

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F805114

LAWRENCE JONES,
EMPLOYEE

CLAIMANT

UNIVERSITY OF ARKANSAS AT
PINE BLUFF,
EMPLOYER

RESPONDENT NO. 1

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED APRIL 30, 2010

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney
at Law, Little Rock, Arkansas.

Respondent No. 1 represented by the HONORABLE RICHARD S.
SMITH, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed October 5, 2009. The administrative law judge
found that the claimant proved he was entitled to 60% wage-
loss benefits. After reviewing the entire record *de novo*,

the Full Commission finds that the claimant proved he was entitled to wage-loss disability in the amount of 30%.

I. HISTORY

Lawrence A. Jones, age 52, testified that he was a high school graduate with no additional education. Mr. Jones testified that he worked as a printer for his father for 20 years. The claimant operated printing presses for the Arkansas Department of Correction for approximately 17 months. The claimant testified that he also performed printing duties for two other companies.

The claimant testified that he was hired at University of Arkansas at Pine Bluff (UAPB) in October 2001. The claimant described his job at UAPB: "Mainly as the pressman, printer and cutter operator, truck unloader, just pretty much - I was the only man in the shop." The claimant testified that the job involved lifting "Cartons of paper, which probably - some of them weigh in excess of 200 pounds or so. It's pretty much all heavy lifting - cutting paper, loading presses with paper. Paper gets pretty heavy pretty quick. I was unloading trucks and pulling the pallets in and out." The claimant testified that his work required lifting overhead, pushing, pulling, bending, and stretching.

The claimant testified that he was involved in a work-related accident with the respondents in 2003: "I was running the press and reached down and grabbed a sheet of paper and come up with a crick in my neck." The claimant agreed at hearing that Dr. P.B. Simpson performed surgery at C6-7 in October 2003, and that the claimant received a 15% anatomical impairment rating. The claimant testified that he received benefits from the respondent-carrier and returned to full-duty work.

The parties stipulated that the claimant sustained a compensable neck and left shoulder injury on or about May 20, 2008. The claimant testified, "I was attempting to put a plate on where you have to pull up with your left arm on the Heidelberg. I was pulling real hard, trying to get it in position right, and my left arm started aching and these two fingers and my hand went numb....I went in the next morning and we filled out all the proper paperwork."

Dr. Lester Alexander examined the claimant on May 21, 2008:

This is a 50-year-old male patient who comes in today complaining of pain in his left shoulder and in the left side of his neck and left arm. He states that he was holding up a part of his printing press and he felt a sharp pain in his arm

and shoulder. He has been experiencing some involuntary jerking movements of this arm when he tries to raise it up and he states that he cannot hold his arm up above chest height. He also has pain which radiates from the neck out to the shoulder and down the arm. Past history reveals he has had cervical disk surgery a few years ago, but he states that he was not having any problems prior to this injury today....

Dr. Alexander assessed "Left shoulder strain and cervical strain with muscle spasms."

The claimant testified that he did not return to work after the May 20, 2008 compensable injury. Dr. Earl Peebles examined the claimant on June 4, 2008 and assessed "Left upper extremity pain, status post ACF C6-C7 with suggestion of possible C5 nerve root involvement."

The record contains a University of Arkansas at Pine Bluff memorandum to Cynthia Anderson, Human Resources, from Beverly Arthur, Printing Services, dated June 4, 2008:

Lawrence Jones current position is that of Pressman. His duties require physical activity including lifting, pulling, loading, etc. The position includes operating and maintaining a four color press and other printing equipment.

There are no light duties associated with this position that can be performed in lieu of the primary duties and responsibilities.

Dr. Peeples arranged an MRI of the claimant's cervical spine, which was done on June 10, 2008 with the following impression:

1. Prominent left paracentral annular bulge at C5-6 with central canal narrowing.
2. Bilateral significant foraminal stenosis C5-6 from underlying broad-based annular bulge and endplate and facet changes.
3. Multilevel foraminal stenosis of underlying more chronic bony arthropathy and bony fusion....

Dr. Peeples referred the claimant to Dr. P.B. Simpson.

Dr. Simpson examined the claimant on July 25, 2008:

This is a gentleman I did a C6-7 L-sided disk on back in Oct 2003. He did well after that. Back in April or so, he started having a little pain towards his L shoulder and chest....About 2 mos ago he was pulling on something and had severe pain in his neck and L shoulder....He had an MRI which shows he has a disk protrusion at C5-6 and he has a lot of degenerative changes at 6-7 where he had his fusion. He complained mainly of L arm pain....

I am not sure he does not have a big central disk at C5-6 on his MRI....I am going to do a myelogram and a post myelogram CT and make some recommendations on him.

The claimant followed up with Dr. Simpson on August 5, 2008: "He had an MRI which shows he has a disk protrusion at C5-6 and he has a lot of degenerative changes at C6-7 where he had his fusion....I did a cervical myelogram/post CT scan that showed this also....**PLAN/SURGERY:** Anterior Cervical Fusion/allograft/plate at C5-6 on the left."

Dr. Simpson performed an operation on August 5, 2008: "Removal of hardware from C6-7. Anterior cervical discectomy with fusion with Allograft and plating at C5-6." The pre- and post-operative diagnosis was "Herniated nucleus pulposus at C5-6, central and lateral paracentral on the left."

Dr. Simpson signed a note on December 2, 2008: "There is no further recommended treatment for this man. He has reached his MMI with an impairment rating of 30% to the body as a whole....You may want to consider have an FCE on this gentleman with no further treatment in store."

The parties stipulated that the claimant reached maximum medical improvement on December 2, 2008. The parties stipulated that the respondents accepted and were paying a 15% permanent impairment rating. The claimant testified that he was receiving bi-weekly benefits in connection with a 15% rating.

The claimant participated in a Functional Capacity Evaluation on December 10, 2008:

FUNCTIONAL LIMITATIONS

Mr. Jones demonstrates functional limitations with material handling as he did not demonstrate the ability to lift over 40 lbs. from the floor to knuckle level or over 25 lbs. bimanually when lifting to shoulder level. Mr. Jones also did not

exhibit the ability to lift up to 20 lbs. with his LUE and up to 25 lbs. with his RUE when lifting to shoulder level. Mr. Jones demonstrated limited cervical spine AROM with slow and guarded movement patterns throughout testing. Mr. Jones also demonstrated limited AROM of the left shoulder and he did not exhibit the ability to perform work with this extremity above shoulder level.

CONCLUSIONS

Mr. Lawrence Jones completed functional testing on this date with reliable results.

Overall, Mr. Jones demonstrated the ability to perform work within the MEDIUM Physical Demand Classification as defined by the US Dept. of Labor's guidelines over the course of a normal workday with the limitations noted above.

A pre-hearing order was filed on May 27, 2009. The claimant contended, among other things, that he had received a 15% anatomical impairment rating which had been accepted. The claimant contended that he was permanently and totally disabled. The claimant alternately contended that he was entitled to a determination of wage-loss disability in excess of the permanent impairment. The respondents contended that the claimant was not entitled to additional benefits.

A hearing was held on July 9, 2009. The claimant testified, "I have great difficulty lifting or trying to raise my left arm up. My right arm is better, but my left arm is real - (indicating). It hurts to even come up that

high." The claimant testified that he suffered from chronic pain in his neck, shoulder, and arm. The claimant testified on direct examination:

Q. Has [Human Resources] offered you some sort of job there at UAPB that's within your limitations?

A. As far as I know, I still have a job there.

Q. As far as you know, you're still considered an employee?

A. Yes, sir. They haven't thrown me out yet.

Q. But have they offered you some work there?

A. No, sir, not since my injury....

Q. Did they offer to rehabilitate you in any way?

A. No, sir....

Q. Mr. Jones, would you be physically able to do the job of a printer/pressman?

A. No, sir. I don't think I could with the way my arm is. I can't get it high enough to do the requirements of that job.

An administrative law judge filed an opinion on October 5, 2009. The administrative law judge found, in pertinent part, "8. Considering the claimant's age, education, work experience, medical evidence, motivation, post-injury income, claimant has proven by a preponderance of the evidence that he is entitled to 60% wage loss benefits sustained as a result of his compensable injury."

The respondents appeal to the Full Commission.

II. ADJUDICATION

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Eckhardt v. Willis Shaw Express*, 62 Ark. App. 224, 970 S.W.2d 316 (1998). In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his future earning capacity. Ark. Code Ann. §11-9-522(b)(1) (Repl. 2002).

In the present matter, the claimant is relatively young, only age 52. The claimant is a high school graduate with no college education and has been gainfully employed throughout his adult life, working mainly as a Pressman. The claimant began operating a printing press for the respondent-employer in October 2001. The claimant credibly testified that his work for the respondents occasionally required manual labor, including lifting, pushing, pulling, bending, and stretching. The claimant was involved in a

work-related accident with the respondents in 2003. Dr. Simpson subsequently performed surgery on the claimant's cervical spine and assigned a 15% anatomical impairment rating. The claimant eventually returned to full-duty work for the respondents.

The parties have stipulated that the claimant sustained a compensable neck and left shoulder injury on or about May 20, 2008. Dr. Alexander's assessment following the compensable injury included left shoulder strain and cervical strain. The claimant was referred back to Dr. Simpson, who performed another operation on the claimant's cervical spine. Dr. Simpson pronounced maximum medical improvement on December 2, 2008 and assigned a 30% anatomical impairment rating. The parties agree that the claimant received a 15% anatomical impairment rating for the compensable 2003 injury and another 15% impairment rating for the 2008 injury.

The parties have stipulated that the claimant reached maximum medical improvement on December 2, 2008. The claimant participated in a Functional Capacity Evaluation (FCE) on December 10, 2008 and gave reliable results for effort. It was concluded following the FCE that the

claimant had functional limitations in material handling, lifting, and performing work with his left upper extremity above shoulder level. However, the FCE did not show that the claimant was permanently and totally disabled from working. Rather, it was shown that the claimant "demonstrated the ability to perform work within the MEDIUM Physical Demand Classification as defined by the US Dept. of Labor's guidelines over the course of a normal workday with the limitations as noted above."

The record therefore indicates that the claimant has permanent physical restrictions but is not permanently and totally disabled. We note that the respondent-employer would not allow the claimant to return to light duty, even before the claimant's compensable surgery and resulting 15% anatomical impairment rating. A UAPB memorandum introduced into the record clearly shows that there was no light duty involved in the claimant's employment position as a Pressman. The Full Commission finds that the claimant has sustained wage-loss disability in the amount of 30%. The record currently indicates that the claimant has not been allowed to return to restricted work for the respondents, but the record also shows that the claimant is able to

perform medium work duties as shown on the Functional Capacity Evaluation.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has sustained wage-loss disability in the amount of 30%. The Full Commission therefore affirms as modified the administrative law judge's award of wage-loss disability. We find that the May 20, 2008 compensable injury was the major cause of the claimant's 30% wage-loss disability. The claimant's attorney is entitled to fees for legal services in accordance with 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, and dissents, in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur & dissent from the majority opinion which erroneously reduces the Administrative Law Judge's award of 60% wage-loss disability to 30%. Based upon a de novo review of the record in its entirety, I find that the preponderance of the evidence of record clearly shows that the claimant has sustained wage-loss disability greater than 30%; therefore, while I concur in the majority's finding that the claimant is entitled to wage-loss disability, I must respectfully dissent from the majority's limited award. As did the Administrative Law Judge, I find that the evidence of record clearly supports an award of 60% wage-loss disability.

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).

At the time of the hearing, the claimant was 52 years old. He has worked almost exclusively in the printing and printing press industry. He has a 30% permanent impairment rating to the body as a whole. Due to the claimant's impairment rating, 30% due to two fusion surgeries; age, 52; education, high school; and the claimant's work experience, almost exclusively in the printing press industry, to which he will not be able to return, as well as the fact that the claimant has been unable to find suitable employment, I find that the Administrative Law Judge was correct in awarding the claimant 60% wage-loss disability. The majority's reduction

of the Administrative Law Judge's award is not supported by the evidence of record.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner