

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208819

ANGELA MASON (SORRENTINO),
EMPLOYEE

CLAIMANT

L. A. DARLING CO.,
SELF-INSURED EMPLOYER

RESPONDENT

MANAGEMENT CLAIMS SOLUTIONS,
TPA

RESPONDENT

OPINION FILED JULY 7, 2004

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

Claimant represented by HONORABLE M. KEITH WREN, Attorney at
Law, Little Rock, Arkansas.

Respondents represented by HONORABLE RICHARD LUSBY, Attorney
at Law, Jonesboro, Arkansas.

Decision of the Administrative Law Judge: Affirmed as
modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed December 16, 2003. The administrative law
judge found that the claimant sustained wage-loss disability
in the amount of 35%. After reviewing the entire record *de*
novo, the Full Commission finds that the claimant sustained
wage-loss disability in the amount of 15%. We therefore
affirm, as modified, the opinion of the administrative law
judge.

I. HISTORY

Angela Michelle Sorrentino, age 33, testified that she had attended college for three years. The claimant agreed that her employment history included sales, cashier, and factory work. The claimant testified that she began working for L.A. Darling Company in March 2000, performing computer work and line work. The claimant described line work as "Taking parts off of the line, stacking them on skids or putting them in boxes." The claimant testified that she lifted "Anywhere from real small parts to big parts, shelves, beams."

The parties stipulated that the claimant sustained a compensable injury on February 25, 2002. The claimant testified:

Q. Tell the Judge briefly how you sustained that injury.

A. I was taking parts off the line and stacking them on a skid. When I went to stack it on a skid I couldn't get back up.

Q. What part was this?

A. A heavy wall upright.

On September 30, 2002, Dr. Dewayne Eubanks performed "1. Left L5-S1 microdiscectomy for decompression of the left S1 nerve root. 2. L5 laminectomy and right L5-S1 microdiscectomy for decompression of the right S1 root. 3.

Medial facetectomy at L4-L5 on the right for decompression of the right L5 root."

It appears from the record that Dr. Bruce L. Safman returned the claimant to restricted work on January 3, 2003. Dr. Safman limited the claimant to work four hours daily, with a 15 pound lifting restriction, and a 10 minute break every two hours. The claimant testified that she returned to work on January 13, 2003, four hours daily, light duty.

Dr. Safman wrote on January 24, 2003:

Ms. Mason reports that she is doing fairly well. She still has some lower lumbar tenderness, but it is not very severe....

She has been treated fairly comprehensively. She still has some subjective discomfort, but it is not marked. Physical therapy has been scheduled for tomorrow. She is to be instructed in a back exercise program. I have related that she can taper off her medications over the next weeks.

Her work restrictions at this time will be 6 hours a day with a 25 pound lifting restriction for one week; Then, full duty. I will see her as needed in the future. The patient is at maximum medical improvement as far as disability ratings go. This patient had surgery at two different levels, L4-5 and L5-S1. According to the Guides To The Evaluation of Permanent Impairment, 4th edition, page 113, table 75, this patient would be entitled to a 10% disability rating for the first surgery and 1% disability rating for the additional level, which would be 11% disability rating.

The respondents stipulated that the claimant sustained an anatomical impairment in the amount of 11%, and the claimant testified that she received these payments.

The claimant testified that she began working six hours daily on January 27, 2003, and that she began full duty on February 3, 2003. The claimant testified that she did not think she ever fully recovered from surgery, and that she was not able to perform her work when she returned to full duty. The claimant testified that she would try to work, but "I would get to where I couldn't really stand up or move or anything, my back was hurting....I couldn't do the heavy work, you know, all the bending and stuff." The claimant testified that she reported this circumstance to her supervisor, Angela Gilland, and that Ms. Gilland told her "either do that job or go home." The claimant testified, "I would work a few days and then I would be off for a few days."

Dr. L. L. Shedd of Family Practice Clinic indicated on February 6, 2003 that the claimant could return to work on February 10, 2003. Dr. Shedd noted on March 11, 2003, "Has experienced an exacerbation of her back pain with radiation down left leg. She can't work from 3-8-03 thru 3-16-03." On March 26, 2003, another Family Practice Clinic note asked

that the claimant be excused from work from March 26, 2003 until April 7, 2003.

Dr. John D. Brophy reported on March 31, 2003:

Ms. Angela Mason is a 32-year-old white female seen in consultation for a second opinion at the request of Workers' Compensation concerning back pain status post lumbar diskectomy. In February 2002, she was lifting at work when she developed low back pain. She was evaluated by her primary care physician and treated with medications and was off and on light duty for the next six months. Due to increasing back pain and bilateral lower extremity paresthesias, she was referred for a lumbar CT scan. Based on these results, she was evaluated by Dr. Eubanks which included a lumbar MRI. She underwent a lumbar diskectomy procedure in September 2002 by Dr. Eubanks. Postoperatively, her lower extremity symptoms resolved. Two months after surgery, she was complaining of back pain and was referred to a local pain clinic. She was treated with multiple injections over the next several months which resulted in transient improvement. She underwent one evaluation for physical therapy in early 2003 for instruction in a home exercise program. She was returned to light duty on 13 January, 2003 and full duty on 3 February, 2003. Since returning to full duty, she has noted increasing low back pain with lifting and bending. She has infrequent left lower extremity pain. She has undergone treatment with multiple anti-inflammatories which have been ineffective....She denies significant lower extremity symptoms....

