

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F102626

STACY M. FALCINELLI,
EMPLOYEE

CLAIMANT

RIVERVIEW HIGH SCHOOL,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 10, 2004

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

Claimant represented by HONORABLE TIMOTHY MYERS, Attorney at
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE BETTY DEMORY, 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 June 14, 2004. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. Employee/employer relationship existed at all
relevant times and on or about February 27,
2001.
2. The claimant sustained compensable injuries
arising out of an automobile wreck on
February 27, 2001.

3. This was a compensable injury that the respondents accepted as compensable and the claimant received treatment.
4. Surgery was performed and impairment ratings given. The claimant has received payment for certain impairment ratings at this time.
5. The claimant's average weekly wage during the relevant period was \$511.00, entitling her to a temporary total disability rate of \$341.00 and a permanent partial disability rate of \$256.00. The respondents previously underpaid the claimant's indemnity benefits at a temporary disability rate of \$302.00 per week and permanent partial disability benefits at a rate of \$209.00 per week. The respondents are liable for the indicated underpayment in benefits.
6. The claimant has sustained a 7% permanent partial disability rating to the body as a whole attributable to her unscheduled injuries in excess of the permanent anatomical impairment accepted and paid by the respondents.

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. 2002).

Since the claimant's injury occurred prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, 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(b) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant is entitled to wage loss disability of 7%. The claimant performed multiple jobs for the respondents at the time of her injury. As a result of her injury, she was unable to return to one of her jobs for respondents thus resulting in a loss of income. This one job, a part-time bus driver, only required the claimant to drive a bus approximately 25 minutes in the morning, and 25-30 minutes in the evening, five days a week for nine months a year. Although the claimant was unable to return to this job, the claimant has failed to look outside the school district for another part-time job to replace her lost income. In my opinion the claimant's lack of motivation in seeking part-time work outside the school district is a clear impediment to a true assessment of any decrease in the claimant's wage earning capacity. Consequently, I cannot find that the claimant has established by a preponderance of the evidence that she is entitled to any wage loss disability.

Accordingly, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner