

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D013040, D612809, F213328 & F304703

MILTON BLAKELY, EMPLOYEE	CLAIMANT
GEORGIA-PACIFIC CORPORATION, SELF-INSURED EMPLOYER	RESPONDENT NO. 1
SEDGWICK CLAIMS MANAGEMENT SERVICES, TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

ORDER FILED AUGUST 2, 2011

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

Claimant appears Pro Se.

Respondents No. 1 represented by the HONORABLE SUSAN
FOWLER, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID
SIMMONS, Attorney at Law, Little Rock, Arkansas.

Respondent 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 an opinion and order of the
Administrative Law Judge filed January 26, 2011. In

said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the employee-employer-carrier relationship existed among the parties on September 19, 1980 (D013040), at a compensation rate of \$126.00. Medical expenses, temporary total disability benefits and a 25% rating have been accepted. The parties also stipulated to an employee-employer-carrier relationship on September 5, 1986 (D612809), at a compensation rate of \$154.00/\$175.00. Medical expenses, temporary total disability benefits, and a 5% rating for a total of 30% to the back have been accepted.

The parties further stipulated to employment relationships on May 23, 2002 (F7213328) and October 24, 2002 (F7304703), at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$425/\$319 in the event the claims in 2002 are found compensable. The claimant's last day of work was October 24, 2002. Some medical expenses for the 2002 injuries have been paid by Health Advantage.

2. The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries in May and October, 2002, caused by specific incidents, arising out of and in the course of his employment, which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. The claimant has failed to prove he is entitled to wage loss disability benefits based on his voluntary retirement and on the reports of Dr. Reddy, Dr. Walsh, and Dr. Schlesinger. Neither the Second Injury Fund or

the Permanent and Total Disability Trust Fund has any liability.

4. If they have not already done so, the respondents are directed to pay the court reporter, Linda Parker's, fees and expenses within thirty days of receipt of the bill.

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.

The claimant alleges that he sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the January 29, 2011 decision of the Administrative Law Judge, including all

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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 must respectfully dissent from the majority opinion. The claimant is a 58-year-old man with a 30% impairment rating to the body-as-a-whole. He has been unable to work since he fell off a railcar while performing employment services for the respondent in 2002. 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). Here, considering the fact that the claimant has worked for the respondent employer in a heavy capacity for the greater part of his work history, in combination with his large impairment rating, I find that he has sustained substantial wage-loss. I would award the claimant 60% wage-loss disability.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner