

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303776

CALVIN H. CLARK, EMPLOYEE	CLAIMANT
DOMTAR INDUSTRIES, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL INS. CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 10, 2006

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

Claimant represented by HONORABLE CLAUDENE T. ARRINGTON, Attorney at Law, Hope, Arkansas.

Respondent represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed April 14, 2005.

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. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

3. The claimant is entitled to no more than the maximum compensation rates, and he has been paid at the appropriate compensation rates.

4. The claimant has failed to prove by a preponderance of the evidence that he is unable to earn any meaningful wages in the same or other employment.

5. The claimant has therefore failed to prove by a preponderance of the evidence that he is entitled to permanent total disability benefits.

6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to wage-loss or additional permanent partial disability benefits.

7. The claimant has proven by a preponderance of the evidence that additional medical treatment, specifically an evaluation by a hand specialist, is reasonably necessary in connection with the compensable injury.

8. The respondents have controverted the claimant's entitlement to additional indemnity benefits.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion finding the claimant is not permanently and totally disabled and has not shown he is entitled to receive additional wage loss or permanent partial disability benefits.

After a de novo review of the record, I find that the claimant should be deemed permanently and totally disabled. While the claimant sustained a scheduled injury, when considering the severity of his injury in conjunction with other factors such as his age, and prior work experience, I find it is unlikely the claimant will ever be able to work again. Accordingly, I would have reversed the Administrative Law Judge and awarded the claimant permanent and total disability benefits.

The claimant sustained an admittedly compensable injury to his left hand on April 7, 2003. The injury occurred when the claimant's hand was caught in a knife grinder. The accident caused multiple fractures in the claimant's left hand. As a result of the injury, the claimant can no longer adequately grip with his left hand and has decreased dexterity with his left hand. On April 6, 2004, the claimant was deemed to be at maximum medical improvement. He was also assigned a 29% impairment rating to his left hand.

At the time of his injury, the claimant was 60 years old. He had worked for the respondent for over 30

years. The claimant's educational background consists of a high school diploma and training in mechanics and welding. The claimant has never worked as a mechanic or as a welder. Prior to working for the respondent, the claimant worked in an ammunition factory. While working for the respondent, the claimant performed a variety of manual labor tasks. Each required the use of his hands and required him to perform tasks such as operating machines or lifting.

At the time of the injury, the claimant worked on the knife grinding machine. The claimant described the job as follows,

It would hold five knives and these knives weight about thirty pounds. You lock them in and this large machine and it holds nine bricks with which to sharpen those knives. There is a large motor and after you lock them in you step off your podium and then you go around and hit the button. Then you work - you wind the machine on in until it touch the knives. Then you set your speeds on that knives and then it sharpen the knives. After you get up there and you are honing your knife just to make sure - to knock the wide part off. Then you come off and you take your finger off the machine and there is a spark on down, well, it sparks as it sharpens the knives but as the spark decreases, you know, after you take the

speed off and you lock it down and it gradually starts sparkling down. Then you take your rock back like this here and you - as the motor traveling in front of you, you take your hand and you take your rock and you knock the white off your knife.

In addition to his work for the respondent employer, the claimant worked as a volunteer. The claimant's volunteer work consisted of teaching, fishing, and various other activities. In fact, the claimant was awarded the Wilbur Award for his volunteering. The claimant testified his ability to volunteer has been hindered due to his inability to write with his left hand and because of his inability to instruct children in such activities as fishing.

On April 6, 2004, the claimant's doctor, Dr. Michael M. Moore, indicated that the claimant had been released to resume regular activities. Dr. Moore further indicated, "He can perform work activities within his physical capabilities. It should be understood that Mr. Clark will have difficulty performing significant pushing, pulling, or lifting his left hand. In addition, the

dexterity of his hand is limited." The claimant has not returned to work since his injury. He said he was terminated from employment with the respondent employer because he was unable to return to work after a 12-month period. The claimant testified that he has actively looked for work to no avail. The claimant further indicated that he has difficulty gripping with his left hand and that he is unable to drive except for very short distances. The claimant indicated that his inability to drive was severe enough that he had hired a driver. The claimant also continues to undergo therapy on his hand.

The Majority, by virtue of affirming and adopting the decision of the Administrative Law Judge, finds that the claimant is not permanently and totally disabled and is not entitled to receive wage loss benefits in excess of his scheduled injury.

I agree with the Majority's assertion that the claimant would not be entitled to receive permanent partial disability benefits in addition to his impairment rating based on his scheduled injury alone. See, Ark. Code Ann. §11-9-519(b). Despite this finding, I would have reversed

the Administrative Law Judge's finding that the claimant is not entitled to receive permanent and total disability benefits.

The Majority argues that the claimant should not be deemed permanently and totally disabled because he testified that he is able to return to work and because he has looked for work. In my opinion, while the claimant testified he is able to return to work, the record indicates that he remains unable to work and that his inability to work is permanent in nature. Accordingly, in my opinion, the claimant should be entitled to receive permanent and total disability benefits.

The Arkansas Workers' Compensation Law provides that when an injured worker's disability condition becomes stable and no further treatment will improve that condition, the disability is deemed permanent. In order to be entitled to any wage loss disability in excess of permanent physical impairment, the claimant must first prove by a preponderance of the evidence that she sustained permanent physical impairment as a result of the compensable injury. Needham v. Harvest Foods, 64 Ark. App. 141, 987 S.W.2d 278, (1998). If

the employee is totally incapacitated from earning a livelihood at that time, he is entitled to compensation for permanent and total disability. See, Minor v. Poinsett Lumber & Manufacturing Co., 235 Ark. 195, 357 S.W.2d 504 (1962). This Commission has further found that a claimant with one scheduled injury may be entitled to receive permanent and total disability benefits. McDonald v. Batesville Poultry Equipment, 2005 AWCC 170, Claim No. E905523 (Opinion filed August 30, 2005).

In deciding whether one is entitled to receive permanent and total disability benefits, the medical evidence, and other factors affecting wage loss, such as the claimant's age, education, work experience, and motivation are to be considered without considering the "odd-lot doctrine". See, McDonald; supra; See also; Eckhardt v. Willis Shaw Express, Inc., 62 Ark. App. 224, 970 S.W.2d 316 (1998).

In the present case, I find that the claimant has shown he has been permanently and totally incapacitated from returning to work. The claimant is a highly motivated individual, as shown by his repeated attempts to return to

work and his insistence that he can return to work despite his limitations. While the claimant admits that he has attempted to return to work, he also indicates his efforts have been futile. Considering his work history of working in manual labor with the use of both hands and his age of 60 years old, I find it is unlikely the claimant will ever be able to find employment again. This is evidenced by the respondent employer's unwillingness to return the claimant to work and by the claimant's inability to find a job. Though the claimant has a high school degree, he has never performed any work other than work that is manual in nature. He also admits that his dexterity is limited and that he continues to undergo therapy in his arm. Furthermore, when one considers that the claimant is largely unable to use his left hand, which is his dominant hand, I find it even more unlikely that he will find employment again. Considering the claimant's various limitations, I find it very unlikely that he will ever find a manual labor job or any other job in which he will become gainfully employed.

The Majority argues that the claimant's volunteer work is indicative that he is not permanently and totally

disabled. However, there appears to be no dispute that the claimant's ability to volunteer has been hindered by his injury. The claimant indicated he can not demonstrate with the fishing rod as he previously could. Furthermore, the claimant indicated that he had difficulty instructing children in a classroom because it is difficult for him to write with his left hand. He also indicated, "They miss me out there", which illustrates that his ability to perform volunteer work has been diminished. Lastly, I note that while the claimant's volunteer services are admirable, there has been absolutely no evidence in the record that would indicate he would be able to be paid for those services or that he could earn meaningful wages for his services. Accordingly, when considering the claimant's injury, his age, and his work experience, I find that the claimant should be deemed permanently and totally disabled.

For these reasons, I must respectfully dissent from the Majority opinion.

SHELBY W. TURNER, Commissioner