

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E912143

SHERRI KENNON, EMPLOYEE	CLAIMANT
CV'S FAMILY FOODS, EMPLOYER	RESPONDENT NO. 1
WAUSAU BUSINESS INS. CO., INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 11, 2003

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

Claimant represented by HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondent No. 1 represented by HONORABLE JAMES ARNOLD, II,
Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by HONORABLE JUDY RUDD,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals and Respondent No. 1 and Respondent No. 2 cross-appeal from a decision of the Administrative Law Judge filed October 14, 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 September 27, 1999, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her low back on September 27, 1999.
4. The claimant is entitled to a weekly compensation rate of \$160.00 for temporary total disability and \$154.00 for permanent partial disability.
5. Medical expenses have been paid and temporary total disability has been paid through October 23, 2001.
6. The claimant's healing period ended on October 23, 2001.
7. Respondents No. 1 accepted and are paying a 7 percent whole body impairment.
8. The Commission's opinion dated August 31, 2001, is the law of this case.
9. The claimant has proven by a preponderance of the evidence that she is entitled to wage loss in the amount of 3 percent over and above her 7 percent permanent impairment rating.
10. There is no Second Injury Fund liability found in this matter.
11. The functional capacity evaluation administered by Mr. Chris Honaker in April and June 2002 to this claimant was based on subjective findings rather than objective findings. The evaluator, Chris Honaker, has clearly stated that the outcome of the tests which he administered is under the control of the patient.

12. The respondents have controverted this claimant's entitlement to wage loss.
13. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the majority opinion finding that claimant is entitled to benefits for wage-loss disability in an amount equal to only 3% to the body as a whole.

On September 27, 1999, claimant sustained an admittedly compensable injury to her lumbar spine. She was diagnosed with a herniated disk at L5-S1, but no surgery has been performed. Claimant's permanent anatomical impairment was assessed at 7% to the body as a whole.

Claimant is 37 years old and has a high school education with two years of college resulting in an Associate Degree in General Education. She has prior work experience as a cashier, waitress, certified lighting technician, and a teacher's aide for an elementary school. As best I can tell, claimant was earning about \$6.00 per hour at the time of her injury. Claimant continues to have a burning sensation in her lower back, as well as pain in her lower back and down into her hips and left lower extremity. Claimant testified that she cannot sit or stand for prolonged periods of time and must avoid repetitive twisting and bending.

Claimant has made substantial efforts to obtain employment subsequent to the injury. She has sought jobs at

approximately 40 places without success. She has also contacted the local offices of the Employment Security Division and temporary employment agencies. Claimant also visited with Arkansas Rehabilitation Services. Claimant stated that she has been unable to obtain employment even at minimum wage. Claimant testified that the compensable injury has prevented her from returning to work at the same or similar wages she was earning at the time of the accident.

In my opinion, the compensable injury has resulted in a much higher disability than the 3% awarded by the Commission. Accordingly, I would modify the opinion of the Administrative Law Judge to award sufficient benefits to adequately compensate claimant for the permanent disability caused by the compensable injury.

SHELBY W. TURNER, Commissioner