

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209256

ALLIE CRELIA, EMPLOYEE	CLAIMANT
RHEEM MANUFACTURING CO., EMPLOYER	RESPONDENT
CRAWFORD & COMPANY, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

**OPINION FILED JULY 31, 2006**

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

Claimant represented by HONORABLE MIKE HAMBY, Attorney at Law, Greenwood, Arkansas.

Respondent No.1 represented by HONORABLE JASON BROWNING, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by HONORABLE JUDY RUDD, 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 August 9, 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. On August 5, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her right hand on August 5, 2002.
4. Medical expenses have been paid.
5. Respondents No. 1 have accepted and are paying a 63 percent impairment to her right hand.
6. The claimant's healing period ended on September 11, 2003.
7. The claimant sustained a compensable injury to her left elbow and all benefits have been paid or are being paid for this injury by the respondents.
8. The claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled.
9. The claimant has failed to prove her entitlement to wage loss disability over and above her permanent partial impairment rating of her right hand.

10. That there is no Second Injury Fund liability in this matter.

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 respectfully dissent from the Majority's opinion affirming and adopting the Administrative Law Judge's December 20, 2005 decision. Based upon my de novo review of the record, it is my opinion that the Administrative Law Judge's decision should be reversed and appropriate benefits awarded.

\_\_\_\_\_At the time of the trial, the claimant was a 64 year old female, who began working for Rheem Manufacturing, in 1975. She suffered an admittedly compensable injury to her right hand on August 5, 2002. Basically, while working on a press, her right hand became entangled, and she wound up losing four fingers, on her right hand. She still has function of the thumb only. As a result of this injury, she has been awarded a 63% anatomical impairment rating to her right hand, which is her dominant hand. She has also been treated for emotional problems in coping with the loss of her right hand. She has been fitted for a prosthesis,

however, it rubs blisters on her hand, making it uncomfortable for her to wear. Furthermore, the prosthesis is for cosmetic purposes only, and is not functional.

The claimant testified, that she primarily has done factory work all of her life, and this work requires use of both hands, therefore, she does not feel like she can go back to any of the jobs she has done in the past. The medical records further show that the claimant suffers from a preexisting problem of ulcerated ulcers on her feet. If the claimant stands on her feet or walks very much, these ulcers rupture, and will not heal. The claimant at the time of the hearing was living with her sister in Osage, Oklahoma. She has a high school education and took some business courses before she began working for the respondents.

\_\_\_\_\_In my opinion, claimant has met her burden of proving that she is permanently and totally disabled. Ark. Code Ann. §11-9-519 (Repl. 2002) provides in pertinent part:

(b) In the absence of clear and convincing proof to the contrary, the loss of both hands, both arm, both legs, both eyes or of any two (2) thereof

shall constitute permanent total disability.

(c) In all other cases, permanent total disability shall be determined in accordance with the facts.

. . .

(e) (1) "Permanent total disability" means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

(2) The burden of proof shall be on the employee to prove inability to earn meaningful wage in the same or other employment.

(f) In considering a claim for permanent disability, the commission and the courts shall not consider the odd-lot doctrine.

In regards to permanent and total disability for a scheduled injury, the Full Commission clarified that even though the "odd lot" doctrine could not be considered it was still possible to make a finding of permanent and total disability.

Under the law that pre-existed the passage of Act 796, when determining the extent of permanent disability sustained by a worker, the worker could be

classified as permanently and totally disabled under the "odd lot" doctrine, even though the worker was not completely incapacitated from working. An injured worker was in the "odd lot" category when his or her injury, combined with other factors such that the services that he or she could perform were so limited in quality, dependability or quality that a reasonable stable market did not exist for those services, even though the claimant was not totally incapacitated from work. See Lewis v. Camelot, 35 Ark. App. 212, 816 S.W.2d 632 (1991). This doctrine has been eliminated by the passage of Act 796 and is not to be considered in a claim for permanent disability benefits by the Arkansas Workers' Compensation Commission. See Ark. Code Ann. §11-9-522 (e) and §11-9-519(f). Therefore, the Commission is charged with the duty of determining permanent and total disability based on the facts of the case and by considering the medical evidence and other factors affecting wage loss, such as the claimant's age, education and work experience, without resorting to the "odd lot" doctrine. Eckhardt v. Willis Shaw Express, Inc., 62 Ark. App. 224, 970 S.W.2d 316 (1998). McDonald v. Batesville Poultry Equipment, Full Commission Opinion, Filed August 30, 2005 (Claim No. E905523).

"[W]e find that Ark. Code Ann. §11-9-521(g) does not prohibit or for that matter, affect, Claimant's entitlement

to permanent and total disability benefits and Claimant is not statutorily prohibited from seeking benefits under Ark. Code Ann. §11-9-519(c) and §11-9-519(f).” Id. The Commission is charged with determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant’s age, education and work experience. Emerson Elec. V. Gaston, 75 Ark. App. 232, 58 S.W.3d 848 (2001).

\_\_\_\_\_ In the present claim, the claimant was 64 years old, at the time of the hearing. She has had four fingers on her dominant hand totally amputated. In addition to the anatomical rating, she has suffered severe emotional distress, over the loss of these four fingers. She testified, that she even had difficulty walking back into the plant, due to the memory of the accident. Claimant further developed a problem with her left elbow in the form of epicondylitis, as a result of overuse of the left arm due to the right hand amputation.

\_\_\_\_\_ In a March 11, 2003 progress note, Dr. Walz noted that in her opinion the claimant was not ready to return to

work as she suffers from post traumatic stress syndrome related to her job accident. Dr. Bise, her original treating physician, on April 22, 2003, found the claimant to be a maximum medical improvement. However, claimant underwent surgery on her right hand to address a neuroma as well as extension contractures on April 24, 2003, by Dr. David Rhodes. Finding claimant at maximum medical improvement, and then undergoing a surgery two days later, is somewhat confusing and it appears that there was a lack of communication between Dr. Bise and Dr. Rhodes. Claimant underwent, at the request of respondents, additional psychological testing by Dr. Winston Wilson on November 20, 2003. In Dr. Wilson's report from that date, he states:

I recommend that Ms. Crelia be considered for less demanding work than she had, but certainly more useful than sweeping and other janitorial efforts. She shows above average motivation to work, which I find commendable.

\_\_\_\_\_As of January 12, 2004, Dr. Walz was not comfortable in returning the claimant to work. Dr. Loyd, the company's treating physician, without consulting with the

claimant's psychologist, or her treating physician, placed claimant through a functional capacity test on February 16, 2004, and found that she was capable of performing medium work. Dr. Loyd acknowledged that he was aware that the claimant was being treated during this time frame by Dr. Walz and Dr. Wilson, and he failed to consult with either doctor before announcing his findings.

\_\_\_\_\_ In a letter dated April 7, 2004, to claimant's attorney, Dr. John Moore, the physician treating claimant's ulcerated ulcers, stated:

Our advice to Ms. Crelia, in light of her chronic condition, was that she limit the amount of time that she spent each day in prolonged standing and that she continually wear compression stockings throughout the entire day and to only remove them on retiring at night.

The application of compression stockings can be difficult for some patients and requires considerable strength in the hands for proper placement of the stocking.

\_\_\_\_\_ In my opinion, the functional capacity evaluation is not an accurate picture of claimant's capabilities for an

eight hour work day. Claimant testified that she does very light cleaning at her residence and takes many breaks due to her various maladies. Claimant is an elderly lady, who has had her fingers on her dominate right hand amputated. She is suffering psychologically, from post traumatic stress disorder, and gets upset when she walks back into the plant. Any cleaning that claimant attempts is done primarily with her non-dominate left arm. In my opinion, based upon claimant's compensable injuries, i.e. the amputation of four fingers on her right hand, the development of left elbow epicondylitis due to overuse of her left arm, and the psychological trauma, combined with her age, education, and work experience, claimant has met her burden of proving that she is permanently and totally disabled.

\_\_\_\_\_For the foregoing reasons, I respectfully dissent from the Majority's opinion affirming and adopting the Administrative Law Judge's December 20, 2005 decision.

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SHELBY W. TURNER, Commissioner