

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G708582

LINDA K. BRADLEY, EMPLOYEE	CLAIMANT
PINE BLUFF SCHOOL DISTRICT, EMPLOYER	RESPONDENT NO. 1
AR SCHOOL BOARDS ASSOCIATION WCT INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED APRIL 12, 2024

Upon review before the FULL COMMISSION in 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 MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE, 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 November 17, 2023. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The AWCC has jurisdiction over this claim.

2. The stipulations offered by the parties are accepted as fact.
3. The claimant failed to establish, by a preponderance of the evidence, that she is entitled to the additional benefits sought in connection with her compensable injuries.
4. Accordingly, this claim is dismissed.

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.

Therefore, we affirm and adopt the November 17, 2023 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.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

The Administrative Law Judge (hereinafter, "ALJ) found that, *inter alia*, the Claimant has failed to prove, by a preponderance of the evidence, that she is permanently and totally disabled or entitled to wage-loss disability benefits as a result of her admittedly compensable shoulder injury on December 4, 2017 for which she was given a 4% permanent impairment rating. After conducting a thorough review of the record, I would find that the Claimant is entitled to a 10% wage-loss disability benefit for her compensable shoulder injury.

Ark. Code Ann. § 11-9-522 provides in pertinent part:

(b)(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation 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 or her future earning capacity.

When a Claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase

the disability rating, and it can find a Claimant totally and permanently disabled based upon wage loss factors. *Milton v. K-Tops Plastic Mfg. Co.*, 2012 Ark. App. 175, 392 S.W.3d 364 (Ark. App. 2012). The wage loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Id.* The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the Claimant's age, education, and work experience. *Id.* In considering factors that may affect an employee's future earning capacity, the court considers the Claimant's motivation to return to work, since a lack of interest or a negative attitude impedes our assessment of the Claimant's loss of earning capacity. *Id.* A Claimant's lack of interest, however, is not a complete bar in assessing wage loss benefits. *Drake v. Sheridan Sch. Dist.*, 2013 Ark. App. 150.

The record supports a finding that the Claimant is entitled to wage-loss benefits. The Claimant was given a 4% permanent impairment rating to the body as a whole by Dr. Charles Pearce on June 9, 2022 for her compensable shoulder injury. At the time of the hearing, the Claimant was sixty-two years old. The Claimant's education consists of a cosmetology degree obtained in the 1980's, a bachelor's degree in psychology obtained in 1988, and a secretarial word-processing certificate obtained in 1990 for a

dos computer system. The Claimant's work experience prior to working for the Respondent consisted of working as a form editing clerk for the Census Bureau for a summer while she was in college, a program operations assistant at the Pine Bluff Convention Center, and a correctional officer at the Arkansas Department of Corrections in the mid-to-late 1990's.

Since the workplace accident, the Claimant has not been able to earn meaningful wages in the same or other employment. The Claimant was released to return to work without restrictions by her treating physician, Dr. Eric Gordon. Claimant briefly returned to work with Respondent but was physically incapable of performing her job duties both as a secretary and a paraprofessional. Claimant then sought and was granted a one-time right to change physicians and began treating under Dr. Shahryar Ahmadi who diagnosed the Claimant's condition as subacromial bursitis recommending surgery and further treatment. The Claimant testified that she suffers from decreased range of motion in her shoulder and must hold her arm at a 90-degree angle to perform basic secretarial work such as typing. Additionally, the Claimant provided credible testimony that she continues to suffer from severe pain which was corroborated by her use of prescription opioids and nerve blocks. Further she is unable to dress herself fully, wash her hair in the shower, or care for her daughter with Aspergers.

In order to avoid a wage-loss award, the Respondent has the burden of proving the employee received a bona fide offer to be employed at wages equal to or greater than her average weekly wage at the time of the accident. Ark. Code Ann. § 11-9-522(c)(1). Employers have been held as having failed to make a bona fide offer of employment when the duties exceeds the employee's physical limitations. *Foster v. Gilster Mary Lee Corp.*, 2011 Ark. App. 735, 387 S.W.3d 212 (2011) and, *Wal-Mart Assocs. V. Keys*, 2012 Ark. App. 559, 423 S.W.3d 683 (2012). Following the release by Dr. Gordon, Respondent gave Claimant a position she was unable to perform and then moved her to her former position as a paraprofessional which she was unable to perform. Based upon these facts, I find that Respondent failed to prove that Claimant received an appropriate, bona fide offer of employment and a wage-loss award is warranted.

I further find that the Claimant's future earning capacity has been affected by her compensable injury and that she is entitled to a ten percent (10%) wage-loss benefit.

For the foregoing reasons, I must dissent.

M. SCOTT WILLHITE, Commissioner