

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM E914465

**RHONDA R. PHILLIPS,
EMPLOYEE**

CLAIMANT

**WEYERHAEUSER COMPANY,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED DECEMBER 1, 2006,

Pursuant to a hearing conducted November 30, 2006, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant and

Mr. Jeremy Swearingen, Attorney at Law, Little Rock, Arkansas, appearing for the respondent.

STATEMENT OF THE CASE

This was a hearing to consider the employee's request to pursue a plan of vocational rehabilitation at the expense of the respondent, pursuant to Ark. Code Ann. §11-9-505.

The claimant requested that respondents be ordered to provide for her education at Remington College in Little Rock in order to obtain a degree that would permit her to engage in medical insurance billing and coding. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the requested vocational rehabilitation was not compensable, under Ark. Code Ann. §11-9-505, because it was not reasonable in relation to the disability sustained and, further, that the claimant declined without reasonable cause, re-employment assistance offered by the respondent and is thereby disqualified from a program of vocational rehabilitation. Other possible issues, including entitlement to credit for overpayment of previous benefits, were reserved.

The record, which included documentary evidence and the testimony of the claimant and Heather Naylor, was closed at the conclusion of the hearing, consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employee-employer relationship existed at all pertinent times; the claimant's average weekly wage was \$554.80; the claimant suffered a compensable injury to her right forearm November 5, 1999; and the injury resulted in permanent impairment of 41% to the right upper extremity, as assessed by Dr. David Rhodes, which has been accepted by the respondents.

3. The preponderance of the evidence shows that the claimant is not entitled to vocational rehabilitation because, although she is entitled to benefits for permanent disability, the respondent did not fail to offer her re-employment assistance, within the meaning of Ark. Code Ann. §11-9-505.

DISCUSSION

The claimant was employed by the respondent at its Mountain Pine, Arkansas, facility where it manufactured plywood. She described her position as that of a utility person and said that her job duties were varied and included sweeping floors, cleaning equipment, driving a forklift, relieving other workers on the production line, and stacking reclip, which she described as sheets of wood

veneer that were used in making plywood. On November 5, 1999, she suffered a compensable injury to her arm when she and a co-worker were stacking reclip on a cart and one sheet, thrown onto the cart by the co-worker, unexpectedly slid down onto her arm, injuring her. Her supervisor sent her for medical care.

The claimant's condition did not respond well to medical care and in October, 2003, Dr. F. Richard Jordan surgically implanted a pulse generator or epidural stimulator, consistent with his diagnosis of complex pain syndrome that had started in the right upper extremity after the claimant had gotten a wood splinter in her arm at work. Earlier, when Dr. Rhodes assessed the claimant's impairment at 41% to the right upper extremity, he recommended permanent work restrictions of light duty with the right upper extremity and no lifting more than five pounds. Later, in June, 2004, the claimant underwent a functional capacity evaluation but was found to have given an unreliable effort, so that the examiner opined that her true abilities with the right upper extremity remained unknown. The report of a May, 2006, functional capacity evaluation noted that the claimant gave a reliable effort and demonstrated the ability to perform work in the medium category by lifting up to 65 pounds from floor level to knuckle level.

The claimant testified that beginning 18 months or two years ago she thought she could be re-employed and requested that she be taken back by the employer. The employer declined to offer the claimant her previous job or any other position and now has closed the Mountain Pine facility. In March, 2006, the claimant met with a vocational counselor provided by the respondents and again expressed her interest in returning to work for the employer, which was then still operating the Mountain Pine plywood factory.

The counselor, whose reports appear in the record, testified at the hearing that she first evaluated the claimant's medical history, work history, job skills, education, and related matters in order to assess her ability to return to work. She then consulted the unemployment office of the Employment Security Division and the local newspaper in order to find possible job openings. She contacted the Employment Security Division concerning jobs that were listed with them and the employers whose jobs were listed in the newspaper in order to determine that the jobs were still available and what the job duties were, as well as the physical demands and the salary. She then forwarded such information concerning sixteen possible jobs to the claimant and offered to assist her in preparing a resume and in possibly improving her interviewing skills.

However, the claimant failed to inquire about any of the jobs, primarily because she wanted to be available to work for the respondent employer. However, even after it was clear that no such work was available, the claimant failed to inquire further about the jobs suggested by Ms. Naylor.

Ark. Code Ann. §11-9-505(b)(1) provides, inter alia, that an employee entitled to benefits for permanent disability, who has not been offered an opportunity to return to work for re-employment assistance, shall be entitled to reasonable travel and maintenance expenses and other necessary costs of a program of vocational rehabilitation, if the program is found by the Commission to be reasonable in relationship to the disability sustained.

Although the parties stipulated, and the record shows, that the claimant was entitled to benefits for permanent disability, the record does not show that she was not offered re-employment assistance. This is a prerequisite to possible entitlement to a program of vocational rehabilitation under current law. Moreover, the claimant's refusal to cooperate with the re-employment assistance provided by the respondent does not permit further inquiry as to whether the proposed vocational

rehabilitation program is reasonable in relation to the disability sustained by the employee, since the employee might well have found suitable employment had she cooperated with the re-employment assistance offered by the respondent. Finally, the record fails to show either that the re-employment assistance was unreasonable or that the claimant's refusal to cooperate was reasonable. Accordingly, the claimant is not entitled to a program of vocational rehabilitation at the expense of the respondent, under the Act. See, e.g., Harris v. City of Fayetteville, Ark. WCC #F211817 (November 16, 2004).

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge