

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302639

KIM PIKE OSBORNE,
EMPLOYEE

CLAIMANT

DEWITT HOSPITAL & NURSING HOME,
EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INSURANCE CO.,
(AIG CLAIMS SERVICES, TPA)
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 15, 2005

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

Claimant represented by the HONORABLE GARY DAVIS,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE R. SCOTT
MORGAN, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed February 10, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties are hereby accepted as fact.
2. Claimant has suffered a 30 percent diminished earning capacity over and above the physical impairment ratings stipulated to by the parties.
3. Respondents have controverted any

permanent disability benefits in excess of the physical impairment ratings, which they have accepted and are currently paying or have paid.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the February 10, 2005 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion 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 after July 1, 2001, the claimant's attorney's fee is governed by the

provisions of Ark. Code Ann. § 11-9-715 as amended by 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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant sustained a decrease in her wage earning capacity equal to 30% to the body as a whole. Based upon my de novo review of the entire record, I find that a preponderance of the evidence fails to support such an award.

The claimant sustained an admittedly compensable injury to multiple parts of her body when the ambulance she was riding in was involved in a roll-

over accident. As a result of these injuries, the claimant underwent multiple surgeries. The claimant has reached maximum medical improvement and has been released to return to light duty work. Claimant's injuries yielded permanent impairment ratings as follows:

3% to the body as whole for her right shoulder
3% to the body as a whole for her left shoulder
5% to the body as a whole for her T-12 fracture, and
25% to the lower extremity for hip and knee injury.

Clearly, the lower extremity cannot be considered in reaching a wage loss determination. See, A.C.A. § 11-9-521 and 522. When determining the degree of permanent disability sustained by an injured worker, the Commission must determine the degree to which the worker's future wage earning capacity is impaired. In addition to medical evidence demonstrating the degree to which the worker's anatomical disabilities impair her earning capacity, the Commission must also consider other factors, such as the worker's age, education, work experience, and any other matters reasonably expected to affect the worker's future earning capacity. Ark. Code Ann. § 11-9-522(b)(1) (Repl. 1996). Accordingly, when considering only those impairment ratings to the body as a whole, the claimant sustained a combined impairment of

11%. The claimant maintains her licence as a registered nurse and she is currently working earning more per hour than she did when she was injured. The main thrust of claimant's argument is that she is no longer able to work in her former job which required heavy lifting and she is no longer able to work 40 hours per week.

However, I note that the claimant has not tried to work at one job for forty hours a week. The claimant was able, however, to work a part-time job twenty hours per week while she also maintained an independent contracting job averaging and additional 10 to 12 physicals per month. I further note that the claimant has not applied for a job in a physician's office because of her unsupported belief that it would require lifting and walking. With claimant's close proximity to the Greater Little Rock area, I find it hard to believe that she cannot secure a full-time job in a physician's office that falls within her physical restrictions.

Accordingly, for those reasons set forth herein, I cannot find that the claimant sustained a wage loss disability equal to 30% to the body as a whole. Based upon my review of the record, I do not find that the claimant's 11% physical impairment rating, combined with her youthful age, her level of education, and all

other matters taken into a wage-loss consideration warrants such an excessive award. Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner