

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302526

JIMMY SINGLETON, EMPLOYEE	CLAIMANT
CITY OF PINE BLUFF, EMPLOYER	RESPONDENT NO. 1
MUNICIPAL LEAGUE WCT, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MARCH 25, 2009

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

Claimant represented by the HONORABLE KENNETH A. HARPER,
Attorney at Law, Monticello, Arkansas.

Respondent No. 1 represented by the HONORABLE J. CHRIS
BRADLEY, Attorney at Law, North Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The Arkansas Court of Appeals has again reversed the
Full Commission in the above-styled matter and has remanded
with directions. *Singleton v. City of Pine Bluff*, CA07-1163
(May 28, 2008). Based on our *de novo* review of the entire
record, the Full Commission finds that the claimant proved

he sustained 10% anatomical impairment for his compensable ankle injury and 10% anatomical impairment for his compensable head injury. The claimant proved that he sustained wage-loss disability in the amount of 25%.

I. HISTORY

Jimmy Singleton, now age 43, testified that he began working full-time with the McGehee Police Department when he was age 21. Mr. Singleton subsequently worked for the Dermott Police Department as a K-9 Sergeant and Police Officer and then performed similar law enforcement duties for the Drew County Sheriff's Department. The claimant testified that he was Chief of Police in McGehee from October 1993 until September 1999. The claimant became a criminal investigator in Drew County in January 2000 and began working for the Pine Bluff Police Department in January 2003.

The parties stipulated that the claimant sustained a compensable injury to the left ankle and head on March 1, 2003. The claimant testified that he was conducting a pat-down search of an individual, and "he came around with his right hand and stuck a pistol in my stomach....I couldn't pull him over, so at that point I decided to see if I could

break his wrist over my knee. When I did that, the gun discharged....at that point I was knocked unconscious by the other individual that was in the truck....I was taken to Jefferson Regional, and I was in and out of consciousness in the ambulance."

A CT scan of the claimant's head was taken on March 1, 2003:

There is minimal soft tissue swelling on the right side of the head. The calvarium is intact, and no acute fracture is seen. There is no acute intracerebral hemorrhage or subdural hematoma. The ventricles are normal in caliber for patient's age. The 3rd & 4th ventricles are in midline. There is no obvious mass effect in either hemisphere.

IMPRESSION:

- 1) There is minimal soft tissue swelling on the right side of the head.
- 2) No acute calvarial fracture or intracerebral hemorrhage is demonstrated.

An x-ray of the claimant's left ankle was taken on March 1, 2003:

There are bullet fragments embedded in the posterior aspect of the talus, and there are small chip fractures of the posterior talus. A small bone fragment at the tip of the lateral malleolus is probably a secondary ossification center or an old avulsion fracture. There also appears to be secondary ossification center of the cuboid. The ankle mortise is intact.

An MRI scan of the claimant's brain was taken on March 25, 2003:

The ventricular system and cortical sulci are normal. There is no intracerebral hemorrhage. No abnormal extra-axial fluid or blood collections are seen. There is no mass or infarct. The cerebral white matter is normal with no evidence of white matter shear injury in this patient with history of trauma. The brain stem, cerebellum, and craniocervical junction are normal. On the post contrast images there are no abnormal enhancing lesions. The orbits and sinuses are normal. The pituitary is normal.

IMPRESSION:
Negative MRI scan of the brain.

Dr. Bradley S. Boop gave the following impression after an Electroencephalography procedure on March 26, 2003: "This is an abnormal EEG due to relatively minor sharp and slow wave activity seen in the left temporal leads. This is a nonspecific finding and may be associated with an underlying paroxysmal disorder."

An MRI of the claimant's left foot was taken on April 3, 2003:

IMPRESSION: Osseous edema. Posterior talofibular ligament is intact. Medial ligament is intact. The posterior talofibular ligament is intact and the calcaneal fibular ligament is not confidently identified.
IMPRESSION: No major tendinous disruption or injury.

Dr. Scott C. Claycomb, an ophthalmologist, consulted with the claimant on May 2, 2003: "Mr. Singleton does appear to have ocular hypertension with possible early glaucomatous visual field deficits. The remainder of his examination does appear relatively unremarkable....Mr. Singleton does report he continues to have headaches....It is possible that he has a post-concussive headache."

Dr. Lon Burba saw the claimant on May 20, 2003: "[T]his is a 38-year-old male who presents with the complaint of headaches located in the top of his head radiating toward the front and at times behind his ears. He has blurred vision in his left eye and he has occasional dizziness with nausea and vomiting. He will get some neck pain and he states he has had headaches daily since he was hit on the head. When he closes his eyes, he sees spots." Dr. Burba's impression was "1. Post-traumatic headaches." Dr. Burba's treatment plan included additional diagnostic testing.

Dr. Scott M. Schlesinger provided a neurosurgical consultation on June 10, 2003:

Mr. Singleton is a 38-year-old male police officer who was hit in the head and knocked unconscious on March 1, 2003 while working. Since that time he has had headaches, blurred vision, tremor in his

right hand, and difficulty sleeping and concentrating. He has multiple other vague neurologic symptoms. He has not been able to work since then. He has been extensively evaluated. He is on a number of medications. He has a history of depression....

I have read the MRI scan of the brain. This study is unremarkable. I do not feel that there is any structural explanation for his headaches. Obviously, headaches could come from multiple sources including underlying structural lesions, tension headaches, migraine headaches, cluster headaches, etc. In his case, I think he has post-concussive headache and neurologic symptoms.

There is nothing to do for him neurosurgically and nothing to base a permanent partial disability rating on. I think over the next 4-6 weeks he should reach maximum medical improvement from post-concussive syndrome. I will defer treatment and following of this patient to Dr. Burba....

Dr. Burba wrote an Electroencephalogram Report on October 2, 2003 and gave the following impression: "This is an abnormal EEG characterized by occasional left temporal sharp activity which may reflect an area of cortex irritation in this region of the brain, but is a non-specific finding. Compared to the previous EEG, this is not much changed."

Dr. Andrew L. Lawton, a Neuro-Ophthalmology specialist, examined the claimant and informed Dr. Burba on October 2, 2003, "I found no organic explanation for the reported decrease in vision in Mr. Singleton's left eye. In fact,

when he was dilated, I disassociated his eyes using a 4 diopter base-up prism over his right eye and he read 20/25 with his left eye. I believe he has a conversion reaction related to his left eye. He does have open angle glaucoma managed by Dr. Claycomb that appears unrelated to his trauma."

The claimant began treating with Dr. Barry D. Baskin on November 10, 2003.

Dr. Jason G. Stewart's impression following an examination on February 25, 2004 was "Left ankle pain related to gunshot wound with residual bullet in the ankle." Dr. Stewart stated the following:

1. I have cautioned him against excision of this fragment stating the obvious risk of neurovascular injury to get this deep in the ankle and creating a problem that does not already exist. I think his burning and pain is such a broad complaint that simply removing the bullet fragment is not going to alleviate the discomfort.
2. I have recommended antiinflammatories only.
3. Regarding his work status, I do not think that he will ever be able to do a job that requires running, climbing, carrying or lifting anything. It mostly needs to be a sedentary job standing no more than two hours in an eight-hour period.
4. Regarding his recovery, I think that he has reached maximum medical improvement at this time, but the AMA Guide to Permanent Impairment does not have a rating based on residual bullet fragment. He does not have leg-length discrepancy, girth discrepancy, or any fractures, fusions or amputations and therefore, I cannot give

him a rating at this time.
5. I will see him on an as-needed basis.

Dr. Baskin reported on March 25, 2004:

Mr. Singleton is 1 year out from his injury. He has mild residual traumatic brain injury type findings. He has diagnosis of post traumatic stress disorder. He has residual antalgic gait on the left due to a gunshot wound in the left foot. Left foot pain. Again, mild cognitive deficits. Using the AMA Guidelines Fourth Edition, Page 142, Table 2, under mental status impairments, Mr. Singleton has a mild mental status impairment but he is able to perform satisfactorily most activities of daily living. He has an 8% impairment to the whole person based on mental status impairment. In Table III, Page 142, emotional and behavior impairment, Mr. Singleton would have an impairment in the mild category which would give him a 10% whole person impairment rating. Due to the patient's post traumatic headaches, which seem to be migraine in nature, he would have an 8% whole person impairment rating. Due to the patient's bullet wound to the left foot with antalgic gait using Table 13, Page 148 he would have an 8% impairment rating to the whole person. Using the combined chart on Page 322, Mr. Singleton would have 30% impairment to the whole person based on mental status impairment, emotional disturbance, gait disturbance ...

The parties stipulated that the claimant "reached the end of his healing period and maximum medical improvement on March 25, 2004."

Dr. Baskin noted on May 6, 2004, "I will try to find something for him to do. He is receiving retirement from work as well as social security disability. He is still

only 39 and has a long life ahead of him. I hope he can find something suitable in the employment line or volunteer work. He has worked in law enforcement primarily, and I think he should stick with that area, if possible."

The impression from a Left Lower Extremity Venous Doppler Ultrasound on June 8, 2004 was "No definite left lower extremity venous pathology."

Dr. Baskin noted "a moderate amount of edema in the left leg" on July 8, 2004. The claimant continued to follow up with Dr. Baskin.

Dr. W. R. Oglesby, a psychiatrist, wrote to a representative of the respondent-carrier on August 5, 2004:

Mr. Jimmy Singleton was seen at Delta Counseling Associates earlier this year and terminated treatment only after a few visits. His diagnoses were Depression and Post Traumatic Stress Disorder which are treatable conditions from which full recovery was expected. Any mental impairment he may have had at the time of his visits here was considered temporary. We usually do not give disability or impairment ratings, however, in reviewing Dr. Baskin's Clinic Note, I do not agree with his conclusion regarding the percentage of mental impairment or that Mr. Singleton was at a point of maximum improvement.

A pre-hearing order was filed on December 6, 2004. The claimant contended, among other things, that he was entitled to an anatomical impairment rating, permanent total

disability, or alternatively wage-loss disability. The respondents contended, among other things, that the claimant was not entitled to an anatomical impairment rating or wage-loss disability. The parties agreed to litigate the following issues: "extent of anatomical impairment, if any, and wage loss, if any."

A hearing was held on February 11, 2005. The claimant testified, "I have had a headache every day since March 1st of 2003." The claimant testified that his left-eye vision was blurred. The claimant testified that he was unable to hold down a regular job because of his post-injury physical condition. The claimant testified on cross-examination that he was receiving Social Security disability and medical-disability retirement pay.

An administrative law judge filed an opinion on May 12, 2005. The administrative law judge found that the claimant was entitled to a 30% whole-body impairment rating and wage-loss disability in the amount of 50%. The respondents appealed to the Full Commission. The Full Commission found that the claimant was not entitled to any anatomical impairment or wage-loss disability, but the Court of Appeals has reversed and remanded with directions.

II. ADJUDICATION

A. Anatomical Impairment

"Permanent impairment" has been defined as any permanent functional or anatomical loss remaining after the healing period has ended. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.2d 823 (2003), citing *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. Ark. Code Ann. §11-9-704(c) (1) (B) (Repl. 2002). Ark. Code Ann. §11-9-102(16) (A) (Repl. 2002) provides:

(i) "Objective findings" are those findings which cannot come under the voluntary control of the patient.

(ii) When determining physical or anatomical impairment, neither a physician, any other medical provider, an administrative law judge, the Workers' Compensation Commission, nor the courts may consider complaints of pain; ...

(B) Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty[.]

Pursuant to Ark. Code Ann. §11-9-521(h) (Repl. 2002) and Ark. Code Ann. §11-9-522(g) (Repl. 2002), the Commission shall adopt an impairment rating guide to be used in assessing anatomical impairment. The Commission has

therefore adopted the Guides to the Evaluation of Permanent Impairment (4th Ed. 1993) published by the American Medical Association. *See, Workers' Compensation Laws And Rules, Rule 099.34.*

The Commission is authorized to decide which portions of the medical evidence to credit and to translate this medical evidence into a finding of permanent impairment using the AMA *Guides*. *See, Avaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003), citing *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

In the present matter, the parties stipulated that the claimant sustained a compensable injury to his left ankle on March 1, 2003. The claimant testified that he received a gunshot wound to the left ankle. An x-ray on March 1, 2003 showed bullet fragments and chip fractures in the claimant's talus bone. The parties stipulated that the claimant reached the end of his healing period and achieved maximum medical improvement on March 25, 2004. Dr. Baskin reported on that date, "Due to the claimant's bullet wound to the left foot with antalgic gait using Table 13, Page 148 he would have an 8% impairment rating to the whole person." Dr. Baskin's observation of antalgic gait was clearly non-

objective evidence. See *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). However, we note the Court's admonishment in its second remand:

The *Guides* are just that: mere guides to aid the Commission in assessing the degree of a claimant's disability as defined by statute and interpreted by the courts. If those *Guides* do not contain an express method of rating an injury that is compensable pursuant to Arkansas law, the Commission must adopt a reasonable method of doing so.

The Full Commission is mindful of the Court's admonishment and we are acting in good faith to carry out the Court's mandate. Although we cannot award the claimant a rating pursuant to "antalgic gait," there are objective medical findings of record in the instant matter which support an assessment of an 10% permanent impairment, including Dr. Stewart's finding of a "residual bullet in the ankle." We also note the March 1, 2003 x-ray showing "bullet fragments embedded in the posterior aspect of the talus." Dorland's Illustrated Medical Dictionary, (27th ed., 1988) defines "fracture" as "the breaking of a part, especially a bone," and "a break or rupture in a bone." It is evident in the present matter that the claimant's talus bone is "fractured" by the presence of the embedded bullet fragments, as there is a break or rupture in the talus bone.

The Guides at Table 64, p. 3/86 provide a range of impairments for ankle fractures from 15% to 25%+ to the lower extremity for a 10°-20° fracture that is extra-articular with angulation and a 20% to the lower extremity for a fracture that is intra-articular with displacement. Dorland's defines "articular" as "of or pertaining to the joint," "angulation" as "deviation from a straight line, as in a badly set bone," and "displacement" as "removal from the normal position or place." The evidence in the present matter does not indicate that the bullet fragments have resulted in any form of "angulation" or "displacement." Nevertheless, the fracture caused by the embedded bullet fragments is a permanent objective medical finding which merits a physical anatomical impairment rating. Table 64, p. 3/86 assigns a 15% lower extremity impairment for a 10°-14° angulation fracture. Relying on the Guides, therefore, the Commission can extrapolate a rating of 10% to the lower extremity for a fracture caused by embedded bullet fragments without angulation or displacement. Pursuant to the Court's remand with directions in the present matter, the Full Commission therefore finds that the claimant proved he sustained a permanent anatomical impairment to his left

ankle of 10% to the lower extremity below the knee as a result of his compensable ankle injury. There are supporting objective medical findings of bullet fragments in the claimant's ankle. We find that the March 1, 2003 compensable injury was the major cause of the claimant's 10% anatomical impairment to his ankle.

The parties stipulated that the claimant sustained a compensable injury to his head on March 1, 2003. This injury was a whole-body, unscheduled injury. The Full Commission cannot award the claimant the 30% whole-body rating assessed by Dr. Baskin. The 30% rating assigned by Dr. Baskin was derived from combining multiple ratings for the claimant's unscheduled head injury and scheduled ankle injury. The 30% rating was therefore not valid as an overall rating for the claimant's compensable head injury. The 30% rating was also based on pain and other subjective criteria. A CT scan on March 1, 2003 showed soft tissue swelling on the right side of the claimant's head. On March 25, 2003, the claimant was diagnosed with conditions including depression, suicidal ideations, severe headaches, and short-term memory loss. The claimant testified that he

suffered from trembling, shaking, and tremors following the compensable injury to his head.

Dr. Boop reported on March 26, 2003 that an EEG procedure on the claimant tested abnormal. Dr. Burba confirmed on October 2, 2003 that EEG testing on the claimant was abnormal. Dr. Boop opined that the claimant suffered from an underlying paroxysmal disorder. On March 25, 2004, Dr. Baskin assigned a 30% impairment rating based in part upon the claimant's mental status (8%), emotional and behavior status (10%), and headaches (8%). The Commission may not consider complaints of pain when determining a claimant's anatomical impairment. Ark. Code Ann. §11-9-102(16)(A)(ii). The Guides at Chapter 15 specifically state that pain is subjective and cannot be measured objectively. Chapter 15 contains the only provision in the Guides for rating headaches. Since the Commission is statutorily proscribed from considering complaints of pain when determining a physical or anatomical impairment, we cannot consider the claimant's headache complaints in assessing a permanent anatomical impairment.

There is also no objective evidence of record leading to an assessment of permanent impairment with regard to the

claimant's mental/emotional or behavior status. Dr. Baskin relied on the Guides at Chapter Four, "The Nervous System." Chapter Four provides for permanent impairment resulting from disturbances of mental status and emotional or behavioral disturbances. Yet the record does not set forth what criteria Dr. Baskin relied on in analyzing the claimant. The Court of Appeals has held that neuropsychological testing, standing alone, is insufficient to establish a compensable injury. *Watson v. Tayco, Inc.*, 79 Ark. App. 250, 86 S.W.3d 18 (2002). Such testing, however, would at least indicate whether a patient was experiencing deficits in neurocognitive and neurobehavioral functioning. While the instant claimant underwent psychological evaluations and was diagnosed with post-traumatic stress disorder and adjustment disorder, there is no evidence that the claimant underwent neuropsychological testing. Without such testing, Dr. Baskin relied solely on subjective responses from the claimant and speculated with regard to the degree, if any, of the claimant's mental, emotional, or behavioral disturbance. The Commission is therefore unable to attach significant weight to the 30% whole-body rating assigned by Dr. Baskin.

The Court has nevertheless directed the Commission to adopt a reasonable method of assigning the claimant a permanent rating. Table 5, p. 143 of the Guides provides for a 0-14% impairment of the whole person for a paroxysmal disorder. Pursuant to Table 5, the Full Commission finds that the claimant proved he sustained a 10% anatomical impairment for his compensable head injury. The diagnosis of paroxysmal disorder was not present before the March 1, 2003 compensable injury. The diagnosis of paroxysmal disorder is supported by two abnormal EEG diagnoses. We find that the claimant proved the compensable injury was the major cause of his 10% anatomical impairment for the unscheduled compensable head injury.

B. Wage-Loss

Ark. Code Ann. §11-9-521(Repl. 2002) provides in pertinent sections:

(a) An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits during the healing period or until the employee returns to work, whichever occurs first, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule:

....

(g) Any employee suffering a scheduled injury shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment set forth above except as otherwise provided in §11-9-519(b).

Ark. Code Ann. §11-9-519(b) states: "In the absence of clear and convincing proof to the contrary, the loss of both hands, both arms, both legs, both eyes, or of any two (2) thereof shall constitute permanent total disability."

A claimant who has sustained a scheduled injury but is less than permanently totally disabled is not entitled to wage-loss disability benefits. *Fed. Compress & Wholesale v. Risper*, 55 Ark. App. 300, 935 S.W.2d 279 (1996).

The instant claimant did not prove he was entitled to permanent partial disability benefits in excess of the 10% permanent anatomical impairment for the scheduled ankle injury. With regard to the claimant's unscheduled compensable head injury, the wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). The Commission is charged with the duty of determining wage-loss disability based upon a consideration of medical evidence and other matters affecting wage-loss, such as the claimant's age,

education, work experience, and other matters reasonably expected to affect the employee's future earning capacity. Ark. Code Ann. §11-9-522(b)(1) (Repl. 2002).

In the present matter, the claimant began a full-time career in law enforcement at age 21. The claimant became a patrolman with the Pine Bluff Police Department in January 2003. The parties stipulated that the claimant sustained a compensable injury to his head on March 1, 2003. The Full Commission has found that the compensable injury was the major cause of a 10% anatomical impairment rating. The claimant has experienced serious emotional and physical problems following the compensable injury. He suffers from headaches, blurred vision, trembling, shaking, irritability, and anger. Dr. Stewart opined in February 2004 that the claimant would not be able to perform a job which required running, climbing, carrying, or lifting. Dr. Stewart opined that the claimant needed "a sedentary job standing no more than two hours in an eight-hour period." However, Dr. Baskin opined on March 25, 2004, the date of maximum medical improvement, that the claimant was "able to perform satisfactorily most activities of daily living." Dr. Baskin opined in May 2004 that the claimant was "still only 39 and

has a long life ahead of him. I hope he can find something suitable in the employment line or volunteer work. He has worked in law enforcement primarily, and I think he should stick with that area, if possible."

The claimant is still a young man, now only 43. Although the claimant *may not* be able to return to work as a law enforcement patrolman, the claimant is able to perform at least sedentary work activity. The claimant however is drawing at least two sources of disability and is not motivated to attempt to resume a productive life and return to work. The claimant's demonstrated lack of motivation is an impediment to a full assessment of his loss of earning capacity. *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984). When we consider Mr. Singleton's young age, education, work experience, and lack of motivation to return to work, the Full Commission finds that the claimant proved he sustained wage-loss disability in the amount of 25%.

As stated earlier, the Full Commission is mindful of the admonishment from the Court of Appeals in the present matter, and we have strived to adjudicate this claim pursuant to the Court's holding. Based on our *de novo*

review of the entire record, and in accordance with the remand and directions from the Arkansas Court of Appeals, the Full Commission finds that the claimant proved he sustained an 10% anatomical impairment for the scheduled injury to his left ankle. The Full Commission finds that the claimant proved he sustained a 10% anatomical impairment for the unscheduled compensable injury to his head. The claimant proved he sustained wage-loss disability in the amount of 25% in excess of the 10% anatomical impairment for the unscheduled compensable injury to his head. The Full Commission therefore affirms the administrative law judge's award as modified. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing in part on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, & dissents, in part.

CONCURRING & DISSENTING OPINION

I concur in the majority's finding that the claimant sustained 10% anatomical impairment for his compensable ankle injury. I also concur in the majority's finding that the claimant sustained 10% anatomical impairment for his compensable head injury. And while I agree that the claimant has sustained wage-loss disability in the amount of 25%, as I find that the claimant is actually entitled to wage-loss disability in the amount of 50%, I must respectfully dissent, in part, on this issue.

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 Hospital, 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).

In support of its limited award of wage-loss disability, the majority states:

The claimant is still a young man, now only 43. Although the claimant may not be able to return to work as a law enforcement patrolman, the claimant is able to perform at least sedentary work activity. The claimant however is drawing at least two sources of disability and is not motivated to resume a productive life and return to work. The claimant's demonstrated lack of motivation is an impediment to a full assessment of his loss of earning capacity. City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W. 2d 946 (1984).

However, the majority's assertion overlooks some very important evidence. Here, it is apparent is that the claimant suffers from debilitating depression, for which it appears the respondents have accepted liability. The evidence of record indicates that the claimant's depression and post-traumatic stress disorder have inhibited his ability to return to work, and also appear to be conditions which will not resolve. Furthermore, the claimant suffers from short-term memory loss, which would almost certainly impede his ability to work.

Despite the severity of the claimant's condition, he attempted to return to work and was unsuccessful. Notably, the claimant did not leave work. Instead, his supervisor had to send him home. Clearly, returning to work despite having severe limitations would not be the actions of someone who is not motivated to return to work. In fact, it is just the opposite.

For the aforementioned reasons I must respectfully concur, in part, and dissent, in part.

PHILIP A. HOOD, Commissioner