

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIMS NOS. F613622, F701773 & F801550

TERRI A. EUBANKS

CLAIMANT

LITTLE ROCK AMBULANCE AUTHORITY

RESPONDENT EMPLOYER

MUNICIPAL LEAGUE WC TRUST

RESPONDENT CARRIER

ORDER AND OPINION FILED MAY 5, 2008

Hearing held before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE J. MARK WHITE, Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on March 12, 2008. A prehearing conference was held on January 8, 2008, and a prehearing order was filed the same date. 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 to the following stipulations:

1. There were three compensable injuries: A November 1, 2006 injury, a February 15, 2007, injury, and a June 5, 2006, injury.
2. The compensation rates are \$416/374.
3. Respondents accepted a 10% permanent impairment rating to the left lower extremity and a 10% permanent impairment rating to the right knee.
4. There was no suitable employment at the respondent employer.

The claimant contends she is entitled to a program of rehabilitation and to additional permanent partial disability benefits of 7% to the body as a whole because of her limp, as assigned by Dr. Jason Stewart. The claimant specifically asks for payment of tuition, mileage, books, expenses and student loan interest. The claimant further contends that rehabilitation is available for both scheduled and unscheduled injuries.

Respondents contend the claimant is not entitled to a 7% permanent impairment rating, as this is based upon non-objective findings. Respondents rely on *Singleton v. City of Pine Bluff*. Respondents also contend the claimant is not entitled to vocational rehabilitation benefits since her injuries are scheduled and scheduled injuries do not rise to permanent disability. Respondents contend under Ark. Code Ann. §11-9-505, the claimant is not entitled to vocational benefits.

ISSUES TO BE LITIGATED

1. Rehabilitation benefits.
2. Permanent impairment rating.
3. Attorney's fee.

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 were three compensable injuries: A November 1, 2006, injury, a February 15, 2007, injury, and a June 5, 2006, injury.
2. The compensation rates are \$416/374.
3. Respondents accepted a 10% permanent impairment rating to the left lower extremity and a 10% permanent impairment rating to the right knee.
4. There was no suitable employment at the respondent employer.
5. The claimant has proven by a preponderance of the evidence that the registered nursing vocational rehabilitation program she has submitted is reasonable in relation to her disability. Respondents are responsible for the reasonable costs of the program, to include books, tuition, uniforms, testing fees, interest on the student loan, travel expenses, and prerequisite course work.
6. The claimant has failed to prove by a preponderance of the evidence that the additional 7% permanent impairment rating is supported by objective and measurable findings.
7. No indemnity benefits have been awarded herein; therefore, no attorney's fee is awarded.

DISCUSSION

The claimant, 34 years old, testified that she has a high school diploma, some college and a certificate from UAMS for a paramedic. The claimant has five years work

experience with the respondent employer. The claimant had two years work experience as a patient care technician at Children's Hospital and she worked as a life skills trainer at the Conway Human Development Center for about nine years. The claimant testified that she does not have any secretarial or office skills to transfer to another job and could not physically handle the prior Human Development Center position.

The claimant sustained three injuries while working for the respondent employer. On June 5, 2006, the claimant was on a call and she was navigating around a flower bed when she felt her right knee pop and there was pain. The claimant was evaluated at the emergency room and had no further treatment. On November 1, 2006, the claimant was in the back of an ambulance working on a patient and she lost her balance and her knee popped again. On February 15, 2007, the claimant sat in a broken chair and, as she attempted to get up, her left knee popped out of place.

The claimant has not returned to work as a paramedic and was terminated on August 15, 2007. No job offer or re-employment assistance has been offered. The claimant was unaware of any other job she could perform with pay comparable to her paramedic job.

The claimant chose an accelerated nursing program because she could get her diploma without graduating with a bachelor's degree. The claimant testified that she had been in the medical health care field since 1992 and likes that type of work. The claimant started the nursing program in January 2008, but also had to take some preparatory courses, starting fall semester last year. The claimant is expected to complete the nursing program in December 2008 and will be able to seek employment

as a registered nurse. The claimant provided a list of expenses she has incurred, to include books, testing fees and tuition and fees and scrubs that are required. The claimant has paid for these expenses herself by obtaining a student loan at an 8.25% interest rate. The claimant testified that she was not aware that vocational rehabilitation was available through her workers' compensation claim until she secured an attorney.

Under cross examination, the claimant confirmed that she had not studied the nursing job market to determine the pay level or the exact types of nursing opportunities that might be available.

The claimant testified that she now has a limp and it is worse some days more than others. Dr. Stewart rated the claimant with a 7% permanent impairment rating for this condition.

ADJUDICATION

Respondents have accepted a 10% permanent impairment rating to both knees and those benefits have been paid. The claimant now contends that she is entitled to an additional 7% permanent impairment due to her limp. Dr. Stewart opined in his February 13, 2008, deposition that an additional 7% permanency is appropriate for the claimant's limp, as provided in the *AMA Guides to the Evaluation of Permanent Impairment, 4th Ed.*, page 76, Table 36. Dr. Stewart opined in the present case there is nothing objective about the claimant's gait and is an activity that comes under the claimant's voluntary control. Any determination of the existence or extent of physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. §11-9-704(c)(1)(B) (Repl. 2007).

After taking into consideration the medical evidence and the requirements for a permanent impairment, I find the claimant has failed to prove by a preponderance of the evidence that the additional 7% impairment for her limp, as assigned by Dr. Stewart, complies with the requirements of “objective and measurable physical findings.” Respondents have already accepted a 10% permanent impairment to each knee.

The claimant next contends that respondents are liable for her vocational rehabilitation program and ask that benefits be awarded. Respondents contend since the claimant’s injuries are scheduled that vocational rehabilitation is not appropriate. Respondents contend that scheduled injuries do not rise to permanent disability.

Ark. Code Ann. §11-9-505(b)(1) provides:

In addition to benefits otherwise provided for by this chapter, an employee who is entitled to receive compensation benefits for permanent disability and who has not been offered an opportunity to return to work or reemployment assistance shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation if the commission finds that the program is reasonable in relation to the disability sustained by the employee.

The Court of Appeals held in *Hampton & Crain v. Black*, 34 Ark. App. 77, 806 S.W.2d 21 (1991), that the claimant who sustained an eye injury and was a carpenter was entitled to vocational rehabilitation benefits. In *Black*, the claimant had an eye injury and had not actually been assigned a permanent rating but a permanent rating was anticipated. The Court held that Ark. Code Ann. §11-9-505 (*supra*), does not require that permanent disability benefits be awarded a claimant before he can have vocational rehabilitation but only that he be “entitled to receive compensation benefits for a permanent disability.”

In the present case, the claimant has received a permanent disability rating on both knees and can no longer perform her job as a paramedic because of the physical requirements of the job. She has evaluated various careers and since she has been in the medical field for the majority of her working history, she has entered into a program for nursing. Since she has a paramedic background, she can enter the accelerated program and finish in one year after taking some additional course work. The claimant has submitted the course of study along with the costs associated. The R.N. field offers a wide variety of opportunities and situations that would allow the claimant to work even with her restrictions.

The claimant's work injury and her background puts her in the right situation to take advantage of vocational rehabilitation. She has injured both knees, was working in a physically demanding career, has a good start on the requirements for a new career, and is motivated to undergo the training for the new career that would keep her in the job market. The claimant can no longer work for the respondent employer. After considering the claimant's injuries and all the other factors to be considered, I find the vocational program the claimant has submitted is reasonable in relation to the disability she has sustained. I find respondents are responsible for the reasonable costs of the program, to include books, tuition, uniforms, testing fees, as well as interest on the student loan and the prerequisite course work and traveling expenses.

ORDER

The claimant has proven by a preponderance of the evidence that the registered nursing vocational rehabilitation program she has submitted is reasonable in relation to her disability. Respondents are responsible for the reasonable costs of the program, to

include books, tuition, uniforms, testing fees, interest on the student loan and travel expenses and prerequisite course work. The claimant has failed to prove by a preponderance of the evidence that the additional 7% permanent impairment rating is supported by objective and measurable findings.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**