

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F611778

ARTHUR W. BEAL, EMPLOYEE	CLAIMANT
FAIRFIELD BAY COMMUNITY CLUB, INC., EMPLOYER	RESPONDENT NO. 1
U.S. FIRE INSURANCE/ CRUM & FORSTER, CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 30, 2010

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

Claimant represented by the HONORABLE LAURA BETH YORK,  
Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE MICHAEL  
WRIGHT, Attorney at Law, Little Rock, Arkansas.

Respondents 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

Claimant appeals from a decision of the  
Administrative Law Judge filed November 9, 2009.

The Administrative Law Judge entered the following  
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the claim.
2. The employee-employer-carrier relationship existed at all relevant times, including October 17, 2006.
3. The claimant sustained a compensable closed head injury in the form of a subdural hemotoma.
4. At the time of the hearing, parties stipulated that the claimant's average weekly wage at the time of his compensable injury was \$401.56. His compensation rate for temporary total disability is \$268.00, and his permanent partial disability rate is \$201.00.
5. The claimant reached maximum medical improvement on May 2, 2007.
6. The claimant received a 39% whole body impairment on May 2, 2007, which has been accepted and is being paid by respondents No. 1.
7. The claimant failed to prove by a preponderance of the evidence that he was rendered permanently and totally disabled by this compensable injury.
8. The claimant proved that he sustained a 25% wage-loss disability, over and above his 39% anatomical impairment.
9. The claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.
10. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

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.

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.

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DAVID GREENBAUM, Special Commissioner

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KAREN H. MCKINNEY, Commissioner

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

**CONCURRING & DISSENTING OPINION**

While I respectfully concur that the claimant is entitled to 25% wage-loss disability, as I find that the evidence of record clearly shows that the claimant is permanently and totally disabled, I must respectfully dissent from the majority's limited award of benefits.

After a de novo review of the record, I find that the claimant is entitled to permanent and total disability. Permanent total disability is defined as inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Ark. Code Ann. §11-9-519 (e) (1). The burden of proof shall be on the employee to prove inability to earn any meaningful wage in the same or other employment. Ark. Code Ann. §11-9-519 (e) (2). The same factors considered when analyzing wage-loss disability claims are usually considered when analyzing permanent and total disability claims. See Ark. Code Ann. §11-9-519 (c); Rutherford v. Mid Delta Community Services, Inc. \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W. 3d \_\_\_ (2008). Such factors include 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. Other factors include motivation, post-injury income,

credibility, demeanor, prior work history and education.

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 apparent, based upon the claimant's age, education, work experience, and medical evidence, that the claimant is permanently and totally disabled. The claimant is a 64-year-old man with only an 8<sup>th</sup> grade education. He can barely read and write. His entire work history consists of working construction, operating heavy equipment, and truck driving, which he can no longer perform. More importantly, the claimant's medical evidence supports that the claimant is permanently and totally disabled. The claimant sustained a 39% whole body impairment rating.

The claimant's traumatic brain injury caused significant mental problems for the claimant, which Dr. Akin testified would only worsen with time. This is evidenced by the claimant being unable to remember his address of 25 years and getting lost in familiar places. For example, the claimant once got lost in his own yard. Likewise, the claimant's personality has changed due to the accident. Where he was once kind and always laughing, he is now angry

and temperamental. The claimant continues to take Zoloft, which has seemed to help with his personality issues, but he still experiences episodes of anger. Moreover, Dr. Akin noted that the claimant's memory was encumbered, and Dr. Boop agreed that the claimant sustained mild cognitive changes, primarily with short-term memory. For example, Dr. Boop testified that, in a mini mental status exam, which is a memory test, the claimant had difficulty remembering some of the things he was asked to remember. As such, it is evident that the claimant's significant mental problems prevent him from returning to any type of employment.

The claimant continues to experience physical problems. Both Dr. Akin and Dr. Boop note the claimant's unsteady gait, and Dr. Akin specifically noted that the claimant suffered from balance problems. Likewise, Mrs. Beal's testimony revealed that the claimant has fallen so many times since the day of injury that she makes him use a cane and wear a bicycle helmet when going outside. Furthermore, Dr. Boop testified that there was a risk of recurrence, and that subdural fluid collections can occur spontaneously or with very minor trauma, like bumping your head on a cabinet. Thus, the claimant's balance problems could lead to a fall, which, in turn, could lead to

additional trauma to his head. As such, it is evident that the claimant's physical problems prevent him from returning to any type of employment.

The claimant continues to suffer debilitating headaches. He testified that he has a headache every day, and on a scale of one to ten, the pain is equivalent to an eight. The pain is so severe that he spends most of his day in the chair, watching birds. Mrs. Beal corroborated his testimony. Additionally, the claimant continues to take medications to help with the pain. Likewise, both Dr. Akin and Dr. Boop continued to note the claimant's complaints of severe headaches throughout their treatment of the claimant. As such, it is evident that a person suffering from severe headaches on a daily basis can no longer return to employment.

In conclusion, considering the severity of the claimant's condition, his ongoing use of medications, his limited work history, and his inability to even engage in less than sedentary work, it is evident that the claimant is unable to return to work in any capacity. Although Dr. Akin noted that the claimant could return to sedentary employment and Dr. Boop testified that he did not place any restrictions on the claimant, it is imperative to note that

the claimant could not perform a desk job prior to the accident, as he can hardly read or write. Likewise, even though Dr. Boop testified that the claimant should be able to perform some sort of employment, he also noted that in a mini mental status exam, which is a memory test, the claimant had difficulty remembering some of the things he was asked to remember. The claimant is unlikely to find any work due to his lack of education, but the fact that he has documented memory problems on top of his lack of education, clearly shows that the claimant has proved his entitlement to permanent and total disability benefits.

For the aforementioned reasons I must concur, in part, and dissent, in part, from the majority opinion.

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PHILIP A. HOOD, Commissioner