

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F100472

PATRICIA WEBER,
EMPLOYEE

CLAIMANT

BEST WESTERN OF ARKADELPHIA,
EMPLOYER

RESPONDENT

FREMONT INDEMNITY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 20, 2003

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

Claimant appeared PRO SE.

Respondents represented by HONORABLE ANDREW M. IVEY,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed in part
and reversed in part.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal an Administrative Law Judge's opinion filed March 13, 2003. The Administrative Law Judge found that the claimant was entitled to a change of physician to Dr. Jim Moore. The Administrative Law Judge found that the claimant's weekly indemnity rate was \$70.00. The Administrative Law Judge found that the claimant was entitled to ongoing reasonably necessary medical treatment, "including treatment for vision problems but not including treatment for complaints of difficulties with her feet." The Administrative Law Judge

found that the claimant was entitled to a 10% anatomical impairment rating and 20% wage loss disability.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she was entitled to a change of physician to Dr. Moore. We find that the claimant's weekly indemnity rate was \$70.00. We find that the claimant proved she was entitled to reasonably necessary medical treatment for her thoracic spine, left foot, and right knee. The claimant failed to prove she was entitled to medical treatment for her vision problems. We find that the claimant sustained anatomical impairment in the amount of 3% and wage-loss disability in the amount of 10%. The Full Commission therefore affirms in part and reverses in part the Administrative Law Judge's opinion.

I. HISTORY

Patricia Weber, age 61, testified that she held a Bachelor of Arts in English with a minor in Economics. Ms. Weber agreed that she was also trained as a "certified care provider" for seniors. The claimant began working for Senior Specialists (Area Agency on Aging) in 1996. The claimant agreed that she performed "cooking, housekeeping, shopping, supervising their medications, and even sometimes supervising bathing activities." The claimant testified

that she also began working for the respondent-employer, Best Western, in 1996. The claimant worked as a housekeeper for the respondents on weekends.

The parties stipulated that the claimant sustained a compensable injury on January 1, 2001. She testified:

I was reaching for something underneath a stack of towels that I had up on the top ... And I fell off the balcony, and I landed face first on the pavement. And I was really lucky because I landed face down but my arm was like this (demonstrating) so I didn't have all my teeth knocked out and my face bashed in....But, as I fell, I tried to grab the housekeeping cart, just thinking it was going to keep me up there. But then what happened was, after I landed flat on the pavement, the housekeeping cart also fell one story and landed flat on my back.

The record indicates that the claimant was admitted to Baptist Health, Arkadelphia, where an x-ray of the thoracic spine was taken on January 1, 2001:

The thoracic vertebral bodies are normally mineralized. There is a compression fracture of T3 with approximately 40% loss of height. The remaining thoracic vertebrae are normal and the pedicles are normal.

IMPRESSION:

Compression fracture of T3 with a 40%-50% loss of height.

An x-ray of the claimant's left foot showed "a fracture of a proximal phalanx of her first digit." The claimant was

diagnosed with "compression fracture of T2," "laceration of head," and "fracture of toe."

A progress note was entered on or about January 2, 2001:

Pt with 3 inch long laceration to scalp just into hairline with staples for repair. Both knees have abrasions to them. The right knee is quite swollen and is very painful when she has to move it to pick her leg up. When she does this the knee looks to have something that is displaced and sticking out on the right side. Left foot is very painful when anything touches the toes at all[.]

A whole-body bone scan was taken on January 4, 2001, with the following impression:

Several areas of increased uptake which correspond to known recent fractures. These fractures are at the body of T3, the right patella and phalanges on the left. There is also increased uptake in the tarsal bones of the left foot, and I am unable to identify a definite fracture on the plain films. There may be an occult fracture there which will become more visible as healing begins.

Dr. Gary P. Gehrki consulted with the claimant and assessed the following on January 4, 2001:

1. T3 compression fracture, stable.
2. Inferior pole right patellar fracture with apparent intactness of the extensor mechanism.
3. Left great toe, first phalanx fracture at the interphalangeal joint, fracture in acceptable position.

The claimant also treated with Dr. Kevin C. McLeod.

Dr. Gehrki noted on January 5, 2001 that the claimant was still tender in the chest, "but main problem is pain in legs." The claimant was discharged on January 10, 2001 with the following diagnosis: "Fall from second floor balcony with trauma causing compression fracture of T3, right patellar fracture and fracture of the left first toe with possible fracture of the left metatarsals."

The respondents began paying temporary total disability compensation on or about January 15, 2001 (for the period beginning January 2, 2001).

It was noted on January 18, 2001 that a CT scan of the head taken while the claimant was hospitalized had shown no intra-cranial abnormality. The claimant was treated conservatively.

An MRI of the brain taken February 22, 2001 was normal. An MRI of the cervical spine was also taken on February 22, 2001, with the following impression:

1. Acute 50% anterior compression fracture of the T2 vertebral body. There is mild buckling in the posterior cortex and mild effacement of the thoracic cord on the right.
2. There are degenerative disc changes with hypertrophic spurring anteriorly and posteriorly from C3-4 through C6-7.

3. There is narrowing of the neuroforamen on the right at C4-5 and C5-6. There may be a small foraminal disc herniation at C5-6.

On March 1, 2001, Dr. McLeod indicated that the claimant could return to light duty effective March 5, 2001, with the restriction "sit-down work only."

A representative of Best Western Continental Motor Inn wrote to the claimant on April 2, 2001:

As you already know, as a gift to you, we have been paying your salary from your weekday job for the past three months. We are under no obligation to do this. However, due to your long history of employment with Best Western, we wanted to help you financially while you recuperated from your accident.

We now find that conditions prevent us from continuing to pay a salary for your other job. Therefore, the enclosed check will be the final gift we are able to send you.

Hopefully, you will be able to return to work shortly.

We shall continue to assist you in anyway we can, by providing transportation, or by holding your position until the time you choose to return.

Dr. James E. Griffin examined the claimant on April 11, 2001, and his impression was "vertigo" and "hearing loss." A physician's impression on April 26, 2001 was "Left unilateral vestibular weakness secondary to labryinthine injury." The physician recommended "Vestibular rehab." Dr. A. Henry Thomas wrote to Philip Wilson on June 8, 2001,

stating, "Ms. Weber has double vision which apparently was caused by her fall this past January. I have given her a prescription for prism glasses to help with the double vision, which could well be a result of her injury."

The claimant recorded and had transcribed a visit with Dr. McLeod on the reported date of June 4 and a subsequent follow-up appointment. Dr. McLeod reported on June 11, 2001:

She comes back bringing the MRI. We reviewed this for her cranium and also for her spine. Indeed it did have a T2 level compression fracture but no evident cord or nerve root impingement in this area. There is a suggestion of possible neuroforamen encroachment at the C spine 5-6. This is the area of her radiated subjective pain. I think this is going to need qualified review from a neurosurgeon for possible implications if her neurologic symptoms continue to deteriorate. I have been as kind as possible to Ms. Weber and have allowed her and her companion to record on there (sic) own cassette several of our last visits. I gave her considerable time today to explain her subjective symptoms. She relayed a host of problems demonstrating at various times standing erect. Her problems with equilibrium, a possible middle ear damage on the right side. She related symptoms of lack of 3-D perception. This is with standing, getting in and out of chairs. She is concerned about her spinal alignment, how she is not able to keep her shoulders upright, she uses a cane for balance. She complains of pain to her right knee and to both feet. She states she has a fear of falling. She states that her left foot, because of the injury, is one inch shorter than the right foot and has continued swelling. She states she is majorly (sic) impaired in daily skills including trying to wash dishes and

clothes. She states she can not actually stand still and that she has to pace because of the pain in her back. She states that she spends half her daily routine just in bed trying to regain comfort. She says her pain is related to activity level. I am certainly disqualifying myself in any measurable means of being able to assess the multitude of symptoms, objective and subjective, that Ms. Weber is alluding to. As the orthopedic surgeon originally involved in her initial evaluation and treatment, I am not qualified to try to evaluate this array of symptomatic distress. I have no treatment options to offer Ms. Weber. I think a possible specialist in neurology would be better able to coordinate the impairment rating for this unfortunate patient.

Dr. McLeod wrote to the claimant on June 11, 2001, stating, "I feel I am not qualified to handle your array of neurological complaints. I must dismiss myself from your immediate care, however, I will continue to assist you for the next thirty days regarding any specific orthopedic need." The record indicates that Dr. McLeod recommended a neurologist, Dr. Donald Brady.

Dr. Brady arranged physical therapy for the claimant, which began June 25, 2001. The claimant wrote in July 2001 that physical therapy was "helping very much."

The claimant testified that she had experienced vision problems "From the time of the accident, but I was so extremely dizzy - It was like a room-spinning dizzy. And the vision problem is like I don't see a wall flat; I see it

kind of wavy....and I thought the vision problems were connected to the dizziness because the room went around and around and I saw the room go around and around in my eyes....But I had the problem from the beginning. It's just that I didn't differentiate it from the other symptoms."

Dr. Frank S. Teed, an ophthalmologist, wrote on July 2, 2001:

Ms. Weber does complain of double vision which seems to have taken place since her fall on January 1, 2001. In all likelihood, this represents a decompensated phoria. This can be related to a trauma. I did ask a strabismus specialist, Dr. Henry Thomas, to evaluate this. I am sure he will be happy to provide you with the results of this exam. He did send a letter to me in which he states that he thinks that the imbalance is due to her head injury. I'm sure he would be happy to provide you with that and it would be clear to you why this is related to the accident.

The respondents ceased paying temporary total disability compensation after August 14, 2001. The claimant contended, however, that her condition had progressively worsened since that time.

The respondents informed the Administrative Law Judge on October 17, 2001, "Respondents have not ceased medical treatment, and in fact, Claimant has been treating with a Dr. Brady. Respondents have denied the request to repeat certain diagnostic tests, because they are not reasonably

necessary, however. Please recall Claimant is set for an IME with Dr. John Wilson, who you appointed, for 11-15-01."

Dr. John L. Wilson examined the claimant on December 5, 2001:

Currently she has pain in the upper dorsal spine as well as neck pain. She has intermittent jerking of the entire body, and also has neck pain....

During the course of the examination Ms. Webber (sic) jerking episodes. There was no loss of bowel or bladder and she was fully conscious during these episodes. She did not appear to be post ictal following the episodes.

Examination today reveals mild restriction of motion of the cervical spine. There is no muscle spasm present....

Examination of the dorsal spine reveals tenderness. There is no muscle spasm present....

Examination of the lumbar spine reveals no muscle spasm. There is a good range of motion....

On palpation of the knee, underneath the patella with the knee going through a full range of motion, there is no difference between the right knee and left knee as far as crepitation is concerned.

X-rays reveals (sic) a fracture of D2 with 50% loss of height and a fracture of the third metatarsal that is healed.

IMPRESSION: Ms. Webber has a history of a fracture of D2 with at least 50% loss of height. She has some type of jerking episodes that I am unable to comment on. Her permanent impairment is 10% to the body as a result of this injury.

The record indicates that the respondent-carrier issued "permanent disability" payments to the claimant on March 13, 2002 and March 27, 2002.

Ms. Weber, *pro se*, claimed entitlement to additional worker's compensation. The claimant contended that she was entitled to a change of physician. The claimant contended that she was entitled to an "adjustment" of her temporary total disability rate. The claimant contended that she was entitled to additional temporary total disability compensation. The claimant contended that she was entitled to the 10% impairment rating assigned by Dr. Wilson. The claimant contended that she was entitled to additional medical treatment, including treatment for vision and foot problems. The claimant contended that she was entitled to permanent total disability. The respondents controverted the claim for additional benefits.

Hearing before the Commission was held on February 21, 2003. The claimant stated at that time, "I would like to just have permanent total disability and just leave off the temporary." The claimant testified that she had not worked since the January 2001 accidental injury. The respondents cross-examined the claimant:

Q. And you did have several offers to resume work as a care provider for private individuals. It that right?

A. If I could work, I could get a job tomorrow. I'd have no trouble. I have excellent references. I have awards. I - -

Q. But you turned down those offers; right?

A. Oh, yeah. I wouldn't have any trouble working if I could work.

The Administrative Law Judge entered the following findings:

1. The claimant is entitled to a change of physician to Dr. Jim Moore, a neurosurgeon in Little Rock.
2. The claimant's weekly indemnity rate for both temporary total disability benefits and permanent partial disability benefits is \$70.00.
3. The claimant is entitled to ongoing reasonable, necessary and related medical treatment as a result of her compensable injury of January 1, 2001, including treatment for vision problems but not including treatment for complaints of difficulties with her feet.
4. The claimant is entitled to a whole body physical impairment rating of 10%.
5. The claimant is entitled to wage loss disability in the amount of 20% rated to the body as a whole.
6. Respondents have controverted the claimant's request to change physicians, additional medical treatment, the physical impairment rating and wage loss disability.

The claimant, *pro se*, appeals to the Full Commission. As we understand her appeal brief, the relevant issues the claimant raises are permanent total disability and "full-time weekly wage." The claimant appears to argue that the Commission should include her work for the respondent-employer, Best Western, and the claimant's other job with Senior Specialists in calculating her average weekly wage. The respondents cross-appeal to the Full Commission. The respondents argue that the Administrative Law Judge awarded the proper compensation rate. The respondents also contend that the claimant is not entitled to permanent and total disability, that the claimant is not entitled to wage-loss disability, that the claimant is not entitled to the 10% rating assigned by Dr. Wilson, and that the claimant is not entitled to additional medical treatment.

II. ADJUDICATION

A. Change of physician

It is now fairly well-settled that an injured employee is generally entitled to a one-time change of physician. Ark. Code Ann. § 11-9-514(a)(3)(a)(ii); Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W.3d 204 (2002). The Administrative Law Judge found in the present matter that the claimant was entitled to a change of physician to

Dr. Jim Moore. The claimant does not directly challenge this finding. The claimant does characterize Dr. Moore as an "insurance" doctor, but the claimant does not argue that she should be able to see someone else. The Full Commission affirms the Administrative Law Judge's finding, "The claimant is entitled to a change of physician to Dr. Jim Moore, a neurosurgeon in Little Rock."

B. Weekly indemnity rate

The Administrative Law Judge found that the claimant's weekly indemnity rate was \$70.00. The claimant contended before the Administrative Law Judge and the Full Commission that we should consider both her work for Best Western, and the claimant's income with Senior Specialists in order to average a higher indemnity rate. There is no authority for the Commission to do so. We note the Administrative Law Judge's citation of Hart's Exxon Service Station v. Prater, 268 Ark. 961, 597 S.W.2d 130 (1980), where the Supreme Court expressly found that Arkansas law "makes no provision for combining wages earned in concurrent employments but, to the contrary, specifically limits the determination of an employee's average weekly wage to those wages earned by the employee under the contract of hire at the time he receives his injury."

The present claimant was working under contract with Best Western when she was injured in January 2001. Her weekend employment with the respondent-employer had nothing to do with her other job at Senior Specialists. We note that Best Western was apparently supplementing the claimant's salary from Senior Specialists after the claimant's compensable injury. Nevertheless, the Commission cannot increase the claimant's average weekly wage and in effect penalize the respondent-employer, based on another employer's pay. The Full Commission therefore affirms the Administrative Law Judge's finding, "The claimant's weekly indemnity rate for both temporary total disability benefits and permanent partial disability benefits is \$70.00."

C. Medical treatment

The employer must provide all medical treatment which is reasonably necessary in connection with the employee's compensable injury. Ark. Code Ann. § 11-9-508(a). The claimant must prove by a preponderance of the evidence that requested medical treatment is reasonably necessary. What constitutes reasonably necessary medical treatment is a question of fact for the Commission to determine. Arkansas Dep't of Cor. v. Holybee, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

In the present matter, the Administrative Law Judge found that the claimant was entitled to ongoing medical treatment, "including treatment for vision problems but not including treatment for complaints of difficulties with her feet." Based on our review of the record, the Full Commission finds that the claimant proved she was entitled to reasonably necessary medical treatment provided in connection with the compensable injuries to her thoracic spine, left foot, and right knee. The claimant failed to prove she was entitled to treatment for alleged "vision problems."

The claimant injured her left foot, right knee, and thoracic spine in the specific incident occurring on January 1, 2001. There are objective medical findings establishing an accidental injury to each of these anatomic regions, although there are no specific additional treatment recommendations in the record. However, the Full Commission does not affirm the Administrative Law Judge's finding that the claimant's "vision problems" are related to her compensable injury. The claimant testified that she began having these vision problems immediately after the injury, but the record does not corroborate her testimony. The claimant did suffer a laceration to her scalp in January

2001, but there is no evidence that she sustained any sort of ophthalmologic injury or bony skull injury. A CT scan taken January 18, 2001 showed "no intra-cranial abnormality." An MRI of the brain in February 2001 was normal. We also note that the claimant began reporting "vertigo" and "hearing loss" in April 2001. Dr. Thomas and Dr. Teed subsequently subsequently began treating the claimant for "double vision." Nevertheless, their attempts to causally relate this alleged condition to the claimant's injury are not supported by the record and are not stated within a reasonable degree of medical certainty, as is required by Act 796 of 1993. The Full Commission finds that the claimant failed to prove that treatment for her "vision problems" was reasonably necessary in connection with the claimant's compensable injury.

D. Anatomical impairment

An injured worker must prove by a preponderance of the evidence that she is entitled to an award for a permanent physical impairment. Ark. Code Ann. §11-9-522(g) directed the Commission to adopt an impairment rating guide to be used in assessing anatomical impairment. The Commission therefore established Rule 34, which adopted the Guides to the Evaluation of Permanent Impairment (4th ed. 1993)

published by the American Medical Association. Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. § 11-9-704(c).

In the present matter, Dr. Wilson assigned the claimant a 10% permanent impairment in December 2001. Dr. Wilson did not indicate that he had consulted the Guides in assigning anatomical impairment. The Administrative Law Judge did not reference the Guides in awarding the claimant a 10% anatomical impairment rating. The Commission must reference the Guides in assigning anatomical impairment. The record shows that the claimant sustained a "Compression fracture of T3 with a 40%-50% loss of height" as a result of her compensable injury. Table 75 of the Guides, for whole-person impairment percents due to specific spine disorders, assigns a 3% impairment of the whole person for a 26%-50% compression in the thoracic spine. The Full Commission therefore finds that the claimant is entitled to a 3% rating for her thoracic compression fracture.

E. Wage loss

Finally, the wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. In considering claims for permanent

partial disability exceeding the amount of the claimant's permanent anatomical impairment, we take into account the employee's age, education, work experience, or any other relevant matter. Ark. Code Ann. § 11-9-522(b)(1).

The claimant in the present matter argues that she is permanently and totally disabled. The record does not support the claimant's argument. There were no permanent restrictions assigned by any treating physician, although Dr. McLeod did recommend "sit-down work only" while the claimant was still within her healing period in March 2001. Dr. Wilson in December 2001 did not keep the claimant off work. There is no evidence before the Commission which would support a finding of permanent total disability.

The Full Commission has determined *supra* that the claimant sustained anatomical impairment in the amount of 3%. We do not affirm the Administrative Law Judge's award of 20% wage-loss disability. The claimant is age 61 and has an undergraduate degree in English. The evidence before us indicates that the claimant could find remunerative employment. The claimant testified, "I could get a job tomorrow. I'd have no trouble." We also note the respondent-employer's April 2001 letter, where the employer explicitly informed the claimant her job was still

available. We agree with the respondents that the claimant is not motivated to find gainful employment. A claimant's lack of motivation is an appropriate factor for the Commission to consider in assessing wage-loss disability. Emerson Elec. v. Gaston, 75 Ark. App. 232, 58 S.W.3d 848 (2001). However, the Full Commission does not agree with the respondents' argument that the claimant is entitled to no wage-loss disability. In considering the claimant's age, advanced education, work experience, lack of motivation, and the type of compensable injury she sustained, the Full Commission finds that the claimant proved she was entitled to wage-loss disability in the amount of 10%.

Based on our *de novo* review of the entire record, the Full Commission affirms the Administrative Law Judge's opinion that the claimant is entitled to a change of physician to Dr. Jim Moore. We affirm the Administrative Law Judge's finding that the claimant's weekly indemnity rate is \$70.00. The Full Commission reverses the Administrative Law Judge's finding that the claimant proved she was entitled to medical treatment provided in connection with her "vision problems." We find that the claimant proved she was entitled to reasonably necessary medical treatment provided in connection with the compensable

injuries to the claimant's thoracic spine, left foot, and right knee. The Full Commission finds that the claimant proved she was entitled to anatomical impairment in the amount of 3% and additional wage-loss disability in the amount of 10%. The Full Commission therefore affirms in part and reverses in part the opinion of the Administrative Law Judge. 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. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

_____ I respectfully concur in part and dissent in part from the majority's opinion. I concur in the majority's holding that claimant is entitled to a change of physician, the majority's computation of claimant's average weekly wage, the award of additional medical treatment for injuries to claimant's foot, the award of wage-loss disability benefits in the amount of 10%, and the award of permanent impairment in the amount of 3%. I respectfully dissent from the majority's finding that claimant's vision problems and

related medical treatments are not compensable and the majority's reduction of the Administrative Law Judge's award of a permanent impairment rating to the body as a whole of 10% and wage-loss disability benefit of 20%.

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's computation of the claimant's average weekly wage, the finding that the claimant's vision problems and the medical treatment related thereto is not a compensable consequence of her admittedly compensable injury, and the finding that the claimant is not permanently and totally disabled. However, I must respectfully dissent from the majority's award to the claimant in the form of additional medical treatment on her foot, the award of wage loss disability benefits in the amount of 10%, and the award of permanent impairment in the amount of 3%. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable

injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

In my opinion, the medical evidence demonstrates that the only definitive injury to the claimant's foot was a fracture of her great left toe. Dr. Wilson stated in his December 5, 2001, report, that the fracture to the claimant's toe had healed. The claimant contended that she sustained a fracture her left arch which was still causing her problems. However, the medical records fail to mention any fracture to the arch of the claimant's foot. Accordingly, I find that the claimant is not entitled to any additional medical treatment with respect to her left foot.

The claimant requested a 10% permanent partial impairment rating as assessed by Dr. Wilson. The majority has reduced the claimant's permanent anatomical impairment to 3%. In my opinion, the claimant is not entitled to any permanent impairment. The evidence demonstrates that Dr. McCleod, who was the claimant's treating physician, released the claimant from his care without assessing any permanent impairment. Further, the claimant's injury was treated non-surgically. Therefore, I find that the claimant is not entitled any permanent impairment.

The claimant has also failed to prove by a preponderance of the evidence that she is entitled to any wage loss disability benefits. Because I find that claimant is not entitled to any permanent anatomical impairment, she cannot be awarded wage loss disability benefits. The claimant must have a permanent anatomical impairment in order to receive wage loss disability benefits. If I were to find that the claimant was entitled to permanent anatomical impairment, a finding which I do not make, I would still find that the claimant is not entitled to any wage loss disability benefits. Although I can agree with the majority that the claimant is not entitled to permanent and total disability benefits, the record fails to demonstrate that she is entitled to any wage loss disability benefits at all.

The evidence simply does not support a finding that the claimant is not able to earn meaningful wages in some other type of employment. The claimant has a college degree with a major in English and a minor in Economics. The claimant's college education would enable her to pursue employment opportunities that would fit within her alleged physical limitations. The claimant testified that the work she performed for the respondent-employer was largely supervisory, which would include task that the claimant would likely be able to perform even under light duty restrictions.

Further, in my opinion, the claimant lacks the motivation to return to work. Motivation is a factor to be considered in assessing wage loss disability benefits. The claimant testified that she has not actively sought work since the time of her injury. She has also produced drawings which an art dealer in Hot Springs would be willing to sell for her. However, the claimant has not followed up with the art dealer. The claimant also testified that she was familiar with word processing programs and knew how to write letters and produce documents. Further, the claimant has refused offers to return to work as a private care-giver for private individuals. The claimant stated at the hearing that she would have not trouble finding work if she felt like

doing it. The claimant testified that she was able to perform the housekeeping duties around her apartment and could take care of herself. Simply put, the claimant lacks the subsequent motivation to return to work. Therefore, she should not be awarded any wage loss disability benefits.

Therefore, for all the reasons set forth herein, I must respectfully concur in part and dissent in part from the majority's opinion.

KAREN H. MCKINNEY, Commissioner