

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F501124

GAYLE NOBLE, EMPLOYEE	CLAIMANT
CUSTARD INSURANCE ADJUSTER, INC., EMPLOYER	RESPONDENT NO. 1
FEDERAL INSURANCE COMPANY, CARRIER/TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED JULY 30, 2010

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

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

Respondents No. 1 represented by the HONORABLE LEE J. MULDRON, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Respondents No. 3 represented by the HONORABLE CHRISTY L. 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 December 29, 2009.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer/employee/carrier existed among the parties on January 18, 2005, at which time the claimant sustained compensable injuries to the eyes, nose and back at a compensation rate of \$465.00/\$359.00. Medical expenses and temporary total disability benefits were paid until the claim was controverted.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that his hearing loss is causally related to the compensable injury.
3. The claimant has failed to prove that he sustained any permanent impairment from the floaters disturbed by the January, 2005 MVA. His present vision loss is the result of the progression of his pre-existing condition of macular degeneration according to Dr. Landers.
4. The claimant has failed to prove that Dr. Mocek's treatment is causally related to the compensable injury. Neither Dr. Mocek nor Dr. Bruffett were able to find any permanent changes to the spine after the January, 2005 injury. The claimant's present back condition is a progression of degenerative disc disease.
5. The claimant has failed to prove the compensable injury is the major cause of any impairment or disability. Therefore,

respondent No. 1, Federal, the Second Injury Fund and the Trust Fund have no liability for permanent partial disability or permanent total disability benefits.

6. Respondent No. 1 is not bound by the subrogation agreement the claimant reached with the third parties. The respondents are directed to pay medical expenses incurred between January 18, 2005, and February 12, 2005, within thirty days of receipt of the itemized medical bills pursuant to Rule 30.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I respectfully dissent from the majority on all issues involved in this claim. However, I am most disappointed by the majority's failure to award permanent and total disability benefits related to the claimant's left eye injury.

The claimant was involved in a work-related compensable motor vehicle accident on January 18, 2005 that involved air bag deployment. The medical records show that the claimant sustained injuries to his eye, ears, nose and back in the accident. The most significant injury is to his left eye. As the claimant already had significant impairment to his right eye, his only "good" eye at the time of the accident was his left eye. After the January 18, 2005

accident, the claimant was left with significant impairment in his left eye, leaving him unable to drive, and effectively blinding him. Two eye doctors testified regarding the degree of permanent impairment to the left eye attributable to the January 18, 2005 accident. Although the two doctors do not agree regarding the degree of impairment, they do agree that the claimant sustained some permanent impairment to the left eye from the January 18, 2005 accident. One of the doctors testified that the claimant's inability to drive is due solely to the January 18, 2005 accident.

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. §11-519 (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. §11-519 (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 no longer able to read or drive, both requirements of the employment he has performed for most of his adult life. His inability to drive can be attributed solely to the January 18, 2005 accident. A 69 year old man with a limited diversity of work history is effectively blind due to a compensable work related injury. If anyone is entitled to permanent and total disability benefits, it should be this claimant.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner