BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E118941

CALREECE WILLIAMS, EMPLOYEE **CLAIMANT**

INTERNATIONAL PAPER COMPANY,
A SELF INSURED EMPLOYER **RESPONDENT**

SEDGWICK CLAIMS MANAGEMENT, TPA **RESPONDENT**

OPINION FILED JULY 13, 2005

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

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Reversed, in part, and affirmed, in part, as modified.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge filed September 14, 2004, finding, in pertinent part, as follows:

> 4. A preponderance of the evidence establishes that the claimant sustained a twenty-five percent (25%)permanent physical impairment to his spine and neck as a result of his compensable injuries.
>
> 5. Claimant proved by a preponderance of the evidence that he is entitled to compensation for a twenty percent (20%) permanent physical impairment in excess of the five percent (5%) permanent

> physical impairment accepted and paid by the respondents.
>
> 6. The claimant sustained a 30% whole body impairment to his earning capacity, in excess of the permanent physical impairment established by the medical records.

A carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove the above. Based upon the AMA Guides, the claimant is entitled to a 15% permanent physical impairment rating to the body as a whole, as opposed to a 25% permanent physical impairment rating as was awarded. The 15% to which the claimant is entitled includes the 5% permanent physical impairment rating already accepted and paid by the respondent. Furthermore, the claimant has failed to prove that he is entitled to a 30% wage loss impairment above his physical impairment rating. Accordingly, the decision of the Administrative Law Judge is hereby reversed, in part, and affirmed, in part, as modified.

The claimant sustained compensable injuries to his back and neck in July of 1991, before the effective date of Act 796 of 1993. Therefore, this claim is controlled by law in effect at the time of his injury. As an ultimate result

of the claimant's neck and back injuries, the claimant underwent an anterior cervical fusion at C5-C6 in 1991, performed by Dr. Wilbur Giles. After his recovery from that surgery, the claimant returned to work with the respondent employer at his previous job as woodyard foreman. Due to continued symptoms in his lower extremities and based upon further diagnostic testing, the claimant underwent a bilateral discectomy and neural foraminotomy at L4-L5, also performed by Dr. Giles, in 1993. After having made a full recovery from this surgical procedure, the claimant returned to work for the respondent employer for whom he continued to be employed until the plant closing in 2001.

In the meantime, the claimant admits that he continued to see Dr. Giles on an annual basis in order to continue his medical benefits. Dr. Giles would periodically take x-rays of the claimant's affected areas. In 2001, Dr. Giles reported that the claimant's condition had worsened. More specifically, an MRI taken on July 17, 2001, revealed anterior and posterior defects at C3-C4, C6-C7, and L4-L5. Based upon these findings, Dr. Giles recommended surgery.

On October 3, 2001, the claimant was seen for a second opinion by Dr. Wayne Bruffett, who did not recommend surgery for the treatment of the claimant's lumbar or cervical complaints. In turn, Dr. Bruffett referred the claimant to a pain specialist, namely Dr. William Ackerman. Dr. Ackerman treated the claimant with two steroid injections and medications. Dr. Ackerman also believed the claimant's current condition to be chronic, and not a result of his original injury.

After his second surgery in 1993, Dr. Giles assigned the claimant with a 5% permanent impairment rating to the body as a whole. The respondent accepted and paid the claimant's 5% permanent impairment rating. On April 30, 2004, Dr. Warren Long, Jr., conducted an independent medical evaluation of the claimant's medical records, from which he opined that the claimant had sustained a 25% permanent physical impairment to the body as a whole.

According to Ark. Code Ann. §11-9-704(c)(Supp. (1991), any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. In Taco Bell v. Finley, 38 Ark. App. 11, 826 S.W.2d 313 (1992) the Arkansas

