

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E221249

TONY HORTON,  
EMPLOYEE

CLAIMANT

UAMS,  
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JULY 10, 2003

Upon review before the FULL COMMISSION in Little Rock,  
Pulaski County, Arkansas.

Claimant represented by HONORABLE MARK MARTIN, Attorney at  
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE THOMAS PENDOWSKI,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the  
Administrative Law Judge filed November 21, 2002. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission  
has jurisdiction of this claim.
2. On November 17, 1992, the relationship of  
employee-self insured employer-third party  
administrator existed between the parties.
3. On November 17, 1992, the claimant sustained  
a compensable injury to her right knee.

4. As a result of the compensable injury to her right knee, the claimant has subsequently experienced compensable consequences or complications involving her left knee, her hips, her lower back, and her left upper extremity, including her shoulder. The claimant has failed to prove that any difficulties involving her hands and wrists (in the form of bilateral carpal tunnel syndrome), her right shoulder, and her neck or cervical spine are causally related to her initial compensable right knee injury. Therefore, these various conditions and difficulties do not represent compensable consequences or complications of the claimant's initial compensable right knee injury.
5. With certain exceptions, which will hereafter be addressed, the medical expenses incurred by the claimant as the result of her compensable injury have been voluntarily paid by the respondents.
6. The weight loss program provided the claimant by Dr. Friedl, the massage therapy, the water therapy or aqua aerobics, and the medications Oxycodone/Oxycontin IR, Prilosec, Prednisone, and Senokot, all constitute reasonably necessary medical services for either the claimant's initial compensable right knee injury or her subsequent compensable consequences and complications. Under Ark. Code Ann. § 11-9-508, the expenses incurred for such services is the liability of the respondents herein.
7. A chair lift constitutes a reasonable necessary prosthetic device required by the claimant as a result of her compensable injury. Pursuant to Ark. Code Ann. § 11-9-508, the claimant is entitled to access to such a device at the respondents' expense.

8. The claimant has proven by the greater weight of the credible evidence that the permanent physical impairment or loss of functional (sic) of her right lower extremity, resulting from her compensable knee injury, prevents her from having a reasonable expectation of obtaining regular gainful employment in the open job market. Therefore, under the provisions of Ark. Code Ann. § 11-9-519, the claimant has been rendered permanently totally disabled as a result of her compensable injury.
9. The respondents have controverted the claimant's entitlement to any permanent disability benefits in excess of a permanent partial disability of 50% to the leg below the hip, her entitlement to the expense incurred for the weight loss program provided by Dr. Friedl, the expense incurred for massage therapy, the expense incurred for water therapy, or aqua aerobics, and the expense incurred for the medications Oxycodone/Oxycontin IR, Prilosec, Prednisone, Phentermine, and Senokot. The respondents have also controverted the claimant's entitlement to any expense incurred in obtaining the use of a chair left (sic).
10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee for all controverted benefits herein awarded.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact

made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 1996).

For prevailing on this appeal before the Full Commission, the claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner Yates dissents.

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DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant was permanently and totally

disabled. Based upon my de novo review of the record, I find that the claimant has failed to met her burden of proof.

I find that the evidence does not support a finding of permanent and total disability. Permanent disability compensation is paid where the permanent effects of a work-related injury incapacitate the worker from earning the wages which he was receiving at the time of the injury. When making a determination of the degree of permanent disability sustained by an injured worker with an unscheduled injury, the Commission must consider medical evidence demonstrating the degree to which the worker's anatomical disabilities impair his earning capacity, as well as other factors such as the worker's age, education, work experience, and other matters which may reasonably be expected to affect the workers' future earning capacity. Such other matters are motivation, post-injury income, credibility, and demeanor. Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946 (1984). Curry v. Franklin Electric, 32 Ark. App. 168, 798 S.W.2d 130 (1990). When it becomes evident that the worker's underlying condition has become stable and that no further treatment will improve the

condition, the disability is deemed to be permanent. If the employee is totally incapacitated from earning a livelihood at that time, he is entitled to compensation for permanent and total disability. Minor v. Poinsett Lumber & Manufacturing Co., 235 Ark. 195, 357 S.W.2d 504 (1962).

An employee who is injured to the extent that he can perform services that are so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist may be classified a totally disabled under the odd-lot doctrine. Lewis v. Camelot Hotel, 35 Ark. App. 212, 816 S.W.2d 632 (1991). The odd-lot doctrine recognizes the obvious severity of some injuries may combine with other factors to preclude the employee from obtaining employment in any reasonably stable market, although the worker is not altogether incapacitated from work. Id. The factors which may combine with the obvious severity of the employee's injury to place him in the odd-lot category are the employee's mental capacity, education, training and age. Id. If the claimant makes a prima facie showing that he falls in the odd-lot category, the respondents have the burden of proving that "some kind of suitable work is regularly and continuously available to the claimant." Id.

In considering the factors which may affect an employee's future earning capacity, the Commission may consider the claimant's motivation to return to work, since a lack of interest or negative attitude impedes the Commission's assessment of the claimant's loss of earning capacity. City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W. 2d 946 (1984); Oller v. Champion Parts Rebuilders, 5 Ark. App. 307, 635 S.W. 2d 276 1982.

In my opinion, a review of the evidence indicates that the claimant was not permanently and totally disabled. The claimant is only 48 years old. Her work history includes some factory work, but she ultimately obtained an LPN license and had a career in the medical field. The claimant has a high-school education as well, and has taken computer competency classes since her compensable injury. The record fails to contain any medical opinion stating that the claimant was permanently and totally disabled. The evidence indicates that the claimant has volunteered at the hospital and has not relinquished her title as vice-president of her husband's company, Backflo Corrections. The claimant is able to do reception work, evidence by her work with the hospital auxiliary, as well as her ability to do that for her husband's company. The claimant can drive

an automobile and has lost a substantial amount of weight since the accident. Therefore, when I consider the totality of the evidence, I cannot find that the claimant is permanently and totally disabled. Accordingly, I must dissent from the majority's finding.

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JOE E. YATES, Commissioner