

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F806728

BARBARA JOHNSON, EMPLOYEE	CLAIMANT
KINDER HARRIS, INC., EMPLOYER	RESPONDENT
CANNON COCHRAN MGMT. SVCS., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 8, 2009

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

Claimant represented by HONORABLE STEVEN R. MCNEELY,
Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondent appeals and Claimant cross appeals from a decision of the Administrative Law Judge filed February 19, 2009.

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 in which the relationship of employer-employee-carrier existed among the parties on June 4, 2008 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$281.00/\$211.00.

2. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. § 11-9-102.
3. The claimant gave notice of her injury in June, 2008 when she discussed her work excuse slip with her employer.
4. The respondents are directed to pay medical expenses within thirty days of receipt pursuant to Rule 30.
5. The respondents are directed to pay temporary total disability benefits from June 11, 2008 to November 11, 2008 as she remained in her healing period unable to work based on the opinions of Dr. Garlapti and Dr. Rosenzweig.
6. The respondents are directed to pay permanent partial disability benefits equivalent to the body as a whole based on Dr. Rosenzweig's rating.
7. The claimant is not motivated to return to the workforce and is therefore not entitled to any wage loss disability benefits.
8. If they have not already done so, the respondents are directed to pay the court reporter, Linda Parker's fees and expenses within thirty days of receipt of the bill.
9. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with Ark. Code Ann. § 11-9-715, § 11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn., (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992) (E019760), the claimant's portion of the controverted attorney's fees is to be withheld from, and paid out of, indemnity benefits and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. § 11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

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.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 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 (Repl. 2002).

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs & dissents.

CONCURRING & DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. After a de novo review of the record, I agree with the majority's award of temporary total disability benefits from June 11, 2008 to November 11, 2008 and permanent partial disability benefits based on a 7% rating to the body as a whole. However, as I would award the claimant 25% wage loss disability benefits,

I must dissent from the majority's denial of wage loss disability benefits.

Pursuant to Ark. Code Ann. §11-9-522(b)(1) the Commission has the authority to increase a claimant's disability rating when a claimant has been assigned an anatomical impairment rating to the body as a whole. See Lee V. Alcoa Extrusion, Inc., 89 Ark. App. 228, 201 S.W.3d 449 (2005). The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Id. In determining wage-loss disability, the Commission may take into consideration such factors as the claimant's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity. Ark. Code Ann. §11-9-522 (b) (1). Such other matters include 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).

Here, the claimant was 57 years old as of the date of the hearing. She had worked for the respondent for over 20 years. The claimant testified that she would be willing

to go back to the respondent employer and try light duty. Due to the claimant's testimony that she is willing to try light duty, the Administrative Law Judge's conclusion that the claimant is not motivated to return to work is not supported by the evidence of record. The claimant is motivated to return to work, however, she now has significant limitations due to her compensable injury and is entitled to some form of wage-loss disability to reflect her loss in wage-earning capacity. Based on my review of the evidence of record I would award the claimant wage loss disability in the amount of 25%.

PHILIP A. HOOD, Commissioner