

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605077

BILLY LACY, EMPLOYEE	CLAIMANT
DELTIC TIMBER CORP., EMPLOYER	RESPONDENT NO. 1
ST. PAUL FIRE & MARINE, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 29, 2009

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

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

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

Respondent No. 2 represented by the HONORABLE CHRISTY
KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal and Claimant cross-appeals an
opinion and order of the Administrative Law Judge filed
May 18, 2009. In said order, the Administrative Law
Judge made the following findings of fact and
conclusions of law:

1. There was a July 17, 2005, compensable injury.

2. The compensation rates are \$466/350.
3. A 10% permanent impairment was accepted and paid by Respondent No. 1.
4. The end of the healing period is June 13, 2007.
5. The claimant has proven by a preponderance of the evidence that he has suffered diminished earning capacity in the amount of 65% over his 10% permanent impairment rating.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the May 18, 2009 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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).

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. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (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(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the finding that the claimant is not permanently and totally disabled. However, I must

dissent from the majority's award of a sixty-five percent (65%) loss in wage earning capacity in addition to the claimant's anatomical impairment rating. In my opinion, this award is excessive.

The evidence demonstrates that the claimant is only thirty-five years old. The claimant's complaints of pain and the severity of the pain cannot be explained by the diagnostic procedures that followed the claimant's surgery. The claimant has not pursued getting his general equivalency diploma (GED), which could mean greater employment opportunities. In my opinion, the claimant lacks motivation to enhance his education. The claimant can complete his GED for free, but he has apparently elected not to pursue this course of action.

While I can agree that the claimant is entitled to some wage loss disability benefits in addition to his permanent anatomical impairment rating, I cannot find that the claimant is entitled to a sixty-five percent (65%). In my opinion, the claimant is entitled to twenty-five percent (25%) loss in wage earning capacity. Therefore, for all the reasons set forth herein, I must respectfully dissent from the award

of sixty-five percent (65%) loss in wage earning capacity.

KAREN H. MCKINNEY, Commissioner