

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G305958

BRIAN O. BIRTCHER, EMPLOYEE	CLAIMANT
CITY OF MENA, EMPLOYER	RESPONDENT NO. 1
ARKANSAS MUNICIPAL LEAGUE, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JANUARY 14, 2016

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

Claimant represented by the HONORABLE JASON M. HATFIELD,  
Attorney at Law, Fayetteville, Arkansas.

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

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondent No. 1 appeals an administrative law  
judge's opinion filed June 1, 2015. The administrative  
law judge found that the claimant proved he was  
permanently totally disabled.

After reviewing the entire record *de novo*, the Full  
Commission finds that the claimant did not prove he was  
permanently totally disabled. The Full Commission finds

that the claimant proved he sustained wage-loss disability in the amount of 50%.

I. HISTORY

The record indicates that Brian O. Birtcher, now age 43, is a high school graduate and attended community college for approximately one semester. Mr. Birtcher testified that he lived in Rocky, Arkansas, nine miles west of Mena. The claimant testified that his employment history included work as a drilling rig operator, deputy sheriff, bouncer, and machinery operator in a poultry plant. The record indicates that the claimant became employed with the respondents in about September 2006. The claimant testified that he was a maintenance worker in the respondents' sewer department.

The parties stipulated that "the date of the compensable injury is July 28, 2013." The claimant testified that he was assaulted by a man and his wife while attempting to turn off their water. The claimant testified that the man's 300-pound wife injured his leg, kicked him in the head, and "jerked my head around."

According to the record, an Emergency Room - Outpatient Record dated July 29, 2013 indicated that the claimant "hurt leg." A Triage Record/Nursing Assessment dated July 29, 2013 indicated, "States was kicked in

left leg, now c/o pain to left lower leg." A Pre-Triage Form dated July 29, 2013 indicated "Broke leg. Attacked/fight."

An Emergency Physician Record dated July 29, 2013 indicated that the claimant complained of "injury to L leg." A physician's handwritten impression was "L leg pain/contusion distal fibula fracture." An x-ray report on July 29, 2013 showed the following findings: "There is an oblique minimally displaced fracture of the distal fibula above the lateral malleolus. No other fracture or dislocation seen. IMPRESSION: Minimally displaced fracture of the distal fibula."

Dr. Kent Schnetzler examined the claimant on July 31, 2013:

Brian Birtcher is a new patient today. He is here for evaluation of left ankle injury. He is a 40-year-old ambidextrous male who works for Mena Water Department. On July 29, 2013, he was doing his job shutting off water meters for overdue accounts when a customer and his wife attacked him. He says the wife "stomped" on his left foot and ankle injuring it. He went to the emergency room for x-rays and x-rays of the left tibia and fibula showed what appears to be a distal fibular fracture. He did not have dedicated x-rays of the left ankle. He was placed in a fracture boot and crutches and referred to my clinic. There were no other injuries reported.

Dr. Schnetzler assessed "Left distal fibular fracture." Dr. Schnetzler treated the claimant conservatively and remarked, "No work for now."

The claimant informed an emergency physician on August 4, 2013 that he had been "kicked in head and neck." A physician's impression was "neck strain." A cervical spine CT was taken on August 4, 2013, with the impression, "Normal cervical spine CT."

An x-ray of the claimant's left ankle was done on August 7, 2013 with the impression, "Stable healing fracture of the distal fibula." A triage record on August 13, 2013 indicated, "Patient states he is dizzy and cannot stand up without losing his balance. Also states the left side of his face is numb." A physician's impression was "Concussion w/o LOC."

A CT of the claimant's brain/head was taken on August 13, 2013, with the impression "No acute abnormality." An MRA of the claimant's head was taken on August 14, 2013, with the impression, "Normal brain MRA." A cervical spine MRI on August 15, 2013 showed "Mild degenerative disc disease at C6-7 with disc bulge at this level as described above. Correlate clinically."

Dr. Reginald Rutherford evaluated the claimant on August 27, 2013: "He was assaulted on 07/29/13. He suffered head trauma without loss of consciousness and a left fibular fracture. Since the accident he has noted diminished pain and temperature sensation left face and

right side of the body accompanied by dizziness  
difficulty swallowing breathing and insomnia....MRI  
study of the brain was performed after being seen. This  
revealed evidence for left vertebral dissection with  
brain stem and cerebellar infarction." Dr. Rutherford  
assessed "Left vertebral dissection secondary to trauma.  
Requires admission to hospital for arteriography. He  
will likely require anticoagulation for 6 months or  
longer."

Dr. Stephen F. Shafizadeh began treating the  
claimant on August 27, 2013:

According to the patient and patient's wife,  
the patient was at work and turning off a  
resident's water secondary to nonpayment.  
While doing that, the resident according to  
the patient, came out and attacked him....Over  
the next few days, the patient started having  
increasing neck pain, started some headache  
and worsening ambulation. The following week,  
the patient continued to have headache which  
was somewhat worse and also started to have  
numbness on the left side of his face and the  
right side of his body....

Outside hospital MRI was reviewed which  
demonstrated a medullary and left cerebellar  
stroke consistent with a posterior inferior  
cerebellar artery infarction. The MRI was  
also suggestive of potential dissection/  
occlusion of the left vertebral artery....

The patient and wife were consulted on the  
potential possibility of a lateral medullary  
syndrome (Wallenberg syndrome).

Dr. Shafizadeh reported on October 9, 2013, "A CT  
angiogram of the head and neck was reviewed which

demonstrated no further progression of the left vertebral artery dissection/occlusion and patient proximal V4 segment of the left vertebral artery with cross flow from the right. There was no new evidence of strokes as based on CT angiogram. Intracranial findings were unchanged." Dr. Shafizadeh planned referrals for follow-up treatment and stated, "5. With regard to him returning to work, I instructed him that he could return to work as long as work had limited risk. As such, I recommended to him to have a 'desk job.' There were no limitations if he was to have a desk job at his same company that he worked at before."

A neuro-ophthalmologist, Dr. Andrew W. Lawton, informed Dr. Shafizadeh on October 25, 2013, "I saw Mr. Brian Birtcher for a comprehensive examination yesterday. He suffered an injury at work in July 2013 that resulted in a left vertebral artery dissection and brainstem stroke. He has persistent right-sided anesthesia and left facial anesthesia. He had balance problems and was told that he had a lateral medullary syndrome. He has noted that his left pupil is larger than his right. At exam, his visual acuity was 20/20 in each eye....Mr. Birtcher has right pupillary abnormalities related to Horner's syndrome. Horner's syndrome is a component of his lateral medullary

syndrome. His eyelid function has recovered. I found no evidence of damage to his visual pathways. No intervention or additional diagnostic testing is indicated. He will return to you for continued care and to me as requested."

Dr. Shafizadeh reported on January 8, 2014, "5. With regards to returning to work, I, again, reviewed with the patient with his representative in the room that I do not do disability assessments. In brief, however, I relayed to him that given his decreased sensation of the right hand, right leg, and alterations in vision, I do not recommend him to do any machinery or any driving at work or otherwise. I also recommended to him that physically he could return to work as long as it was a desk job and he was not asked to do work that would put him at harm if he fell or was involved in any machinery. These were generalized recommendations, and I relayed to him that I do not do specific recommendations in this kind of setting as there are innumerable situations which could include or exclude the above recommendations. I also relayed to him that I would be willing to talk to his lawyer if there are any further specific questions."

A Return To Work Permit dated January 8, 2014 indicated that the claimant could return to work on

January 9, 2014, "No machinery. Light duty. No driving."

The claimant testified that he returned to restricted duty work for the respondents. The claimant testified that he occasionally worked in the respondent-employer's office, collecting money from customers. The claimant asserted, however, that his arithmetic ability was "sixth grade" level.

Dr. Scott W. F. Carle provided an Independent Medical Evaluation on August 28, 2014:

This is a 42 year old white male who was assaulted by a customer at work on 7/28/2014....He states that a very large female kicked him in the head, chest and leg....He was admitted to St. Vincent and was under the care of Dr. Shafizadeh. It was at that time he was diagnosed with a dissected vertebral artery and subsequent stroke. He has had a variety of neurological complaints and has been maintained on anti-coagulation therapy....

He drives a car and can care for himself at home. He is able to shop and shower and eat....

The claimant has worked for Mena Water Department for close to eight years in maintenance....Claimant advised by Neurosurgery to not participate in any "high impact" physical activity. He is working in the office and is on light duty. He was off work for a total of about one month and has been back to work for about one year. Prior to his job, he worked as a correction officer....

This is a 42 year old white male who a little over one year ago was assaulted at work by a



customer. Subsequent to this, he sustained a head injury and a fractured left fibula. The leg has healed. His head and neck injuries resulted in a vertebral artery dissection on the left and resultant medullary stroke. He has had some neurological residual from this and has completed therapies and consultations recommended. He continues to have some problems with positional vertigo, difficulty swallowing, pain in the left face, paresthesias of the right upper and lower extremity and central sleep apnea. He also has some depression and remains symptomatic. He has not been found to have injury to his visual pathways. His confusion has resolved. He does have hypertension which is not maximally treated. He has also gained significant weight over the past year. He has been back to work for almost a year and his employer has accommodated his restrictions....

This client was assaulted on the case date which resulted in measurable injury to the brain. The mechanism was a left sided vertebral artery dissection and subsequent medullary stroke. He has some permanent neurologic sequelae....

TOTAL COMBINED NEURO IMPAIRMENT: 33% whole person permanent partial impairment rating due to the case date for neurologic impairments associated with traumatic dissection of the left vertebral artery and subsequent medullary stroke....

The claimant has had specific direction not to engage in activity that is beyond a "desk job" by his attending neuro surgeon. Subsequent to his current functional status pertaining to work ability and his apparent risk associated with engaging in activity, the following work class recommendations are made and should be considered permanent in duration.

The claimant would not be considered eligible for Commercial Vehicle Operation under the DOT due to his persistent symptoms of vertigo with a neurologic basis.

Subsequent to that, he should also engage only in ground level work. He should not lift, push or pull beyond 20 pounds of force occasionally to move objects. He should not exceed 10 pounds of force on a frequent basis and no more than negligible force constantly. He should not operate dangerous machinery at work such as a backhoe or forklift.

A job description is available for review. There exist documentation that the claimant has been trained to work as a billing clerk and other light duty office work. He will also be given the opportunity to go with contractors to identify meter locations. Duties for that will include 'riding and communicating.' The claimant would appear to be able to do this job as described and would be of no direct threat of imminent harm to others or himself by engaging in this type of work activity.

The record contains a note from the respondent-employer's general manager, stating, "Brian Birtcher's employment with Mena Water Utilities was terminated on October 1, 2014. Brian's employment was terminated because Mena Water Utilities no longer had a position for Brian with the work restrictions imposed by the doctor that conducted the medical evaluation for Worker's Compensation insurance."

Heather Taylor, a vocational consultant, provided a Vocational Rehabilitation Assessment Report on October 24, 2014:

At the request of Andrea Sayre, with Arkansas Municipal League, I met with Mr. Brian Birtcher to complete a vocational rehabilitation assessment....

Mr. Birtcher sustained several injuries as a result of his work accident. He has reached maximum medical improvement, and has been released to return to the workforce with permanent restrictions. Mr. Birtcher reported that he very much would like to return to the workforce as soon as possible, and stated he is open to trying just about any job he physically would be able to perform....

Although Mr. Birtcher has an excellent work history and has acquired some skills from his work history, most of these skills are applicable to a medium or heavier level of work. It appears that he is now limited to light duty work, and there appear to be a few jobs in his labor market area that would fall within his permanent restrictions. Mr. Birtcher stated that he would be interested in job search assistance if that is available to him; therefore, I recommend beginning to work with Mr. Birtcher in the job search process. Such services could include weekly job market research to identify jobs for which he can apply. I also recommend providing him with interviewing skills training and an updated resume if needed.

Ms. Taylor identified several job openings for the claimant in such areas as customer service, driving, and retail employment.

Heather Taylor notified the respondents on November 24, 2014 that she had identified job openings for the claimant including "Merchandiser for Frito Lay in Mena," "Wireless Sales Representative for Russell Cellular (Verizon) in Mena," and "Bank Teller for Arvest in Mena."

Heather Taylor corresponded with the claimant on December 8, 2014 and informed him of two job openings, "Dispatcher for Southern Star in Poteau" and "Registration Clerk for the Poteau Health Clinic." Heather Taylor notified the respondents on December 29, 2014 that she had identified two job openings, including "Dispatcher for Southern Star in Poteau. Training provided. Salary approximately \$11.00/hour." The claimant testified that Poteau, Oklahoma was over an hour's drive from his home.

Heather Taylor informed the claimant on January 7, 2015, "The following is one current job opening that you may want to follow-up on as soon as possible, as positions tend to fill quickly. Business Office Rep in Waldron for Mercy. No prior experience required. Training provided. Salary approximately \$8-\$10/hour." Ms. Taylor wrote to the claimant on January 15, 2015 and informed him of a job opening, "Local Office Administrative Assistant in Waldron for the Department of Human Services. Will answer phones, greet visitors, file, and distribute mail. Salary \$22,919-\$37,954/year." The claimant testified that Waldron was a 90-minute drive from his home.

Heather Taylor informed the claimant on January 23, 2015, "There is a weekend position with the Sevier

County Developmental Center in DeQueen for individuals to teach clients daily living skills. Salary \$11.25/hour and training is provided....Please call me with an update on your job search progress." The claimant testified that De Queen was over an hour's drive from his home.

A pre-hearing order was filed on January 26, 2015. The claimant contended that he "sustained a compensable injury while working for the respondent on or about July 8, 2013. At that time, the claimant was in the course and scope of his employment with the respondent when he sustained a head injury and a broken leg."

Respondent No. 1 contended that it "has paid or is paying all medical appropriate benefits. The claimant is not permanently and totally disabled. The claimant has a wage-loss disability of 10% to the body as a whole."

Respondent No. 2 contended, "If the claimant is found to be permanently and totally disabled, the Trust Fund stands ready to commence weekly benefits in compliance with Ark. Code Ann. §11-9-502. Therefore, the Trust Fund has not controverted the claimant's entitlement to benefits."

The parties agreed to litigate the following issues:

1. Whether the claimant is entitled to permanent total disability.
2. Alternatively, whether the claimant is entitled to wage-loss disability.
3. Fees for legal services.

Heather Taylor informed the respondent-carrier on January 26, 2015, "During this reporting period, job market research continued on Mr. Birtcher's behalf. I have communicated with him regularly, and he reports that he is actively applying for jobs, as he stated that he wants to return to the workforce. However, he has yet to obtain employment as of this date." Ms. Taylor notified the claimant of positions including Business Office Representative for a hospital and Administrative Assistant for the Arkansas Department of Human Services.

Dr. Carle reported on March 3, 2015, "Total Combined Neuro Impairment: 33% whole person permanent partial impairment rating due to the case date for neurologic impairments associated with traumatic dissection of the left vertebral artery and subsequent medullary stroke."

The parties stipulated that the claimant's healing period ended on March 3, 2015. The parties stipulated that Respondent No. 1 "accepts liability for permanent partial disability in the amount of 33% to the body as a whole." The parties stipulated that Respondent No. 1 "has accepted 10% wage loss."

After a hearing, an administrative law judge filed a opinion on June 1, 2015. The administrative law judge found that the claimant proved he was permanently and totally disabled.

Respondent No. 1 appeals 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. *Rutherford v. Mid-Delta Cmty. Servs, Inc.*, 102 Ark. App. 317, 285 S.W.3d 248 (2008). 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 factors reasonably expected to affect his future earning capacity. Ark. Code Ann. §11-9-522(b) (1) (Repl. 2012).

Permanent total disability means 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) (Repl. 2012). 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) (Repl. 2012).

An administrative law judge found in the present matter, "1. The claimant has proven by a preponderance of the evidence that he is permanently and totally disabled as a result of his admittedly compensable injuries sustained on July 28, 2013." The Full Commission does not affirm this finding. The claimant is only 43 years old. The claimant graduated from high school and attended community college for approximately a semester. The claimant's work history has involved primarily manual labor. The claimant testified that he had performed oil field work, machinery operation, and law enforcement employment.

The claimant became employed as a maintenance worker for City of Mena Water Utilities in September 2006. The claimant's co-workers testified that the claimant was a good employee. The parties stipulated that the claimant sustained a compensable injury on July 28, 2013. The claimant testified that he was physically assaulted by two irate water customers, and that his injuries including being "fishhooked" with his head jerked back and forth. Although the initial medical records showed only a fracture to the claimant's lower left leg, with no other injuries, the respondents also accepted an injury to the claimant's head.



Dr. Rutherford's assessment in August 2013 was "Left vertebral dissection secondary to trauma." The claimant was placed on "anticoagulation" medication. Dr. Shafizadeh subsequently became the claimant's primary treating physician and confirmed Dr. Rutherford's assessment. Dr. Shafizadeh returned the claimant to work but recommended a "desk job." Dr. Shafizadeh stated in January 2014, "I do not recommend him to do any machinery or any driving at work or otherwise. I also recommended to him that physically he could return to work as long as it was a desk job and he was not asked to do work that would put him at harm if he fell or was involved in any machinery." A Return To Work Permit dated January 8, 2014 indicated, "No machinery. Light duty. No driving." The claimant testified that he returned to restricted work for the respondents, but that he had difficulty working in the office and counting money.

Dr. Carle provided an independent evaluation in August 2014. Dr. Carle noted that the claimant could drive a vehicle and perform activities of daily living such as shopping, showering, and eating. Dr. Carle stated that the compensable injury had caused "a left sided vertebral artery dissection and subsequent medullary stroke." Dr. Carle assigned the claimant a

33% whole person impairment rating and opined that the claimant could not be eligible to drive commercially due to neurologic symptoms including vertigo. Dr. Carle stated, "he should also engage only in ground level work. He should not lift, push or pull beyond 20 pounds of force occasionally to move objects. He should not exceed 10 pounds of force on a frequent basis and no more than negligible force constantly. He should not operate dangerous machinery at work such as a backhoe or forklift."

The respondents terminated the claimant's employment on or about October 1, 2014 because they could not accommodate the claimant's work restrictions. Heather Taylor subsequently met with the claimant and noted that the claimant had permanent work restrictions. Ms. Taylor identified several appropriate job openings near the claimant's home in Mena, such as food merchandiser and wireless sales representative, but the claimant asserted he was physically unable to perform those jobs. Ms. Taylor also identified other job openings for the claimant in areas such as Waldron, Ar. and Poteau, Ok., but the claimant stated it was not economically viable to drive such distances from his home.

The respondents have accepted a 33% permanent anatomical impairment and 10% wage-loss disability. The Full Commission finds that the claimant did not prove he was permanently totally disabled. The claimant is only age 43 and no treating physician has opined that the claimant is permanently totally disabled. The respondents have accepted wage-loss disability in the amount of 10%. In considering the claimant's relatively young age, his 33% permanent physical impairment, and permanent work restrictions, the Full Commission finds that the claimant has sustained wage-loss disability in the amount of 40%, in addition to the 10% already accepted by the respondents. The claimant is able to drive a vehicle, albeit not commercially, and he has been released to work with permanent restrictions. The preponderance of evidence does not support the claimant's contention that he will never be able to find work within his restrictions near his home in Mena. Nor is there any probative evidence supporting an assertion that medium-level work will cause the claimant to "bleed out" and die instantly.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he was permanently totally disabled. The Full Commission finds that the claimant sustained wage-loss

disability in the amount of 40% in addition to the 10% wage-loss accepted by the respondents. The claimant proved that the compensable injury was the major cause of his 33% anatomical impairment and 50% wage-loss disability. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

After my *de novo* review of the entire record, I dissent from the majority opinion. The claimant is permanently totally disabled. There is no basis for the majority's conclusions.

Based upon the evidence recited in the majority opinion, the claimant is limited to desk or light duty work. His neurosurgeon cautioned him to only perform "desk work" with "limited risk." The majority's assertion that the claimant was under no threat of death

or serious injury by performing medium work is formed from whole cloth. The neurosurgeon's cautions alone bear this out to avoid all but desk work. The very definitions<sup>1</sup> of vertebral artery dissection/occlusion and stroke make it clear that the claimant has a clot which impeded correct blood flow in his brain, resulting in the symptoms he has continued to experience.

In regard to the claimant's ability to find work, there is no question that he has the motivation to return to work and an excellent work history. However, his work history, training and education are all focused on medium or heavier classifications of work. He is now limited to light work. His permanent restrictions confine him to a desk job, no driving, ground level work, no lifting over twenty pounds, no machinery, and no heavy machinery. He was ineligible for a commercial driver's license. The specialist stated that the claimant is disabled from returning to any of his

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<sup>1</sup> Knipe, Dr. Henry, and Gaillard, A. Prof. Frank, *Radiopaedia.org: Vertebral artery dissection* (2005-2016 Radiopaedia.org), Retrieved January 11, 2016 from <http://radiopaedia.org/articles/vertebral-artery-dissection>; Lang, Eddy, MDCM, CCFP(EM), CSPQ, Medscape: Vertebral Artery Dissection, (2015 Medscape) Retrieved January 11, 2016 from <http://emedicine.medscape.com/article/761451-overview>; Park, Dr. Kwan-Woong, *Vertebral Artery Dissection: Natural History, Clinical Features and Therapeutic Considerations*, J KOREAN NEUROSURG SOC. 2008 Sep; 44(3): 109-115, Retrieved from the US National Library of Medicine and National Institutes of Health - National Center for Biotechnology Information: PubMed Central on January 11, 2016 at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2588305/>

previous occupations. If he did get a job, it would be doing something he had never done before. The specialist stated that, based upon the claimant's aptitudes, on-the-job training was appropriate, but returning to school for a technical certificate or associate's degree was not appropriate for him.

The vocational specialist noted that the claimant's option in the labor market where he lived were "few." The specialist stated that she only found two jobs in the claimant's home town of Mena, because there just were not jobs open there. The jobs she found that were an hour or more away were the closest that she found. She stated that Mena is a competitive marketplace, and that almost anyone who applied for a job in Mena would be more qualified than the claimant.

Interestingly, the majority did not note the specialist's testimony that the bank teller job, one of the two located in Mena, would not be within his capabilities, given his difficulties with handling money. A pizza delivery job required him to drive, which would violate Dr. Shafizadeh's restrictions of no driving and Dr. Carle's desk job restriction. Further, it was classified as a medium job, for purposes of lifting, although accommodations could perhaps be made. The claimant applied in person for another job the

specialist identified at Hatfield Lumber, but the lifting requirements were thirty-five pounds, well outside his limitations.

Based upon the restrictions stated by Dr. Carle and Dr. Shafizadeh, the specialist would not recommend that the claimant take a job more than an hour's driving distance from his home, a fact the majority chose to ignore. Instead, the majority merely noted the claimant's concern about the expense of making such a drive.

Frequent fingering and handling in a desk job would be outside the claimant's capabilities due to the numbness in his hands caused by his injury. The only job which the specialist identified that might not require frequent fingering and handling was located in Waldron, more than an hour away from his home.

The only position which she identified which was not ruled out by his restrictions was a sales clerk position with a cellular phone store. This would be approximately half sales and half data entry and computer work. The claimant had limited computer skills, limited mathematical capacity, and significant dexterity issues.

The majority's assertion that the record does not support a finding that the claimant will never be able to find work near his home is incomprehensible. The

vocational specialist could only find two jobs in Mena which were possibly suitable. One was outside his restrictions. One is outside his current skill set and possibly outside his abilities. The specialist stated that the claimant would be at a competitive disadvantage, because almost every other applicant would be more qualified than he is. The claimant applied for the jobs identified by the specialist, without success, despite his clear motivation to return to work. He had residual neurological symptoms after having a stroke in the medulla of his brain, including positional vertigo, difficulty swallowing, pain in his face, paresthesia of his right upper and lower extremities, sleep apnea, depression. He had numbness in his fingers. He required a fifteen minute break, hourly. His employer corroborated the evidence of his limitations and his motivation to work. He was terminated from his employment, because a job could not be created to accommodate his limitations.

The majority's reference to the claimant's relative youth, at age forty-three, is frustrating, because again, his age makes his situation more tragic. It does not somehow obviate the limitations he has. There is no suggestion in the evidence that the claimant's limitations will reduce, and in fact, to the



contrary, his restrictions were deemed permanent, by the respondents' own medical expert.

I would award the claimant permanent total disability benefits, because the evidence is clear that the claimant has no ability to earn a meaningful wage.

For the foregoing reasons, I dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner