARCH 31, 2005**

Hearing before Administrative Law Judge J. Mark White on February 8, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Keith Wren, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On February 8, 2005, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on December 28, 2004, and a Prehearing Order was entered that same day. A copy of the December 28, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including November 4, 2003; that on November 4, 2003, the claimant sustained a compensable injury to her neck; and that respondents accepted the November 4, 2003, injury as compensable and are paying benefits, including a permanent impairment rating of 10% to the body as a whole. At the hearing, the parties further stipulated that the claimant earned wages sufficient to entitle her to a compensation rate of \$305 for total disability benefits and \$229 for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether the claimant has sustained wage loss in excess of her permanent anatomical impairment rating; and controversion and attorney's fees.

The claimant contends that she worked as a paramedic until November 4, 2003, when she sustained a compensable injury to her neck at C6-7; that she has been assigned a 10% permanent partial impairment to the body as a whole by Dr. James Arthur on July 14, 2004; that the rating has been accepted and is being paid; and that the claimant has sustained wage loss in excess of her permanent impairment.

Respondents contend that all appropriate benefits have been and are continuing to be paid with regard to this claim.

## **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 Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she has sustained wage loss in excess of her 10% anatomical impairment rating.
4. The respondents have controverted all benefits sought herein.

## **DISCUSSION**

### **I. History**

On November 4, 2003, the claimant sustained a compensable injury to her neck and cervical spine while lifting a patient. She was employed at the time as a paramedic by the respondent-employer. She sought treatment at Pike County

Hospital that afternoon and eventually came under the care of neurosurgeon Dr. James Arthur, who performed surgery at C6-7.

The claimant testified she experienced significant relief from the surgery, but she continues to experience spasms across her shoulders and pain in her arm. Dr. Arthur released the claimant from his care on July 14, 2004. He dictated a letter assigning the claimant an impairment rating of 10% to the body as a whole. In his letter, Dr. Arthur released the claimant "to return to work at this time with no restrictions." But he also stated, "I have advised she find an easier job than a paramedic."

The claimant testified that paramedic work involves a significant amount of lifting – she and her partner at times would lift patients as heavy as 350 to 400 pounds. These patients would sometimes be carried up and down stairs. She testified the job also requires crawling, bending and stooping. The claimant testified that she discussed these physical requirements with Dr. Arthur in her final visit with him, before he dictated the letter referenced above. She testified that she does not believe she is physically capable of returning to work as a paramedic.

The claimant testified she has looked for work since her release, but as of the hearing she was still unemployed. She received unemployment assistance for a time. She testified that she attempted to contact the respondent-employer about returning

to work in a different position, but the owner of the respondent-employer, Robbie Hines, denied that the claimant did so. Hines testified that at the time the claimant was released by Dr. Arthur, he could have returned her to her old job, or she could have applied for a less strenuous dispatcher position that would have paid \$6 per hour.

## **II. Adjudication**

In considering permanent disability benefits in excess of a claimant's anatomical impairment, the Commission may consider "such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity." ARK. CODE ANN. § 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 42 years of age with a high school degree. She is a licensed paramedic and completed two years of training to receive her license. Her training was taken at a college, though she later testified that she took no college course

work aside from paramedic training. At the time of her injury she had worked as a paramedic for six years; she had previously worked as an emergency medical technician, a waitress, and as an office clerk.

The medical evidence contained in the record as to the claimant's work abilities is limited to the single letter authored by Dr. Arthur and referenced above. The claimant emphasizes Dr. Arthur's stated opinion that the claimant should find an "easier" job, while the respondents emphasize the fact that Dr. Arthur released her to return to work "without restriction." Nothing in the record explains this apparent discrepancy in Dr. Arthur's letter. It may be that he was of the medical opinion that the claimant should no longer work as a paramedic, but he wanted to leave the option open for her if she chose to return to such work. Or, it may be that he was of the medical opinion that the claimant was capable of continuing work as a paramedic, but he wanted to accommodate the claimant's subjective opinion that she could no longer do so. Or, there may be some other explanation.

I cannot find from this scant evidence that the claimant's physical ability to work has been limited beyond the 10% rating already assigned and paid. Given this, and given the claimant's education, experience, and relatively young age, I find that the claimant has failed to prove by a preponderance of the evidence that she has sustained wage loss in excess of her 10% anatomical impairment rating.

**AWARD**

The claimant has failed to prove by a preponderance of the evidence that she has sustained wage loss in excess of her 10% anatomical impairment rating. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge