

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F103361

DELORES TAYLOR,
EMPLOYEE

CLAIMANT

CARWELL ELEVATOR CO., INC.,
EMPLOYER

RESPONDENT

FREMONT PACIFIC,
INSURANCE CARRIER

RESPONDENT

ORDER FILED MAY 13, 2004

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

Claimant represented by HONORABLE ROBERT J. DONOVAN,
Attorney at Law, Marianna, Arkansas.

Respondents represented by HONORABLE JEREMY SWEARINGEN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

ORDER

The above-styled matter is before the Commission on remand from the Arkansas Court of Appeals. The Court has remanded to the Commission "for further development of the issue regarding weekly wage." Carwell Elevator Company, Inc. v. Taylor, CA03-500 (Ark. App. Nov. 12, 2003). After again reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the compensation rate is \$147, based on an average weekly wage of \$220. We affirm the administrative law

judge's finding that the respondents are liable for the difference in the temporary total disability rates paid, \$135, and the rate calculated by the administrative law judge, \$147.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury on August 25, 2000. The respondents controverted additional medical treatment beginning July 2, 2001. The respondents controverted additional temporary total disability compensation after July 5, 2001. In an order and opinion filed May 28, 2002, the administrative law judge found that the claimant proved additional medical treatment was reasonably necessary. The claimant had contended that her average weekly wage was \$252 and that her compensation rate was \$168. The administrative law judge determined:

The parties did not agree on the compensation rate; therefore, I find that the wage records reveal the claimant's pay for her first week is \$252.59 for 43.95 hours. The claimant continued to work after the injury and pay records were provided for that period as well. Utilizing the pay records, I was able to determine that the claimant was paid \$5.50 per hour and considering the claimant's testimony that she was hired full time, I find that her average weekly wage is \$220, making her compensation rate \$147 per week. See, Ark. Code Ann. §11-9-501(b). The payout from respondents reveal (sic) the claimant was paid

\$135 per week. I find that respondents should reimburse claimant for the difference in what was paid and what should have been paid in temporary total disability benefits.

The administrative law judge therefore found, "7. The compensation rate is \$147, based on the \$220 average weekly wage. 8. The respondents are liable for the difference in the temporary total disability rates paid (\$135) and the revised rate (\$147)."

The respondents appealed to the Full Commission. In an opinion filed January 14, 2003, the Full Commission affirmed the opinion of the administrative law judge. The Full Commission found that the claimant proved she was entitled to additional reasonably necessary medical treatment. The respondents appealed to the Arkansas Court of Appeals. The respondents contended, among other things, that substantial evidence did not support the Commission's finding with regard to average weekly wage. The respondents cited Ark. Code Ann. §11-9-518(a)(1), but they stated that the claimant "only worked for four days prior to her injury." The respondents therefore cited Ark. Code Ann. §11-9-518(c) and stated that there were "exceptional circumstances." The respondents argued that a temporary total disability rate of \$135 weekly was appropriate.

The Court of Appeals affirmed the Commission's award of additional benefits. However, the Court remanded to the Commission "for further development of the issue regarding weekly wage." The Court determined, "the Commission affirmed the law judge's decision but did not adopt its conclusions and findings. The decision of the Commission includes no discussion of Taylor's weekly wage and compensation rate even though Carwell included that issue in its appeal to the Commission from the law judge's findings....Because the Commission made no findings regarding the compensation rate and because we cannot determine the basis of the Commission's decision on this issue, we remand to the Commission for further development of this last point on appeal."

II. ADJUDICATION

Ark. Code Ann. §11-9-518(a) provides:

(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment....

(c) If, because of exceptional circumstances, the average weekly wage cannot be fairly and just determined by the above formulas, the commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

In the present matter, the Full Commission affirms the administrative law judge's finding that the compensation rate is \$147, based on a \$220 average weekly wage. The administrative law judge's calculation of a \$220 average weekly wage was based on exhibits submitted by the respondents. The respondents' accounting of the dates, hours worked, and gross pay supports the administrative law judge's finding of a \$220 average weekly wage. The Full Commission finds that the administrative law judge's determination in this regard comports with Ark. Code Ann. §11-9-518(a)(1). But even if "exceptional circumstances" did exist, as the respondents argue, the administrative law judge's method of calculating the claimant's average weekly wage was just and fair, pursuant to Ark. Code Ann. §11-9-518(c).

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding, "The compensation rate is \$147, based on the \$220 average weekly wage." We also affirm the administrative law judge's finding, "The respondents are liable for the difference in the temporary total disability rates paid (\$135) and the revised rate (\$147)." The claimant's

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attorney is entitled to fees for legal services as provided
by Ark. Code Ann. § 11-9-715(a) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs.