

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214406

CAROLYN RUDDER, EMPLOYEE	CLAIMANT
GENERAL ELECTRIC, SELF-INSURED EMPLOYER,	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED JULY 10, 2007

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

Claimant represented by the HONORABLE PHILIP WELLS,
Attorney at Law, Jonesboro, Arkansas.

Respondent #1 represented by the HONORABLE MARK
MAYFIELD, Attorney at Law, Jonesboro, Arkansas.

Respondent #2 represented by the HONORABLE DAVID L.
PAKE, Attorney at Law, Little Rock, Arkansas.

Respondent #3 represented by the HONORABLE JUDY W. RUDD,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

Respondent #1 appeals the Administrative Law
Judge's opinion filed on September 5, 2006, which
awarded the claimant a permanent impairment rating of 2%
to the body as a whole, which was in addition to the 7%

impairment rating that the claimant received pursuant to a compensable injury that she sustained in 1992. The Administrative Law Judge also found the claimant sustained wage loss disability, in the amount of 63% over and above her anatomical impairment and that Respondent #1 was liable for payment of those benefits. The Administrative Law Judge also found that Respondent #1 was entitled to a credit or off-set pursuant to Ark. Code Ann. § 11-9-411 against the claimant's early retirement and disability benefits, and that Respondent #2, the Second Injury Fund, had no liability. Respondent #1 contends that the claimant is not entitled to a loss of earning capacity/wage loss disability in the amount of 63% on a 2% anatomical impairment rating, and that Respondent #2 is liable based upon the claimant's prior injury and surgery. The claimant also filed an appeal, contending that Respondent #1 should not be entitled to a credit for retirement benefits paid to her and contending that she should have been awarded permanent and total benefits.

After a de novo review of the record, we affirm the Administrative Law Judge's finding that (1)

Respondent #2 bears no liability; (2) Respondent #1 is entitled to a credit for retirement disability benefits and long term disability benefits; and (3) the claimant is entitled to 63% wage loss.

The claimant began working for Respondent #1 in 1971. The claimant had graduated from Hoxie High school at age 17 and commenced employment as a waitress until she turned 18 years old, at which time she became employed at Frolic Footwear. The claimant worked at Frolic Footwear for two and a half months until she secured employment with Respondent #1 on July 16, 1971, and continued in their employment for thirty-one (31) years. The Respondent operates a plant that builds motors. The claimant's primary job duty was to pack the motors, but she filled in for other workers as well. The claimant testified that she did whatever job her employer needed for her to do. In the course of performing her job, the claimant was injured on April 11, 1992 and ten years later on August 28, 2002.

On April 11, 1992 the claimant suffered an on-the-job injury to her neck. Under the care of Dr. Rebecca Barrett-Tuck, a neurosurgeon, the claimant

underwent an anterior cervical diskectomy and Cloward fusion at C5-6. The claimant remained off work for eight months until her fusion healed. The claimant testified that when she returned to work she went back to her job as a packer and was unaware that Dr. Barrett-Tuck had imposed a 40-pound weight restriction on her employment activities, but understood that she did work under a 40-pound weight restriction. The claimant also testified that she had to demonstrate that she could lift 40-pounds before returning to work.

The claimant continued to work as a packer until she bid-off of the job. Essentially, the claimant applied for and got a job as a tester with the same employer. The claimant testified that the physical demands of the packer job were more than those of the tester job and the tester job paid more, which is why she went to the tester job.

After her surgery in 1992, the claimant was given a 7% permanent partial impairment rating by Dr. Barrett-Tuck as outlined in the AMA Guides to the Evaluation of Permanent Impairment (3rd ed.). The claimant maintains that she did not have any physical

problems involving either her neck or low back since the date of her surgery. In 1994 the claimant filled out a Health History Questionnaire given by the Respondents, which indicated that she did not have any health problems, including any problems with her bones, joints or muscles. The claimant did turn in a complaint of popping in her low back in 1998, but never sought medical treatment.

On August 28, 2002, the claimant, at age 51, sustained an admittedly compensable injury while working for Respondent #1. The claimant testified that her job of testing motors consisted of turning her head, listening to the motor, and then picking up the motor. The claimant testified that sometimes she would do that to 150 motors or more each hour. On the date of her injury, the claimant testified that she turned her head a certain way and a pain ran down her back. The claimant was subsequently diagnosed as having a ruptured disk at C6-7. Again under the care of Dr. Rebecca Barrett-Tuck, the claimant underwent an anterior cervical discectomy and fusion at C6-7.

Despite having surgery and physical therapy, the claimant continued to have severe pain and other problems, and on May 13, 2003 Dr. Barrett-Tuck released the claimant as being at a maximum point of healing with a 2% additional impairment rating. Presumably, this was given by adding 1% for each level that was operated on. The claimant noted that at that time she still had problems with her left leg and arm and was unable to turn her head in either direction. The claimant testified that her pain is now severe and has shooting pains down her neck. As such, she has extremely limited daily activities.

In December 2002, Dr. Barrett-Tuck performed an anterior cervical discectomy and fusion at C6-7 and continued to treat the claimant for severe pain after the surgery. On May 15, 2003, Dr. Barrett-Tuck assessed that the claimant had reached maximum medical improvement and assessed an additional 2% impairment rating. Eventually in August of 2003 a myelogram was performed and the claimant was diagnosed as having a narrowing of the neural foramen at C6-7. Dr. Barrett-Tuck offered to perform another operation and drill a

hole which would open up the hole where the nerve was located to possibly relieve some of her pain. In May of 2004, Dr. Barrett-Tuck noted that the claimant was learning to live with the pain.

The claimant testified that she suffers from almost constant pain to her neck and left arm. If she rides in the car for any length of time, she becomes nearly sick with pain and headaches and must rest for a while or take pain medication. The claimant also testified that she could not sit or stand for long periods of time. In fact, she testified that if she sat for more than two hours, she experienced severe neck pain that radiated through her left arm. To take the pressure off her neck, she spent on average, three hours a day reclining or laying down. Due to the pain she was able to perform very little housework such as cooking or cleaning.

To relieve the pain, the claimant testified that she took the prescription medication, Hydrocodon, as well as over-the-counter non-prescription medications, including Aleve and Tylenol. The claimant testified that she tries to takes refrain from taking

the Hydrocodon as much as possible because it makes her feel dizzy. As such, she can sometimes go two or three days without taking any, but sometimes the pain becomes so severe that she has to take it two times in a row.

Despite her pain, the claimant testified that she began her own job search and applied for eighty-four (84) jobs since 2005. In addition, the claimant worked with a vocational rehabilitation consultant, Ms. Heather Naylor, to find employment. The claimant testified that she disclosed to prospective employers that she had undergone surgeries and that as a result she had physical limitations. Even though she was searching for employment, she testified that she did not feel that she could perform even sedentary work because she could not sit or stand for that many hours. However, she did testify that if given the opportunity, she would have tried it. Despite having "a nice appearance" the claimant was never called back for a second interview and now at age fifty-four (54) felt that employers were mainly hiring younger people. Additionally, the claimant testified that she was trying to improve her typing skills and develop some computer skills. The claimant

testified that she was willing to try to learn new things and develop new skills.

The claimant's testimony reveals that she receives Social Security Disability payments each month in the amount of \$1,342.00 and retirement disability in the amount of \$768.95 each month. The claimant testified that the retirement benefit payments was based upon the duration of her employment with the Respondents. The claimant also receives \$150.00 each month in the form of long-term disability. All together, the claimant's current monthly income totals \$2260.95. The claimant testified that while she was employed, she earned between \$40,000 and \$45,000 a year.

Gary Rudder, the claimant's husband, testified on the claimant's behalf. Mr. Rudder corroborated the claimant's testimony and noted that the claimant used to be a very active person. However, Mr. Rudder testified that after the accident the claimant has been in a lot of pain and that her pain is evident to him.

On February 1, 2005, the claimant was given a Functional Capacity Exam (FCE) at American Physical Therapy Centers, Inc., by Mr. Jim L. Keller. Mr. Keller

noted that the claimant could sit, walk, push/pull, bend, kneel, and grasp. However, Mr. Keller noted that she could not stand for an excessive amount of time each day, plus she could not rotate her head to the right, pick up an electric motor, and return it to the right. The FCE classified the claimant's job in 2002 as "light work," but placed her functional capacity at sedentary work. The "light work" classification entails lifting 20 pounds infrequently, 10 pounds or less frequently, walking or carrying 2.5 miles per hour. The sedentary work classification entails lifting 10 pounds or less on an infrequent basis and no walking or carrying. Respondent #1 did not offer the claimant any sedentary work after the FCE due to ceasing it's operations in Jonesboro, where the claimant was employed at the time of her injury.

On August 19, 2005, Ms. Heather Naylor of Rehabilitation Management conducted an initial vocational rehabilitation evaluation at the request of Respondent #1. In the August 19, 2005 report, Ms. Naylor noted that the claimant could return to the work force but had the ability to only work in a sedentary job. Due

to her singular work history as a factory worker, the claimant lacked skills that would transfer her into a sedentary category of work. However, the claimant did begin learning to type at Ms. Naylor's suggestion. Ms. Naylor also noted that the claimant had been a high wage earner, but because of her singular work history and lack of transferable skills, she would most likely have a significant wage loss without further training/education. On January 23, 2006, Ms. Naylor wrote her last Progress Report, and noted that the claimant had followed up on almost all the job leads that had been provided to her, and at that time, her labor market area was exhausted.

On December 19, 2005, the parties deposed Dr. Barrett-Tuck, regarding the claimant's medical treatment. Dr. Barrett-Tuck first treated the claimant in 1992 for the anterior cervical discectomy and fusion at C5-6, and released the claimant in 1993 with a 7% impairment rating and a 40-pound lifting restriction. The claimant was last seen by Dr. Barrett-Tuck in January 1994 and did not receive any pain medication from Dr. Barrett-Tuck after 1994.

Dr. Barrett-Tuck testified that the previous neck surgery did add to the claimant's difficulty in fully recovering from the second surgery. However, Dr. Barrett-Tuck testified that the claimant's 2002 injury caused the herniated disk at C6-7 and the previous 1992 fusion was not responsible for the surgery at C6-7. In fact, Dr. Barrett-Tuck testified that she would consider that the claimant received an excellent result from the 1992 surgery.

The Administrative Law Judge opined that the claimant sustained a loss of earning capacity/wage loss disability in the amount of 63% over and above her anatomical impairment. We affirm the Administrative Law Judge's opinion due to the finding that the claimant cannot sit or stand for very long periods of time, and must resort to using narcotics to relieve the pain. Also, the claimant, at age 54, has had limited work experience as she worked for thirty years as an unskilled manual laborer. Even though she applied for eighty-four (84) potential jobs and exhausted her labor market, she was still unsuccessful in finding employment. Furthermore, Ms. Naylor, the vocational

rehabilitation specialist, has indicated that the claimant's injury will cause her to sustain a significant amount of wage loss.

The claimant was highly motivated to find work and the FCE placed her functional capacity at sedentary work. In fact, the claimant applied for eighty-four (84) jobs, followed up on all job leads, pursued improving her office skills, and was still unsuccessful in finding employment. The claimant was limited in employment because she cannot sit or stand for very long periods of time, and must resort to using narcotics to relieve the pain. Also, the claimant has limited work experience as she worked for thirty years as an unskilled manual laborer. Even though the claimant had a "nice appearance," she was never called back for a second interview and at age 54 felt that employers were mainly hiring younger people. Additionally, the claimant testified that she was trying to improve her typing skills and develop some computer skills. The claimant testified that she was willing to try to learn new things and develop new skills. Even Ms. Naylor noted that despite her efforts, the claimant's labor market

area had been exhausted. For these reasons, we affirm the Administrative Law Judge's opinion that the claimant sustained wage loss disability in the amount of 63% over and above her anatomical impairment is appropriate.

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. The Commission is charged with the duty of determining disability. The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. The Commission is charged with the duty of determining disability. Cross v. Crawford County Memorial Hosp., 54 Ark. App. 130, 923 S.W.2d 886 (1996). In determining wage-loss disability, the Commission may take into consideration the worker's age, education, work experience, medical evidence and any other matters which may reasonably be expected to affect the worker's future earning power. Such other matters are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946 (1984); Curry v.

Franklin Electric, 32 Ark. App. 168, 798 S.W.2d 130 (1990), 54 Ark. App. 130, 923 S.W.2d 886 (1996). It is well established that a claimant's prior work history and education are factors to be considered in determining eligibility for wage-loss benefits. See Cross v. Crawford County Memorial Hosp.; Glass v. Edens; City of Fayetteville v. Guess; Curry v. Franklin Electric, supra.

Respondent #1 first argues that the claimant should not be entitled to a 63% wage loss on a 2% anatomical rating because she did not meet her burden of proof for a wage loss award. Respondent #1 argues that the claimant declined having a second surgery by Dr. Barrett-Tuck due to personal reasons and that she was tolerating pain well enough that she did not want to consider another surgery. Apparently, Respondent #1 seems to argue that the claimant just is not in enough pain to grant wage loss. However, she refused the second surgery by Dr. Barrett-Tuck because there were no guarantees that it would work. The claimant explained that it was only an exploratory surgery. In fact, Dr. Barrett-Tuck even admitted that the more surgeries a

person had, the greater the chance that person would not fully recover or they would have some other pain or disability. Additionally, the claimant has a fear of needles and dying during surgery. The claimant stopped breathing upon two occasions after surgery and has a fear that she will not survive another surgery.

Furthermore, the claimant's mother had recently past away and her sister was diagnosed with cancer. As such, it is completely within reason why the claimant did not want to pursue surgery and why she was tolerating pain "well enough" that she did not want to consider another surgery. Furthermore, the claimant has the right not to have to undergo another surgery, particularly given the associated risks.

The claimant also testified that she was prescribed Hydrocodon and also took over-the-counter non-prescription medications, including Aleve and Tylenol. The claimant testified that she tried to refrain from taking the Hydrocodon as much as possible because it makes her feel dizzy. As such, she can sometimes go two or three days without taking any, but sometimes the pain becomes so severe that she has to

take it two times in a row. Furthermore, if the claimant opted for the second surgery, and it failed, putting the claimant in more pain, she would most likely have to take the Hydrocodon every day. Accordingly, the claimant's pain level is an appropriate factor in determining wage-loss. In fact, in the case of Whitlatch v. Southland Land & Dev., 84 Ark. App. 399 (2004), the Court of Appeals indicated,

In short, when taking into consideration appellant's limited education, manual-labor employment skills, severe pain in his back and legs, coupled with the side effects of necessary prescription pain medication, in addition to the testimony of his doctors and vocational expert, we are convinced that fair-minded persons with the same facts before them could not have reached the conclusion arrived at by the Commission, finding that appellant was anything less than permanently and totally disabled. For these reasons we are compelled to reverse the Commission's decision. (Internal citations omitted) (Emphasis added).

As such, Respondent's argument that the claimant did not meet her burden of proof is erroneous.

Respondent #1 also argues that the claimant is able to perform some housework, and as such, she should

be able to perform sedentary work. The claimant does not deny that she is able to do some housework. In fact, she testified that she does some laundry, cooking and cleaning. However, she is no longer able to mow her lawn or enjoy going to her lake house because her pain is too severe. The Respondents argue that the claimant claims that she cannot do sedentary work because she does not feel that she would sit or stand for eight hours a day. In fact, the claimant cannot sit or stand eight hours a day. The claimant testified that she could sit for approximately two hours before the pain became severe, causing her head, neck and arm pain. When she felt this pain, she had to either lie down or stand up. The claimant even testified that she spent approximately three hours a day lying down to relieve the pressure on her neck. As such, even though the claimant may be able to perform some sedentary work, it would be impossible for her to sit or stand eight hours a day as most jobs would require. Furthermore, the FCE revealed that the claimant is unable to turn her head and it is frankly impossible to imagine such a job that did not require sitting or standing eight hours a day, even if it is sedentary.

Respondent #1 also seems to argue that the claimant is not motivated to return to work. The FCE, which was not given until February 1, 2005, placed the claimant's functional capacity at sedentary work. The claimant requested Respondent #1 to provide job place assistance via letters from her attorney on February 9, 2005, April 6, 2005, and May 19, 2005. Without any assistance from the Respondents, the claimant began her own job search on July 13, 2005 and applied for work at 84 separate businesses. It was not until August 19, 2005 that the Respondents requested an initial vocational rehabilitation evaluation by Ms. Naylor. The claimant fully cooperated with Ms. Naylor, and even began to learn to type at Ms. Naylor's suggestion. Unfortunately, the claimant was still not able to find employment. Ms. Naylor noted that due to the claimant's singular work history as a factory worker, she lacked skills that would transfer her into a sedentary category of work. Ms. Naylor also noted that the claimant had been a high wage earner, but because of her singular work history and lack of transferable skills, she would most likely have a significant wage loss without further training/education. Ms. Naylor even noted that despite

her efforts, the claimant's labor market area had been exhausted. We further find that the claimant's inability to locate work in her labor market area shows that she sustained a 63% wage loss.

For example, in the case of Clyde O. Cox v. DeQueen Sand & Gravel Company, Full Commission Opinion filed August 1, 2005 (F011701), the claimant sustained admittedly compensable silicosis. The claimant was over forty years old, had an eighth grade education, and had difficulty reading and writing. Additionally, his only work experience was performing heavy, manual labor, which he was unable to perform. This Commission relied on the testimony of Bob White, a Vocational Rehabilitation Specialist, who indicated that the claimant, due to his age, his medical condition, and shortage of jobs for people with his abilities, would not be employable. This was later affirmed by the Court of Appeals. See DeQueen Sand & Gravel Company v. Clyde O. Cox, ___ Ark. App. ___, ___ S.W.3d ___ (2006). Additionally, in the case of Johnson v. Latex Construction Company, 94 Ark. App. 431, ___ S.W.3d ___ (2006), the Court of Appeals specifically held that when a claimant refused out of state work, it was improper to

find that the claimant was not motivated to return to work.

Likewise, in the present case, it is evident that the claimant's medical condition in combination with her age, job skills, and labor market area prohibit her from returning to most work. Accordingly, even Ms. Naylor's notes illustrate that the claimant's medical condition in combination with her work experience, age, and education along with the local job market, are all factors to consider in determining the claimant's employability. As such, we find that the claimant sustained a 63% wage loss.

Additionally, the Respondents argue that the claimant believes her age is an impediment to her ability to do work. On the contrary, the claimant does not use her age as an excuse not to do work. The claimant worked for thirty (30) years for the same employer, and Gary Rudder even testified that his wife was a hard worker. Rather, the claimant's testimony was that her age (54) has been an impediment to her finding a job. This is evident by the claimant's observations that employers were hiring younger employees. In determining wage-loss disability, the Commission may

take into consideration the worker's age. Supra Glass v. Edens; City of Fayetteville v. Guess; Curry v. Franklin Electric.

Respondent #1 also argues that the claimant is not motivated to return to work because she is making too much money now. At the time of her injury, the claimant's yearly earnings totaled between \$40,000 and \$45,000, which averages between \$3,333 and \$3,750 each month. Since her injury, the claimant receives Social Security Disability payments each month in the amount of \$1,342.00 and retirement disability in the amount of \$768.95 each month. The claimant also receives \$150.00 each month in the form of long-term disability. All together, the claimant's current monthly income totals \$2260.95. Respondent #1 argues that the claimant is not motivated to return to work, because the \$319 a month award in permanent partial disability would likely cause the claimant to make more money than she made while working for the Respondents. This is incorrect as an additional \$319 each month would bring the claimant's total income to \$2579.95 (minus a credit) each month, approximately \$1,000 less each month than she made while working for the Respondents. In fact, her receipt of

Social Security Disability corroborates her testimony that she cannot return to work. Additionally, even if the claimant was able to return to work, with her level of education and skills, it would be unlikely that she would find a job that would pay more than minimum wage.

Accordingly, in light of the job market, the claimant's age, education, and work experience, we find that the claimant's ability to find suitable work to be severely impeded given that she has already exhausted her job market. As such, we affirm the Administrative Law Judge's opinion that the claimant sustained a loss of earning capacity/wage loss disability in the amount of 63% over and above her anatomical impairment.

The Administrative Law Judge opined that Respondent #2, the Second Injury Fund, has no liability in this claim. Although Respondent #1 appeals this finding citing the claimant's prior injury, we affirm the Administrative Law Judge's finding as the evidence reflects that she had made a good recovery after her 1992 injury.

There is a tripartite test for establishing Second Injury Fund liability. The test requires that:

(1) The employee must have suffered a compensable injury

at his present place of employment. (2) Prior to that injury the employee must have had a permanent partial disability or impairment. (3) The disability or impairment must have combined with the recent compensable injury to produce the current disability status. Patterson v. Arkansas Dep't of Health, 343 Ark. 255, 33 S.W.3d 151 (2000), citing Mid-State Construction Co. v. Second Injury Fund, 295 Ark. 1, 746 S.W.2d 539 (1988).

In the present case, the claimant suffered a cervical injury in 1992, yet the injury that she sustained in 2002 was at a completely separate cervical level and totally unrelated to the 1992 injury. The claimant had completely recovered from her 1992 injury, and even Dr. Barrett-Tuck testified that the claimant's 2002 injury caused the herniated disk at C6-7 and the previous 1992 fusion was not responsible for the surgery at C6-7. In fact, Dr. Barrett-Tuck testified that she would consider that the claimant received an excellent result from the 1992 surgery. Even though Dr. Barrett-Tuck testified that the previous neck surgery did add to the claimant's difficulty in fully recovering from the second surgery, she did not indicate that the previous

injury was in any way related to the second injury. Additionally, the claimant had not been prescribed any pain medications since 1994, which further proves that the claimant had completely recovered from the 1994 injury.

The Respondents argue that the claimant had not completely healed from her first surgery, as evidenced by the 40-pound weight restriction that Dr. Barrett-Tuck had imposed. Yet, the Respondents fail to note that the claimant, a 5'2.5" woman weighing 122 pounds, would be lifting one-third of her own body weight by lifting 40-pounds. As such, a 40-pound restriction was a fairly significant amount of weight that the claimant was medically allowed to lift. Accordingly, the claimant's 1992 impairment is in no way related to the 2002 compensable injury, and we affirm the Administrative Law Judge's finding that the Second Injury Fund has no liability in this claim.

The claimant contends that Respondent #1 is entitled to a credit for the long term disability benefits that the claimant has received, but that Respondent #1 is not entitled to a credit for retirement disability benefits. However, the Court of Appeals

recently opined that Respondents are entitled to a credit for retirement disability benefits. Henson v. General Electric, ___ Ark. App. ___, ___ S.W.3d ___ (2007). As such, we affirm the Administrative Law Judge's opinion, granting Respondent #1 a credit for long term disability and retirement disability benefits.

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. §11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. §11-8-715 (Repl. 1996) with Ark. Code Ann. §11-9-715 (2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code. Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. Specifically, I concur in the finding that respondent no. 1 was entitled to a credit or set off pursuant to Ark. Code Ann. §11-9-411 against the claimant's retirement disability benefits, and the finding that the Second Injury Fund has no liability. However, I must dissent from the finding that the claimant suffered a loss in wage earning capacity in the amount of 63% over and above her permanent anatomical impairment rating of 2%. Based upon my de novo review of the record, I find that the claimant has proven by a preponderance of the evidence that she sustained some wage loss disability; however, not to the degree found by the majority.

In my opinion, a review of the evidence demonstrates that the claimant is not permanently and totally disabled nor is she entitled to a 63% loss in wage earning capacity over and above her 2% permanent anatomical impairment rating. The claimant is only 54 years old and has a high school diploma. The claimant is very trainable. At the suggestion of the vocational counselor, the claimant began taking a typing course and

stated that she had some improvement on that. She has also been working on a computer. The claimant is able to do light housekeeping chores as well as laundry and some outside work.

The claimant's FCE showed that she has an ability to perform sedentary work. However, financially, it is clear that the claimant has no motivation to return to work. The claimant receives \$1,342.00 per month in social security disability benefits as well as \$768.95 per month in disability retirement benefits and \$150.00 in long term disability benefits. The claimant also receive \$319.00 per week in permanent partial disability benefits. Furthermore, the claimant did not look for work for nearly two years. It was not until she found out that the respondents were about to provide job placement assistance, that the claimant began looking for a job. Therefore, when I consider the fact that the claimant is relatively young and trainable and has the ability to do things around the house, as well as, her education, work history, and other factors, I find that the claimant has failed to prove entitlement to a 63% loss in wage earning capacity. However, not withstanding my finding that the claimant lacks the motivation,

particularly a financial motivation, to return to work, the evidence does preponderate in favor of finding that the claimant has sustained some degree of wage loss disability.

Therefore, for all the reasons set forth herein, I must respectfully concur, in part, and dissent, in part, from the majority opinion.

KAREN H. MCKINNEY, Commissioner