

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G701898

JOSHUA RUFFIN, EMPLOYEE	CLAIMANT
COMMAND CENTER, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY/ GALLAGHER BASSETT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 13, 2022

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

Claimant represented by the HONORABLE ROBERT R. CORTINEZ, II, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed July 15, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim; and,
2. The Claimant has failed to prove, by a preponderance of the evidence, that he is entitled to an average weekly wage of \$404.00 with respect to his compensable injuries of March 9, 2017 and has thus failed to prove that he is entitled an award for

an underpayment of indemnity benefits paid to date in relation to such.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's July 15, 2021 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 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.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion, finding that the claimant has failed to prove by a preponderance of the evidence that he is entitled to an average weekly wage of \$404.00 with respect to his compensable injuries of March 9, 2017 and has thus failed to prove that he is entitled to an award for an underpayment of indemnity benefits paid to date in relation to such.

A.C.A. §11-9-518 reads, in pertinent part, as follows:

(a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment.

...

(b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.

(c) If, because of exceptional circumstances, the average weekly wage cannot be fairly and justly determined by the above formulas, the commission may determine the average weekly

wage by a method that is just and fair to all parties concerned.

The claimant testified that he was contracted to work through the respondent-employer for Source Building and Construction at the Little Rock Air Force Base. According to the claimant, the terms of this contract were for him to work eight (8) hours per day (forty (40) hours per week) at a rate of pay of \$10.10 per hour. The claimant testified further that this assignment was scheduled to last for several months.

The claimant's testimony regarding his pay and the number of hours he worked per day was corroborated by the Employee Payroll Summary contained within the record. The Employee Payroll Summary showed that the claimant worked for Source Building and Construction on March 8, 2017 and March 9, 2017. The rate of pay noted is \$10.10. On March 8, 2017, the claimant's gross pay was \$95.95, which equates to 9.5 hours of work. On March 9, 2017, which is the day the claimant was injured, the claimant's gross pay was \$75.75, which equates to 7.5 hours of work.

I find that the relevant contract to be considered in computing the claimant's average weekly wage is the one that was in place with Source Building and Construction at the time of the workplace accident.

Therefore, pursuant to Ark. Code Ann. §11-9-518(a)(1), the claimant's average weekly wage is \$404.00.

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

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M. SCOTT WILLHITE, Commissioner