IMPRESSION: Residual back pain status post lumbar diskectomy with myofascial component without clinical evidence of radiculopathy or recurrent HNP.

RECOMMENDATIONS: In my opinion, there is no indication for surgical intervention. I have suggested continued conservative management with

anti-inflammatories and gradual progression of a walking endurance exercise program in an effort to tone her lumbar paraspinal muscles. Based on the results of the postoperative studies and her normal neurologic examination, there is no objective reason why she cannot be cleared to return to work at full duty without restriction. At six months postop, I would consider her at maximum medical improvement with a PPI rating (according to the AMA Guides Guidelines, 5th Ed.) of eleven percent (11%). If she is unable to tolerate full duty, she should consider alternative employment.

The claimant testified that alternative employment was not offered, that light duty work was available, and that her employment with the respondents was in fact terminated because of absenteeism. The claimant's attorney examined Angela Gilland, the respondent-employer's production supervisor:

Q. You've heard her testimony here today that there was some light-duty jobs available out there, such as making boxes and stick wrapping and special racking, did you hear that testimony?

A. Yes, sir, I did.

Q. And, is that true?

A. No, sir, those are not specific light-duty functions. Those jobs are done when the associates are not needed on the line at that moment. They are put on to do those functions at that time and then put back on....

Q. Did you make any effort at all to move her to any other types of lighter duty jobs?

A. There were times, if I had enough manpower I would put her in special racking. And, she would come to me at times and complain, I can't do that anymore. I would shift a few people around to accommodate her but there came a time where you don't have the extra people to do that and I explained to her, Angela, you have to be able to do this job. You've been released to full duty and I need you here to do this job.

Ms. Mason claimed entitlement to additional worker's compensation, and a pre-hearing order was filed on August 20, 2003. The claimant contended that she returned to work at light duty, four hours daily, on January 13, 2003; that she began working six hours daily on January 27, 2003; and that she began working full time on February 3, 2003. The claimant contended that she was unable to consistently perform full-time work, and that she was terminated on April 21, 2003 for missing too much work. The claimant contended that she had been unable to find employment since being terminated. The respondents contended that the claimant was employable and should have no wage-loss disability as a result of the compensable injury.

Hearing before the Commission was held on October 17, 2003. The claimant testified that she had attempted to return to work for other employers. The claimant referred at hearing to Claimant's Exhibit Two, which document identified at least 16 employers with whom the claimant said

she had applied for work. The claimant had not been offered a job. The claimant testified on redirect:

Q. Ms. Sorrentino, Mr. Lusby asked you that you could be making the same wages that you were out at L.A. Darling. What were those wages?

A. I believe it was close to \$11 an hour.

Q. And, is that a 40-hour work week?

A. Anywhere from 40 to maybe 60 a week, sometimes we worked a lot of overtime.

Q. And, was that the best paying job that you ever had?

A. Yes.

Q. Did you want to keep that job?

A. Yes.

Q. If you were physically able to do the work that was available to you out there at L.A. Darling, would you do it?

A. Yes.

Q. Have you been able to earn any wages since you've been terminated by L.A. Darling?

A. No.

Q. Has that been a difficulty for you and your family?

A. Definitely.

The administrative law judge found, "When the claimant's age, education, permanent restrictions and limitations are considered, the evidence preponderates that

she has sustained a loss of earning capacity/wage loss of 35% in excess of her anatomical impairment." The respondents appeal to the Full Commission.

II. ADJUDICATION

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961). Ark. Code Ann. §11-9-522(b) provides:

(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

The present claimant is only 33 years old and testified that she has three years of college. The claimant's work for the respondents involved manual labor occasionally. The claimant sustained a compensable injury in February 2002, and she subsequently underwent surgery at L4-L5 and L5-S1. There are no permanent work restrictions of record from the treating surgeon, Dr. Eubanks. The reports of Dr. Safman, beginning in July 2003, indicate that the claimant would be gradually returned to full-duty work. Dr. Safman assigned an 11% rating based on the Guides. We note that the

respondents have paid permanent partial disability based on this anatomical impairment rating, and there is no dispute concerning physical impairment.

The respondents in their initial brief argue that the claimant is entitled to no wage-loss disability in excess of the claimant's 11% anatomical impairment. The respondents note that Dr. Safman and Dr. Brophy opined that the claimant could return to full duty. Neither physician assigned any permanent work restrictions, so the respondents argue that the claimant should have returned to her previous line work. The Commission recognizes that Dr. Safman and Dr. Brophy released the claimant to full work duties. However, it is also true that the claimant received an undisputed 11% anatomical impairment rating as a result of her compensable injury. The record shows that the claimant was not able to return to her previous assembly-line work for the respondents. We note Dr. Brophy's opinion, "If she is unable to tolerate full duty, she should consider alternative employment." When the Full Commission takes into account the claimant's 11% permanent anatomical impairment, in addition to her young age, three years of college education, and work experience, we find that the

claimant sustained wage-loss disability in the amount of 15%.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained wage-loss disability in the amount of 15%. We therefore affirm, as modified, the opinion of the administrative law judge. The claimant's attorney is entitled to maximum fees for legal services rendered, pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing in part on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.