

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D909205

BILLY H. HENDRICKS, EMPLOYEE	CLAIMANT
CROWN CONTRACTORS (EL DORADO), EMPLOYER	RESPONDENT NO. 1
LIBERTY MUTUAL INSURANCE CO., INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MARCH 16, 2006

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

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

Respondents No. 1 represented by the HONORABLE MICHAEL
E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE JUDY RUDD,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed August 3, 2005. In said
order, the Administrative Law Judge made 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 has failed to prove by a preponderance of the evidence that he is totally and permanently disabled.

4. The claimant has failed to prove by a preponderance of the evidence that he has sustained a diminished earning capacity in excess of his ten percent (10%) permanent impairment and, therefore, is not entitled to wage loss disability benefits.

5. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical benefits in the form of continued treatment from Dr. Davis, and Celebrex as prescribed by Dr. Davis, plus attorney fees associated therewith.

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.

Therefore we affirm and adopt the August 3, 2005 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 concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

The Majority is affirming and adopting a decision of an Administrative Law Judge awarding the claimant certain medical benefits, but holding that he had not established his entitlement to any permanent disability benefits beyond the 10% anatomical impairment previously accepted by the respondent. Because I agree that the claimant is entitled to the medical treatment awarded by the Administrative Law Judge, but believe that he is entitled to an award of wage-loss disability benefits, I must concur in part and respectfully dissent in part from the Majority's decision.

The claimant suffered an admittedly compensable injury on February 26, 1989. Consequently, this claim is governed by the law in effect on that date. Nonetheless, the respondent argues that we should apply the current rules in the interest of a "standard of fairness and equity." I find this unconvincing, in that, the laws in effect at the time of this injury were intended to be fair and equitable and, while the Legislature later saw fit to change the Workers' Compensation Act, it does not change the fact that this case must be decided under the laws in effect on February 26, 1989.

I agree with the Majority's evaluation of the claimant's current disability to the extent that I do not believe that this injury, by itself, renders the claimant permanently and totally disabled. However, I take issue with the denial of any wage-loss disability.

In the first place, the Majority seems to accept the respondent's argument that the current prevailing standards for awarding permanent disability benefits apply to this case. In this regard, I note that in the Judge's Opinion, which the Majority is accepting as their own, the following statement is made: "The MRI's,

nerve conduction studies, and other reports offered into evidence gave doubt in this examiner's mind about the 10% impairment that was accepted and paid by the respondents."

The Judge appears to question this rating based upon his evaluation of various diagnostic testing performed on the claimant. However, the 10% impairment rating was assessed by the claimant's treating physician in January 1990. The rating was in accord with the Workers' Compensation Act as it existed at that time. But, whether the medical record supports a 10% impairment rating under the current Workers' Compensation Act is irrelevant. It appears to me that the Majority has focused on whether the impairment rating would be valid under today's law instead of the direct issue, which is whether the injury caused the claimant to suffer an economic loss, therefore entitling him to receive wage loss disability benefits.

In considering the effects of his injury upon the claimant's wage earning ability, the Administrative Law Judge reaches the conclusion that the claimant was poorly motivated. On that basis, he then denies that the claimant was entitled to any benefits for wage-loss

disability. I find this analysis flawed because, even if the claimant was poorly motivated (a conclusion I do not agree with), such a lack of motivation does not act as a bar on receipt of wage loss disability benefits.

At the time of his injury, the claimant was a construction foreman supervising a crew of electricians and was earning in excess of \$40,000.00 per year. Following his accident, the claimant's limitations precluded him from performing that employment. The correct question is what types of employment is still available to the claimant in the general economy given his age, education, and transferrable job skills. In my opinion, the claimant, who is a high school drop out, with no vocational training, or other job experience or certifications in any field other than as an electrician, has little likelihood of finding employment with wages comparable to those he was earning at the time of his injury. In my opinion, the record demonstrates that the claimant sustained wage loss in an amount equal to 10% impairment to the body as a whole.

Since I would award the claimant additional disability benefits based upon 10% impairment to the

body as a whole, I respectfully dissent from the Majority's denial of any wage-loss disability benefits.

SHELBY W. TURNER, COMMISSIONER