

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106802

LONETTE OVERBEY PRESLEY, EMPLOYEE	CLAIMANT
RHEEM MANUFACTURING CO., EMPLOYER	RESPONDENT
EMPLOYERS MUTUAL INSURANCE OF WAUSAU, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 20, 2004

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

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

Respondent represented by HONORABLE JASON BROWNING, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed December 12, 2003.

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 March 22, 2000, the relationship of the employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her back on March 22, 2000.

4. The claimant earned wages sufficient to entitle her to a weekly compensation rate of \$363.00 for temporary total disability and \$272.00 for permanent partial disability.

5. The claimant's healing period ended on October 19, 2000.

6. The claimant has a 15% permanent impairment rating as a result of her compensable injury and the respondent accepts liability for and is paying benefits in regard to that rating.

7. The claimant has proven by a preponderance of the evidence that she is entitled to an additional 15 percent wage loss over and above her 15 percent impairment rating. This will give this claimant a disability rating to the body as a whole of 30 percent.

8. The respondents have controverted this claimant's entitlement to wage loss over her 15 percent.

9. 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the opinion of the majority finding that claimant is entitled to benefits

for wage-loss disability in an amount equal to only 15% to the body as a whole. I find that the award is inadequate to justly compensate claimant for her permanent disability.

On March 22, 2000, claimant sustained an admittedly compensable lower back injury. She was subsequently diagnosed with a herniated nucleus pulposus, an extruded fragment at L5-S1, and an L5 radiculopathy. Following surgery, she was left with a permanent anatomical impairment of 15% to the body as a whole.

Claimant continued to have significant physical difficulties. She has an ultimate diagnosis of failed back syndrome with persistent L5 radiculopathy, accompanied by foot drop, loss of reflexes and sensation in the left lower extremity, limited range of motion, constant pain, and some depression. Claimant has a motorized wheelchair for occasional use.

Further, claimant is taking multiple prescription medications, experiences continuous pain, weakness in her lower extremity, occasional bladder problems, difficulty sleeping, and an inability to sit, stand, walk, or drive for prolonged periods of time. She has difficulty bending and is very limited in her lifting ability. In short, she

experiences a significant increase in symptoms with most any physical activity. She participated and fully cooperated in a work-hardening program, but a vocational rehabilitation specialist was unable to identify any jobs that claimant could perform during a full eight-hour shift.

Claimant's work history includes employment in a factory and as a cashier. She cannot return to any of her past types of employment. She was with the present employer for approximately six years and earned about \$26,000 per year. Even if claimant was able to obtain employment, it would probably be at minimum wage.

In my opinion, claimant has easily proven by a preponderance of the evidence that she has experienced a loss in wage-earning capacity far greater than the 15% to the body as a whole awarded by the Commission. Accordingly, the opinion of the Administrative Law Judge should be modified to award sufficient benefits to adequately and justly compensate claimant for her permanent disability.

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SHELBY W. TURNER, Commissioner