Court of Appeals defined the word "objective" to mean "based on observable phenomena or indicating a symptom or condition perceived as a sign of disease by someone other than the person afflicted." In the 1994 case of Johnson v. General Dynamics,46 Ark. App. 188, 878 S.W.2d 411 (1994), the Court of Appeals stated that permanent physical impairment, which is usually a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. Id.; Citing, Ouachita Marine v. Morrison, 246 Ark. 882, 440 S.W.2d 216 (1969). In addition, the Court stated that an injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. Id. Furthermore, in quoting the Arkansas Supreme Court in the case of Wilson & Co. v. Christman, 244 Ark. 132, 424 S.W.2d 863 (1968), the Jordan Court said that the Commission "is not limited, and never has been limited, to medical evidence only in arriving at its decision as to the amount or extent of permanent partial disability suffered by an injured employee as a result of injury." Id. Injured workers bear the burden of proving by a preponderance of the evidence

that they are entitled to an award for a permanent physical impairment. Moreover, it is the duty of this Commission to determine whether any permanent anatomical impairment resulted from the injury, and, if it is determined that such an impairment did occur, the Commission has a duty to determine the precise degree of anatomical loss of use. Johnson v. General Dynamics, Supra; See also, Crow v. Weyerhaeuser Co., 46 Ark. App. 295, 880 S.W.2d 320 (1994).

The Commission cannot consider complaints of pain when determining physical or anatomical impairment. The Commission has the authority and the duty to weigh medical evidence to determine its medical soundness, and we have the authority to accept or reject medical evidence. Mack v. Tyson Foods, Inc., 28 Ark. App. 299, 771 S.W.2d 794 (1989); Wasson v. Losey, 11 Ark. App. 302, 669 S.W.2d 516 (1984); Farmers Insurance Co. v. Buchheit, 21 Ark. App. 7, 727 S.W.2d 391 (1987). Likewise, the Commission is entitled to examine the basis for a physician's opinion, like that of any other expert, in deciding the weight to which that opinion is entitled. However, as with any evidence, the Commission can not arbitrarily disregard the testimony of any witness. In making determinations regarding the

existence and extent of anatomical loss of use, we are not limited solely to medical evidence.

Based upon Table 75 of the 4th Edition of the AMA Guides, Dr. Long made a reasonable estimation of the claimant's cervical impairment as follows: a surgically treated cervical disc with residual, medically documented pain and rigidity is given a 9% impairment rating to the body as a whole. One percent (1%) is added for each additional level, with or without operations and/or residual signs or symptoms. Therefore, the claimant is entitled to a 10% impairment rating to the body as a whole based upon his surgical neck treatment performed in 1991. However, Dr. Long assessed the claimant with an additional 5% impairment to the body as a whole based upon the claimant's defects at C4 and C7 as seen in recent x-rays. However, in his assessment of the claimant's condition, which was based upon both a review of the records and physical examination, Dr. Bruffett opined that the claimant's current condition is not a result of his 1991 injury. In a letter to Debbie Wyman dated January 28, 2004, Dr. Bruffett states:

> 1. I first saw Mr. Calreece Williams on 10/3/01 He gave a history of an injury in 1990. He was treated

> surgically and was able to return to work.
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> ...
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> Within a reasonable degree of medical certainty, I felt at that time and continue to feel that his complaints at that visit, 10/3/01, were not related directly to his original worker's comp injury of 1990. I felt that his complaints were of a more progressive degenerative nature and not a specific work- related injury.
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> ...
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> 2. I do not feel that his current complaints are a result of his original injury. I think they are more of a chronic nature.

Similarly, Dr. Ackerman, who treated the clamant for "pain in his lumbar spine," opined that the claimant currently suffers from "significant degenerative disc disease." Although in a letter dated February 16, 2004, Dr. Ackerman stated that the claimant "should be able to qualify for an impairment rating to the body as a whole of 5%... ," he also stated that this rating was based upon the claimant's complaints of pain.

_____As previously mentioned, the claimant underwent an anterior cervical fusion at C5-C6 in 1991, which was performed by Dr. Giles. Concerning the resolution of the

claimant's cervical spine injury, this surgery was reportedly successful. The record reveals that once the claimant had reached MMI for his cervical spine injury, Dr. Giles intended, but failed, to rate the degree of impairment from the claimant's cervical spine condition. In balancing the weight of the medical evidence regarding the claimant's degree of permanent physical impairment to his cervical spine, the opinion of the claimant's treating physician, Dr. Bruffett, should be given more weight than that of his consulting physician, Dr. Long. Based upon the above and foregoing, the claimant has failed to prove that the current defects in his cervical spine, which are located at C4 and C7, are the natural result of his injury of over a decade ago. Rather, the weight of the medical evidence reveals that the claimant's current problems are degenerative in nature. Therefore, the claimant is only entitled to a 10% permanent physical impairment rating for his cervical spine injury, as opposed to the 15% assigned by Dr. Long, which takes into account portions of the claimant's cervical spine that were not injured in 1991.

Concerning his lumbar spine, the claimant has likewise failed to prove that he is entitled to more than

the 5% permanent physical impairment rating originally assigned by Dr. Giles. Specifically, Dr. Long reasoned that the claimant's decompressive laminectomy and foraminotomy at L4-L5 should have been assigned an 8% impairment rating according to the Guides. However, 10 years after the fact, Dr. Long refused to interject an 8% rating over the 5% originally assigned by Dr. Giles. In addition to the 5% already assigned, Dr. Long then assigned the claimant with another 5% for his future surgery, for a total of 10%.

> In looking at the lumbar area, it would be 5% whole body. If you add 5 for the previous operation and 5 for a new operation, it would be 10% whole body for the back.

Upon examining the basis for Dr. Long's impairment rating to the claimant's lumbar spine, it is obvious that this rating is incorrect because he has taken surgery that has not been performed into consideration. Therefore, the correct impairment rating for the claimant's lumbar spine was and is the 5% impairment as assigned to the claimant by Dr. Giles. Based upon the above and foregoing, the claimant is entitled to a 15% permanent physical impairment rating to the body as a whole for both his lumbar and cervical spine

injuries. This 15% impairment rating includes the 5% already accepted and paid by the respondent.

Because permanent physical impairment has been established in this case, we look next to whether the claimant has suffered any loss in his capacity to earn wages because of his injury. When determining the degree of permanent disability sustained by an injured worker, the Commission must consider 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 his earning capacity, the Commission must also consider other factors such as the worker's age, education, work experience, and any other matters which may affect the worker's future earning capacity, including degree of pain experienced by the workers. Ark. Code Ann. §11-9-522 (1987); See also, Tiller v. Sears, 27 Ark. App. 159, 767 S.W.2d 544 (1989). The claimant asserted that he had become totally incapacitated from earning wages, which is a finding that the Administrative Law Judge did not make. The claimant was injured prior to the effective date of Act 796 of 1993, therefore, the Administrative Law Judge was correct to

consider the Odd Lot Doctrine in his decision not to award the claimant permanent and total disability benefits.

Under the odd-lot doctrine, an employee who is injured to the extent that he can perform services that are so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist may be classified as totally disabled. Lewis v. Camelot Hotel, 35 Ark. App. 212, 816 S.W.2d 632 (1991). It is agreed in this case that the extent of the claimant's disability does not place him within the odd-lot doctrine. Therefore, the burden of proving that "some kind of suitable work is regularly and continuously available to the claimant," does not shift to the respondent. Id. The evidence clearly shows that the claimant was capable of returning to work despite his compensable injury and consequences thereof. See, Burkhart v. R B Potashnick Construction Co., Full Commission Opinion filed April 14, 1999 (No. E801569). Further, the record is void of any medical documentation that reflects that the claimant's physical condition continued to deteriorate due to his compensable injury to a point where, by the time of the plant closing, the claimant was no longer able to work and to earn a meaningful wage. In fact, annual medical

reports indicate that the claimant's post-operative condition, which was described by Dr. Giles as active, chronic cervical and lumbar degenerative disc disease, remained stable throughout the course of his treatment, with occasional flare-ups. For example, in a report dated February 3, 1997, Dr. Giles stated, "He is employable but I suspect he will always continue to have intermittent episodes of chronic inflammatory states from time to time." In a subsequent report dated June 26, 2001, Dr. Giles wrote:

> **FOLLOW-UP FOR:** Mr. Williams is seen back in the office today for his worker's compensation injury. He has had a longstanding history of chronic neck and back pain for which has been basically unchanged over many years and he has not worked since February 2001.
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> His past history is already well documented in our chart and the chronic inflammatory states that he has had. He has been warned in the past that they will continue to be a problem for him. When last seen here in 1999 I informed him at that point in time that it was highly unlikely that I could do much more for him from the neurosurgical standpoint.

Finally, on January 28, 2004, Dr. Wayne Bruffett stated that he did not feel that the claimant's current complaints were, within a reasonable degree of medical

certainty, related to the claimant's compensable injury over a decade prior, nor did he feel the claimant had specific work restrictions other than "some limitations based on his pain."

As previously mentioned, the claimant is reasonably intelligent, trainable, capable of advancement, and still years from retirement age. This is demonstrated by the fact that the claimant, who was 57 years old at the time of his hearing, graduated from high school, attended college for three years, and then served in the United States Armed Forces. During his tenure with the respondent employer, the claimant eventually advanced into a supervisory position, where he would remain but for the plant closing. And although the claimant testified that he is currently unable to enjoy many of the activities that he did prior to his injury, the record is void of proof in this regard.

The same facts that were used to determine that the claimant is not entitled to total disability benefits are relevant to a determination of the degree to which the claimant may have suffered any wage loss. First, the claimant, who was in his early forties at the time of his compensable injury, has worked in the logging industry for

nearly 30 years. Prior to this, however, the claimant earned over 90 college credit hours. Afterwards, the claimant served for two years in the United States Armed Forces, from which he received an honorable discharge. After recovering from each of his respective surgeries, the claimant returned to employment with the respondent employer in the same capacity and at the same wage. Furthermore, over the years of his employment with the respondent employer, the claimant continued to advance in rank and pay, until at the time of his lay off, he was a yard supervisor earning roughly $20.00 per hour. Arkansas Code Ann. §11-9-522 provides, and has provided at all relevant times, that the claimant be employed or offered employment "equal to or greater than" his average wage "**at the time of the accident**." As best as can be ascertained based upon the claimant's own testimony, he was earning "probably somewhere around $12 to $13 an hour ..." at the time of his compensable injury. Therefore, it is irrelevant what the claimant earned at the time of the plant closing, and/or whether the claimant has been able to find employment paying $20.00 per hour. The question is whether the claimant has sought or found employment paying $12.00 to $13.00 per hour. Unfortunately, the record is void of

evidence which indicates that the claimant has sought jobs in $12.00 to $13.00 category.

Clearly, the claimant has demonstrated skills and abilities that could easily transfer into a another position. In addition, the claimant testified that, if not for the plant closing which prompted his lay off, he would have continued to work for the respondent employer until his retirement. The claimant admitted that he continued to seek medical treatment from Dr. Giles over the decade following his last surgery in order to keep his worker's compensation case open. Although the records from those visits indicate that the claimant experienced normal residual symptoms from his condition, these records also indicate that the claimant's condition during that time remained otherwise, relatively stable. Considering that the claimant's injury occurred more than a decade ago; that after having received the appropriate medical treatment for his injuries, the claimant returned to the same employment; that, but for the closing of the plant, the claimant would still continue to work for the respondent employer; that the claimant's current complaints are attributed by Dr. Bruffett to a natural degenerative process rather than to the claimant's

compensable injury; and, all of the other factors as are discussed above, including the claimant's age and education, we find that the claimant has failed to prove that he has sustained a decrease in his earning capacity, in excess of any permanent physical impairment.

Based upon the above and forgoing, we find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to wage loss disability benefits and to 25% permanent physical impairment to the body as a whole. Therefore, the decision of the Administrative Law Judge is hereby reversed. We further find that the claimant has established by a preponderance of the evidence that he sustained a 15% permanent physical impairment as a result of his compensable cervical and lumbar injures. Therefore, we modify the award accordingly.

IT IS SO ORDERED.

_____
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 the claimant is entitled to a 15% permanent physical impairment rating to the body as a whole, as opposed to a 25% permanent physical impairment rating as was awarded. The 5% permanent physical impairment rating that has already been accepted and paid by the respondents is included in the 15% permanent physical impairment which the claimant has been found to be entitled. I must also respectfully dissent from the finding that the claimant has failed to prove entitlement to a 30% wage loss impairment above his physical impairment rating. Based upon my objective review of the evidence, I find that the Administrative Law Judge's wage loss award was correct and should be affirmed and the anatomical award be modified to 21%.

The claimant suffered an admittedly compensable injury on July 9, 1991, when he fell while exiting a crane. As a result of this fall, the claimant sustained injuries to his cervical and lumbar spine. Eventually, the claimant underwent a cervical fusion at C4-C5 and C5-C6 and a lumbar

laminectomy and a foraminotomy at L4-L5. After a substantial period of temporary disability, the claimant returned to his job as wood yard foreman at the respondent's paper mill in early 1993. He continued to carry out the duties of that position until the plant was closed in February 2001.

Following the claimant's recovery from his neck and back surgery, Dr. Wilbur Giles, a Little Rock neurosurgeon who had operated on the claimant, opined in a letter dated March 2, 1994 that the claimant had sustained 5% permanent partial disability to his body as a whole as a result of his back injury. The respondents accepted and paid the rating. Neither Dr. Giles, nor any other physician who had treated the claimant offered any assessment as to degree of impairment in the claimant's neck.

In the years following the claimant's return to work, he continued to see his doctors on a regular basis for treatment of various symptoms relating to his original injury. These symptoms generally included numbness in his hands, arms, and legs; loss of grip strength; and occasional giving way in his legs.

Following the shut-down of the respondent's plant, the claimant attempted to obtain employment in the logging

industry. However, because of his extensive limitation and physical problems associated with his injuries, he was not able to perform this type of work for more than a few days at a time. After a prolonged period of unemployment, the claimant eventually sought and obtained Social Security disability benefits.

Eventually, the claimant also filed a claim for additional workers' compensation benefits. In that claim, he asserted he was entitled to permanent disability benefits based upon his neck injury as well as an increase in benefits based upon his back injury. The claimant also requested an award of wage loss disability because of the residual effects of his permanent impairment.

After a hearing, the Administrative Law Judge accepted the assessment of permanent impairment made by Dr. Warren Long, a Little Rock neurosurgeon, who conducted a consultative examination of the claimant. Based upon Dr. Long's opinion, the Administrative Law Judge found that the claimant had sustained anatomical impairment of 25% to the body as whole based upon injuries to his neck and back. This impairment included the 5% anatomical impairment which the respondent had previously accepted and paid. In addition to

the anatomical impairment, the Administrative Law Judge found that the claimant was entitled to additional disability in an amount equal to 30% to the body as a whole because of his loss of earning ability. From that decision, the respondents filed an appeal. In my opinion, the Administrative Law Judge's wage loss award was correct and should be affirmed and the anatomical award be modified to 21%.

The Commission has the duty of determining whether the claimant has suffered permanent impairment and to translate the evidence into findings of fact. Johnson v. General Dynamics, 46 Ark. App. 188, 878 S. W. 2nd 411 (1994). Further, when the Commission is assessing permanent impairment, it has the obligation to review the facts and determine the amount of impairment using the AMA Guides. Polk County v. Jones, 74 Ark. App. 159, 47 S. W. 3rd 904 (2001). In assessing the claimant's anatomical impairment, we are not bound by the ratings set out by Dr. Giles, Dr. Long, or any other physician. In regard to Dr. Giles' opinion, I find that he did not assess the claimant's cervical impairment nor did he accurately determine the extent of the claimant's lumbar injury. Therefore, I find

that his opinion as to the claimant's impairment must be disregarded.

Pursuant to Commission Rule 34, impairment ratings should be based upon the relevant sections of the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. Table 75 of that Edition sets out the impairment ratings for spinal injuries. My review of the claimant's medical records indicate that he suffered injuries to two cervical levels which were treated with discectomies and fusions. Further, the medical records following that surgery clearly document that the claimant continued to suffer from residual effects including pain, rigidity, and other symptoms. I therefore find that Section II (E), entitled the claimant to receive 9% impairment to the whole person. Additionally, Subsection (F) also provides that where multiple levels are involved, 1% per level should be added to the total. Since the fusion involved two levels, 2% would be added to result in the impairment of 11% to the body as a whole based upon the claimant's neck injury.

I note that Dr. Long assessed the claimant at 15% impairment to his neck. However, in doing so, Dr. Long relied upon what he described as a "defect at C3-C4 and

C6-C7." These were the cervical levels above and below the claimant's fusion sites. It was Dr. Long's opinion that these defects would add an additional 5% to the claimant's permanent impairment. While I am aware that it is common for the disc level above and below fusions to deteriorate and develop into disabling conditions, it does not appear to me that there is or ever has been any finding that these particular defects were related to the claimant's compensable injury. Therefore, I find that any question as to the compensability of the defects at C3-C4 and C6-C7 should be held in abeyance and reserved for future determination.

As indicated above, the claimant also suffered an injury to his lumbar spine which was also surgically treated by Dr. Giles. The surgical procedure performed by Dr. Giles was in the form of a decompression to remove disc material impinging the claimant's nerve roots. Further, the medical records clearly document that the claimant suffered from continued symptoms including numbness and giving way of his legs. I therefore find that this condition is governed by Section IV (B) of Table 75 entitling the claimant to receive 10% impairment to the body as a whole. Therefore, I find

that the claimant's cervical and lumbar injuries would entitle him to receive 21% impairment to the body as a whole. This figure would include the 5% impairment which the respondent has already accepted and paid.

The remaining issue is the claimant's entitlement to wage loss disability benefits. The Administrative Law Judge found that the claimant was entitled to wage loss in an amount equal to 30% to his body as a whole. I believe that this award is justified by the facts of this case and should be affirmed.

At the time of his injury, the claimant had been employed by the respondent employer for 18 years. His employment with the respondent did not end until they laid him off in 2001, following a closing of their plant. By then, the claimant had been the respondent's employee for a total of 28 years. For much of that time, the claimant was the wood yard foreman for the respondent. Even though the claimant's back and neck problems caused him considerable difficulties, the claimant was able to return to his job following his recovery from his surgeries. However, the residual effects of these injuries have made it very difficult, if not impossible, for the claimant to find

alternate employment. The claimant attempted to capitalize on his experience in logging by obtaining jobs in the logging industry. However, these jobs required him to use a chain saw, climb on trucks loaded with logs, and engage in strenuous lifting, as well as frequent bending and stooping. These physical demands were well beyond the claimant's physical abilities. Further, at the time the respondent ceased providing employment to the claimant, he was earning approximately $20.00 per hour.

While the claimant does have some college hours, he has no degrees or other advanced training. For the vast majority of his working career, he has been employed by the respondent at their paper mill. He has very few job skills beyond those involving this activity. Further, at the time he was laid off, the claimant was 53 years of age. It seems to me that a 53 year old, with two fused vertebrae in his neck, lumbar back problems, and symptoms including numbness and frequent falling, is going to have a very difficult time finding jobs paying $20.00 per hour. Given the claimant's lack of specialized training or education, and the significant restrictions caused by his injuries, it is apparent that the only jobs which would be available to him

are those paying at or near the minimum wage. Given the relatively high salary the claimant was earning prior to the respondent's termination of employment, I do not see how it could be reasonably argued that the claimant did not suffer a significant wage loss because of his injuries.

The respondents argue that the claimant should be denied any wage loss because he remained employed by the respondent employer for a substantial period following the recovery from his injuries. However, they do not cite any authority, either in the Workers' Compensation Act or in any cases interpreting or applying it, which suggests that the claimant's return work under these circumstances fails to limit his entitlement to wage loss disability benefits. During the time following his return to work, the claimant was continually under medical treatment and attempting to perform his job duties. His condition continued to deteriorate during this time as evidenced by the description of his symptoms set out in his medical reports between 1994 and 2001. Since the respondents took no steps to settle the case or otherwise limit the claimant's entitlement to future benefits, I do not see any basis for denying his claim for wage loss disability benefits because of his return to work.

As set out above, I believe that the claimant sustained an anatomical impairment in an amount equal to 21% to the body as a whole as is provided by the AMA Guides. Further, I believe that any impairment the claimant is entitled to based upon the cervical defects noted by Dr. Long should be held in abeyance until such time as the compensability of those conditions can be determined. Lastly, I believe that the wage loss award assessed by the Administrative Law Judge is entirely correct and should be affirmed by this Commission.

For the foregoing reasons, I must respectfully dissent. The opinion of the Administrative Law Judge should be affirmed in part and modified in part as discussed above.

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SHELBY W. TURNER, Commissioner