

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209888

JESSIE LATIMER,
EMPLOYEE

CLAIMANT

ASAP PERSONNEL SERVICE,
EMPLOYER

RESPONDENT NO. 1

TRAVELERS INSURANCE,
INSURANCE CARRIER

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED APRIL 13, 2006

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

Claimant represented by the HONORABLE DONALD S. RYAN,
Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE PHILLIP
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 did not appear at the hearing before
the Administrative Law Judge.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed October 27, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The stipulations agreed upon by the parties are reasonable and are approved.

2. The employee-employer-carrier relationship existed on August 20, 2002, and at all other relevant times.

3. Claimant sustained a compensable cervical spine injury on August 20, 2002.

4. Claimant's healing period ended on April 12, 2004.

5. Claimant's average weekly wage is \$162.16; his compensation rate is \$108.00.

6. Respondents controvert additional benefits for permanent disability.

7. Respondent #1 accepted and is paying a 15% permanent impairment rating.

8. Claimant did not sustain his burden of proving by a preponderance of the evidence that he is entitled to an additional 1.5% permanent impairment rating. Claimant did not identify any provision of the Fourth Edition of the Guides that would entitle him to an impairment rating greater than 15%; I did not find a provision that would entitle Claimant to an additional 1.5% permanent impairment rating.

9. Claimant did not sustain his burden of proving by a preponderance of the evidence that he is permanently and totally disabled. He is not motivated to return to work. Further, the medical evidence will not sustain a finding that Claimant is permanently and totally disabled; at least two doctors recommend that Claimant undergo an FCE, suggesting that he does have some capacity to work.

10. Because Claimant did not sustain his burden of proving that he is permanently and totally disabled, it is not necessary to discuss the third issue listed in the Prehearing Order, relating to the liability of the Death and Permanent Total disability Trust Fund.

11. Upon consideration of all relevant wage-loss factors, I find that Claimant did establish a decrease in his wage earning capacity equal to 15% to the body as a whole, and that he is therefore entitled to wage-loss disability benefits. Again, Claimant's August 20, 2002 compensable injury is the only, and therefore the major, cause of this decrease in his earning capacity.

12. Claimant's attorney is entitled to the maximum prescribed attorney's fee under Ark. Code Ann. § 11-9-715, to be paid by Respondent #1.

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 October 27, 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 dissents.