

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H202874

TODD O. GRIFFIN, EMPLOYEE CLAIMANT

MILBANK MANUFACTURING COMPANY,
EMPLOYER RESPONDENT

STANDARD FIRE INSURANCE COMPANY/
TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED SEPTEMBER 5, 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 represented by the HONORABLE GUY ALTON WADE, 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 May 15, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

The stipulations contained in the prehearing order filed November 21, 2023, hereby are accepted as facts.

1. The claimant has failed to meet his burden of proof in demonstrating that he is PTD.

2. The claimant has met his burden of proof in demonstrating he is entitled to an additional five percent (5%) in PPD based on wage loss disability.
3. The claimant's attorney is entitled to a controverted fee based on the aforementioned 5% wage loss disability finding.

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. The findings of fact and conclusions of law made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the May 15, 2024 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 dissents.

DISSENTING OPINION

The Claimant appeals an Administrative Law Judge (hereinafter referred to as “ALJ”) Opinion that the Claimant has failed to meet his burden of proof in demonstrating that he is permanently and totally disabled. Further Claimant appeals the ALJ finding that he is entitled to an additional five percent (5%) in permanent partial disability based on his claim for wage-loss benefits. After conducting a thorough review of the record, I would concur in part and dissent in part.

1. The Claimant has failed to meet his burden of proof in demonstrating that he is permanently and totally disabled.

Pursuant to Ark. Code Ann. § 11-9-519(e)(1), permanent total disability means the “inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.” The burden of proof is on the employee to prove inability to earn any meaningful wages in the same or other employment. Ark. Code Ann. §11-90519(e)(2).

Permanent total disability shall be determined in accordance with the facts. Ark. Code Ann. § 11-9-519(c).

The Claimant suffered an admittedly compensable injury to his left hip on April 4, 2022, after falling off of a ladder working for Respondent. Claimant underwent a left hip arthroplasty on May 2, 2022, as performed by

his authorized physician, Dr. James Rudder. On January 3, 2023, Dr. Rudder places Claimant at maximum medical improvement stating “the patient has now reached maximum medical improvement. He will have a permanent impairment that will be dictated under separate letter.” Dr. Rudder filled out an AR-3 for the Claimant and his compensable injury on February 28, 2023. Dr. Rudder stated that the Claimant cannot return to work in his prior position as he will be unable to perform his prior duties and stated that the Claimant has suffered a permanent impairment rating of 20% to the body as a whole. Dr. Rudder does not take Claimant off of work completely. In September of 2023, Dr. Rudder changed the Claimant’s permanent impairment rating to 15% to the body as a whole, but again does not take Claimant off of work completely.

While the Claimant is unable to perform in his prior position, as opined by Dr. Rudder, there is not enough evidence in the record to conclusively state that the Claimant cannot earn any meaningful wages in the same or other employment. Claimant has received an FCE that placed him in the medium category of work with reliable results, and his authorized physician has not taken him off work completely. Therefore, I must concur with the ALJ’s findings that the Claimant failed to meet his burden of proof in demonstrating that he is permanently and totally disabled.

2. The Claimant has met his burden of proof in demonstrating that he is entitled to an additional 50% wage-loss disability benefit.

Wage-loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Whitlatch v. Southland Land & Dev.*, 84 Ark. App. 399, 141 S.W. 3d 916 (2004). The Commission is charged with the duty of determining disability. *Cross v. Crawford County Memorial Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). 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. Ark. Code Ann. § 11-9-522(b)(1). Such other matters are 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); *Cross v. Crawford County Memorial Hosp.*, *supra*. It is well established that a claimant's prior work history and education are factors to be considered in determining eligibility for wage-loss benefits. See *Cross v. Crawford County Memorial Hosp.*, *supra.*; *Glass v. Edens*,

supra.; *City of Fayetteville v. Guess, supra.*; *Curry v. Franklin Electric, supra.*

Claimant is 59 years old. Claimant graduated from high school and has approximately one semester of college. Claimant obtained “votech” training for air-conditioning and refrigeration in the 1980s. Claimant’s prior work-history includes working for refineries such as Lion Oil as a cleaner, Worsham Wholesale as a delivery person, and finally as a general laborer for an aluminum boat company. Claimant worked for Respondent for approximately 30-years and does not have experience in skill-based jobs. Lastly, Claimant testified that he had very little experience with computers or skilled labor.

Claimant underwent an FCE on February 14, 2023, where he was given a medium classification with reliable results based on an 8-hour workday. Ultimately, the Respondents were unable to return the Claimant to the position he had prior to his compensable injury, or any other position within their company.

Claimant’s compensable injuries have affected his ability to earn a livelihood. Claimant has limited education. Claimant is unable to perform labor intensive work as he has in the past. Claimant is also unable to earn wages equal to or greater than his average weekly wage at the time of the

accident. This Commission has ruled that significant wage-loss benefits are appropriate for fact patterns such as the case at hand. See *Ark. Dot v. Abercrombie*, 2019 Ark. App. 372, 584 S.W.3d 701 (2019); *Ark. Highway & Transp. Dep't v. Wiggins*, 2016 Ark. App. 364, 499 S.W.3d 229. Therefore, I would rule that the Claimant is entitled to 50% wage-loss disability over and above his permanent impairment rating.

For the reasons stated above, I respectfully concur in part and dissent in part.

M. SCOTT WILLHITE, Commissioner