

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004773

DONALD P. HODGE,
EMPLOYEE

CLAIMANT

DEPT. OF HUMAN SERVICES,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 7, 2024

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

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The Claimant appeals an administrative law judge's opinion filed March 19, 2024. The administrative law judge found that the Claimant failed to prove by a preponderance of the evidence that he is entitled to wage-loss disability benefits as a result of his compensable injuries incurred on June 15, 2020. After reviewing the entire record *de novo*, the Full Commission finds that Claimant is entitled to 20% wage-loss disability benefits as a result of his compensable injuries incurred on June 15, 2020.

I. HISTORY

The testimony of Donald Hodge, now age 64, indicated that

he became employed with the Respondents, Department of Human Services, in November 2012. Mr. Hodge testified that he had been employed as a training and project manager for the Respondents. The parties stipulated that the employee-employer relationship existed on June 15, 2020. The Claimant testified on direct examination:

Q. And on the date of your injury, June 15th of 2020, were you working in the office that day?

A. Yes, sir. I had come to the office, and was told to come back and stay at the office, because of the blueprints.

Q. I understand and, of course, we stipulated to your injuries, but just give us a brief description of what happened? How did you – how did your accident – how did you have an accident that caused yourself to be hurt?

A. Well, I was coming in to review a specific – a hundred-units new facility that was being built in Little Rock, and the blueprints had been shipped to me. A full set of blueprints for a hundred-unit is quite heavy, and it was shipped in a cardboard container, and I wasn't going to carry it to office. I had to carry it to another place to stretch it out. I had to have a big table, you know, and the cubicles didn't have enough room or table width to pull out a full set of plans. So I went and got a cart with wheels on it and I was going to put them on the cart and roll it down to the conference room, where I could pull them out and go over them, and when I picked the – I pulled the cart in and when I picked the blueprints up to move them, the bottom of the box was open and I didn't realize that. The blueprints slid out of the bottom of the box and hit me on my left foot. When it did, you know, the pain, it knocked me off my feet and I grabbed the cart. Well, it was on wheels and as a result, I slid across from my cubicle across the corridor and hit a little two-foot file cabinet and flipped over it and hit another

file cabinet.

The parties stipulated that the Claimant sustained compensable injuries to his “back, neck, right foot, right arm/right shoulder and right hip,” on June 15, 2020. On June 15, 2020, according to the record, Claimant reported to the Baptist Health emergency department where he underwent a multitude of x-rays and was diagnosed with a contusion of right foot, arthralgia of hip, and acute shoulder pain.

The Claimant’s testimony indicated that he underwent surgery by Dr. Kirk Reynolds on December 28, 2020 for his compensable right shoulder injury. The Claimant testified on direct examination:

Q. And to what extent or help us understand what symptoms or problems that you began to experience as far as your neck was concerned, after the work-related accident?

A. I had a spot about as big as a silver dollar between my neck and shoulder that always burned and had sharp pain in it.

Q. And was that in between – which shoulder area were you –

A. This was on the left neck and shoulder area.

Q. And you did, ultimately, it looks like, have an MRI recommended by Dr. Reynolds at one point for your neck?

A. Yes, sir.

According to the record, an MRI of the Claimant’s C-Spine was taken on January 22, 2021:

FINDINGS: There are no signal abnormalities within the cervical spinal cord. No thecal sac mass. The cervical vertebrae are in anatomic alignment. No vertebral body or disc edema. The

prevertebral space is unremarkable. The spinous processes and interspinous ligaments are normal. The following findings are present at each level:

C2-C3: Small focal central disc protrusion. No spinal canal or neural foraminal stenosis.

C3-C4: Minimal uncovertebral spurring. No spinal canal or neural foraminal stenosis.

C4-C5: A small focal central disc protrusion. No spinal canal or neural foraminal stenosis.

C5-C6: A small posterior disc bulge. Small bilateral parasagittal disc protrusions. No spinal canal stenosis. No right neural foraminal stenosis. Mild left neural foraminal stenosis.

C6-C7: A small broad-based posterior disc bulge. Small to medium size asymmetric left parasagittal disc protrusion. No spinal canal stenosis. No right neural foraminal stenosis. Mild left neural foraminal stenosis.

C7-T1: Unremarkable.

IMPRESSION:

1. Normal MRI of the cervical spinal cord and canal.
2. No significant cervical spinal canal or neural foraminal stenosis.

The record indicates that Dr. Kirk Reynolds evaluated the Claimant's MRI on January 25, 2021, who then referred Claimant to Trent Tappan PA-C for evaluation. Dr. Reynolds states that he did not "see anything that indicates surgical intervention based upon [his] review of the MRI." On February 8, 2021, Claimant's c-spine was evaluated by Trent Tappan PA-C who stated "I think he may be symptomatic from this foraminal stenosis, but it is really difficult to know if that C6-7 or C7-T1 because [he] cannot see the images together to count the level. We are going to hold off on treatment for

this anyway.” Trent Tappan PA-C states that Claimant may be seen for his back as needed and does not recommend further treatment for Claimant’s c-spine. The Claimant’s testimony indicated that he underwent some physical therapy for his cervical spine after this visit, but no other treatment was provided for Claimant’s c-spine.

The parties stipulated that, on May 10, 2021, the Claimant was assigned an impairment rating of five percent (5%) to the body as a whole after reaching maximum medical improvement for his compensable shoulder injury.

The Claimant participated in an initial Functional Capacity Evaluation on May 19, 2021: “The results of this evaluation indicate that a reliable effort was put forth, with 53 of 55 consistency measures within expected limits....Mr. Hodge completed functional testing on this date with **reliable** results. Overall, Mr. Hodge demonstrated the ability to perform **in the light** classification of work[.]”

According to the record, the Claimant was assessed at maximum medical improvement with regard to his low back injury on August 11, 2021 by Dr. Wayne Bruffett. Dr. Bruffett gave the Claimant a “7% impairment rating of the whole person” and released the Claimant without restrictions for his low-back injury. The parties stipulated that “Claimant was initially assessed at maximum medical improvement with regard to his low back

injury on 11 August 2021, but was later deemed to require surgery that occurred on 2 December 2021, with maximum medical improvement being found again on 3 May 2022 with a ten percent (10%) impairment rating assigned at that time.”

The Claimant participated in another Functional Capacity Evaluation on April 25, 2022: “The results of this evaluation indicate that a reliable effort was put forth, with 50 of 53 consistency measures within expected limits....Mr. Hodge completed functional testing on this date with **reliable** results. Overall Mr. Hodge demonstrated the ability to perform work **in the light** classification of work[.]”

The Claimant began working with Vocational Rehabilitation Consultant, Keondra Hampton on May 24, 2022. Keondra Hampton, provided a Vocational Rehabilitation Progress Report on July 1, 2022. Keondra Hampton reported in part, “Mr. Hodge has completed online job applications and is waiting on employee responses....He is continuing to apply for several job openings each week so we are anticipating he will have interviews in the coming months.” Hampton further reported: “Mr. Hodge is an excellent candidate to return to the workforce. He has a stable work history and has acquired some skills and transferrable skills from his education, training, and work experience that he should be able to utilize in

returning to a new lighter capacity job in the future.”

On September 15, 2022, Keondra Hampton further reported in another Vocational Rehabilitation Progress Report that “[Mr. Hodge] is eager to return to the workforce to a new position and is agreeable to working with me. He is being cooperative with the job search process to date and is completing job applications on a weekly basis. However, he has not received any job offers for permanent placement to date. He does continue to apply for job openings each week.”

Keondra Hampton provides another Vocational Rehabilitation Progress Report on December 9, 2022. Keondra Hampton reported in part “Mr. Hodge reported he has been completing job applications weekly and has not heard from any employer for which he applied. He stated, in addition to the jobs he has received from me, he has conducted his own job search on search engines such as Indeed and Glassdoor....Mr. Hodge stated he is having difficult securing employment with consistent sustainable income, but he is still optimistic.”

Keondra Hampton provides a final Vocational Rehabilitation Progress Report on January 13, 2023. Keondra Hampton reported that “[Mr. Hodge] reported he applied for multiple construction inspector jobs but has not heard back from any of the employers. Mr. Hodge stated he believes he is not being considered for any positions based on the fact he

has not obtained a bachelor's degree.”

A pre-hearing order was filed on October 3, 2023. According to the text of the pre-hearing order, the Claimant contended the following:

“Claimant contends that he was initially assessed at maximum medical improvement with regard to all injuries on August 11, 2021. That this was premature, and he did not reach maximum medical improvement until May 3, 2022, and as a result there has been an underpayment of temporary total disability benefits. Claimant contends he was entitled to temporary total disability benefits during the time frame from May 13, 2021, through December 5, 2021. Claimant contends that his permanent partial disability benefits should have started on May 3, 2022, and contends that he would be entitled to permanent partial disability benefits beginning at that time for the five percent (5%) impairment rating assigned to his right shoulder, as well as the ten percent (10%) impairment rating assigned to his low back. Claimant also contends that given the nature of the, “posterior disc bulges identified at C5-6 and C6-7 with increased signal associated cervical cord” that he should be awarded a cervical impairment rating of at least five percent (5%). Claimant contends he should be awarded wage-loss disability benefits in excess of the anatomical impairment ratings assigned. The Claimant is currently receiving pain management medications being prescribed through his primary physician, Dr. Becker, which Claimant

contends is reasonable, and necessary associated with the pain he continues to experience and contends that Respondents should be ordered to pay for same. Claimant contends Respondents should be ordered to pay attorney's fees as provided by law."

The Respondents contended, "The Claimant reported lifting a box of blueprints when the blueprints slid and his right foot. He reported that he fell forward, grabbed the wheeled cart, and slid into the file cabinet. The Respondents accepted this claim as compensable and initiated appropriate benefits. The Respondents contend that appropriate temporary total disability and permanent partial disability benefits have been paid to Claimant, to date. The Claimant underwent right shoulder arthroscopy on December 18, 2020, by Dr. Reynolds and was found to be at maximum medical improvement for his shoulder injury on May 10, 2021. The Claimant was assigned a ten percent (10%) whole-body impairment rating by Dr. Reynolds on June 7, 2021. The Respondents accepted and paid this rating. The Claimant was treated for lumbar symptoms by Dr. Warren Bruffett. Medical records indicate that the Claimant did not want any additional surgery and thus Dr. Bruffett found him to be at maximum medical improvement on May 11, 2021. Dr. Bruffett continued the Claimant's full-duty work status on June 21, 2021, as the Claimant did not want any additional surgery. After many months, the Claimant indicated he was

interested in additional surgery on November 15, 2021. An L4-5 laminectomy was performed on December 2, 2021. Temporary total disability benefits were reinstated and paid through May 2, 2022, permanent partial disability benefits were then initiated and paid through March 9, 2023. The Claimant has been paid appropriate periods of temporary total disability and permanent partial disability benefits. The Claimant is not entitled to temporary total disability benefits from May 13, 2021, through December 5, 2021, as he declined additional medical treatment recommendations from his authorized treating physician, namely an additional surgery, and he was found to be at maximum medical improvement and released to full-duty work. He cannot now claim to be entitled to temporary total disability benefits for the same time period for which he refused medical treatment. The Respondents contend that there has been no underpayment of either temporary total disability or permanent partial disability benefits. The Claimant received all temporary total disability benefits to which he was entitled. The Respondents will contend that permanent partial disability benefits were overpaid to the Claimant in the amount of \$1,589.00. The Claimant has many years of construction experience and related skills. He currently works for a company that requires him to visit construction sites to monitor building progress. He gets paid \$700.00 per completed assignment. He has applied for social security

benefits and is awaiting a decision on his claim. The Respondents contend that the Claimant is not entitled to wage-loss disability benefits based on these facts. The Respondents have paid and continue to pay reasonably necessary medical expenses incurred by Claimant, including those from Dr. Brecker.

The parties agreed to litigate the following issues:

1. Whether the Claimant was owed for underpayments of temporary total disability and permanent partial disability benefits.
2. Whether the Claimant was entitled to an impairment rating associated with a cervical injury.
3. Whether the Claimant was entitled to additional medical treatment.
4. Whether the Claimant is entitled to an attorney's fee.

An administrative law judge filed an opinion on March 19, 2024. The administrative law judge found that the Claimant failed to prove he was underpaid or owed additional payments for temporary total disability benefits, that Claimant failed to prove he was underpaid permanent partial disability benefits under his contention that "permanent partial disability benefits should have started on May 3, 2022" as the record reflects that permanent partial disability payments began on that date, that the Claimant has failed to satisfy his burden in showing that he is entitled to an impairment rating for a cervical injury, that the Claimant has not satisfied his burden in showing that he is entitled to wage-loss disability benefits, and finally that the Claimant is not entitled to an attorney's fee consistent with

these findings. The administrative law judge therefore denied and dismissed the claim. The Claimant appeals to the Full Commission.

II. ADJUDICATION

(A) Temporary Total Disability Benefits

Temporary total disability benefits are appropriate where the employee remains in the healing period and is totally incapacitated from earning wages. *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The Claimant has the burden of proof in showing that he remains in his healing period and is totally incapacitated from earning wages. *Id.*

It is the Commission's duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). After his June 15, 2020 work-accident Claimant was diagnosed with an admittedly compensable lumbar condition of a facet cyst on his right L4-5, and disc bulging and stenosis by Dr. Bruffet. Dr. Bruffet then recommended a bilateral laminectomy for Claimant's compensable injury. Claimant testified at the hearing that he did not want to undergo another surgery as he believed that the surgery wasn't an absolute guarantee that his condition would improve, and he wanted the surgery to be considered a last resort. Unfortunately for the Claimant, the surgery was necessary and was performed on December 2, 2021. Trent Tappan PA-C

opined on February 8, 2021, that he wanted to give Claimant's "back some time to improve," while the Claimant had may have had work restrictions, there is no medical professional that takes Claimant completely off work for the requested time period of May 13, 2021 through December 20, 2021.

An administrative law judge found in the present matter, "The Claimant has not satisfied his burden for an underpayment on or additional payments owed for temporary total disability benefits." The Full Commission affirms the administrative law judge's finding that the Claimant has not satisfied his burden of proof as to an underpayment of, or additional payments owed, for temporary total disability.

(B) Impairment Rating

An administrative law judge found in the present matter, "5. The Claimant has not satisfied his burden in showing that he is entitled to an impairment rating for a cervical injury."

Claimant underwent a C-Spine MRI on January 22, 2021. Dr. Kirk Reynolds read this MRI and diagnosed Claimant with cervical degenerative disc disease with bulges at C5-C6 and C6-C7. There is insufficient evidence in the record to presume that the Claimant's cervical spine diagnoses are a direct result of his June 15, 2020, work accident. Therefore, the Commission affirms the administrative law judge's finding that the Claimant did not satisfy his burden in showing that he is entitled to

any benefits relating to an impairment rating for a cervical injury.

(C) Wage-Loss

Wage-Loss factor is the extent to which a compensable injury has affected the Claimant's ability to earn a livelihood. *Cross v. Crawford County Mem. Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). The Commission is charged with the duty of determining disability. *Id.* In considering claims for permanent partial disability exceeding 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 matters reasonably expected to affect his future earning capacity. Ark. Code Ann. § 11-9-522(b)(1)(Repl. 2012). 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.*

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The Commission is not required to believe the testimony of the Claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002) The Full Commission has the duty to adjudicate the case *de novo* and we are not bound by the characterization of evidence adopted by an administrative law judge. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the Claimant is 64 years-old. Claimant graduated high school in 1978 and has one semester of post-secondary education. Claimant obtained an Inspector's License with the Uniform Federal Accessibility License and is a certified Welding Inspector. Claimant testified that his prior work-history includes owning a big-rig truck washing business, renovations and remodeling for residential homes and subcontracting inspections for residential buildings. Claimant further testified at the hearing that he attempted to work as a window installer, as he had done this kind of work in the past, but he was unable to continue this line of work due to the pain he was experiencing in his neck and back. Claimant then attempted to re-enter the workforce after his injury as a subcontracted inspector for residential buildings with Leetex. This position

is two-to-three working days a month for which Claimant receives approximately \$1400 per month. Claimant has undergone two Functional Capacity Evaluations where he received a light-duty classification for work and exhibited reliable effort. Claimant has received impairment ratings in the amount of five-percent (5%) to the body as a whole for his shoulder, and ten-percent (10%) for the body as a whole for his back as a result of his compensable injuries. Claimant worked with vocational rehabilitation in an effort to re-join the workforce for which the rehabilitation consultant, Keondra Hampton noted that Claimant was eager to join the workforce and had exhibited independent effort as well as the effort with her to obtain gainful employment. Since Claimant was terminated from his position he was offered two positions, both of which would have paid him significantly less than the position he worked with the Respondents where he made approximately \$47,000 per year.

The Full Commission finds that the Claimant sustained wage-loss disability in the amount of 20% in excess of the permanent anatomical impairment accepted and paid by the Respondents. 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 clearly exhibits a willingness to work. Claimant is also unable to earn wages equal to or greater than his average weekly

wage at the time of the accident.

After reviewing the entire record *de novo*, therefore, the Full Commission finds that the Claimant did not prove he was entitled to additional temporary total disability benefits between May 13, 2021, and December 20, 2021. The Full Commission finds that the Claimant is not entitled to an impairment rating for his cervical spine. The Full Commission finds that the Claimant sustained wage-loss disability in the amount of 20% in excess of the permanent anatomical impairment accepted and paid by the Respondents. The Claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the Claimant's attorney is entitled to an additional fee of five-hundred dollars (\$500), pursuant to Ark. Code Ann. § 11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant is entitled to wage-loss disability benefits in the amount of twenty

percent (20%) in excess of the permanent anatomical impairment accepted and paid by the respondents.

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 permanently disabled based on the wage-loss factors. *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. *Enterprise Products Company v. Leach*, 2009 Ark. App. 148, 316 S.W.3d 253 (2009).

When determining wage-loss disability, 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 matters reasonably expected to affect his or her future earning capacity. Ark. Code Ann. § 11-9-522(b)(1); *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961). Other factors may include—but are not limited to—motivation to return to work, post-injury earnings, credibility, and demeanor. *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the

evidence to determine wage-loss disability. *Taggart v. Mid America Packaging*, 2009 Ark. App. 335, 308 S.W.3d 643 (2009).

Our courts also consider the claimant's motivation to return to work since a lack of interest or negative attitude in pursuing employment impedes the assessment of the claimant's loss of earning capacity. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005).

Here, the claimant was initially released without restriction and placed at maximum medical improvement (MMI) on August 11, 2021. (Cl. Ex. 1, P. 220). At that time, Dr. Wayne Bruffett opined further prescriptions addressing the claimant's pain "would be under Mr. Hodges regular insurance, not Workers' Comp." and assigned the claimant a seven percent (7%) whole-body impairment rating. *Id.*

After later bilateral hemilaminectomies at L4-5 performed on December 2, 2021, the claimant underwent a functional capacity evaluation (FCE) and was assigned the light work classification and received an additional ten percent (10%) whole-body impairment rating. (Cl. Ex. 1, Pp. 236, 281).

In the time since his injuries, the claimant has worked with a vocational rehabilitation counselor, Ms. Keondra Hampton. In July of 2022, Ms. Hampton opined that the claimant:

is an excellent candidate to return to the workforce. He has a stable

work history and has acquired some skills and transferrable skills from his education, training, and work experience that he should be able to utilize in returning to a new lighter capacity job in the future.

(Cl. Ex. 1, P. 290). However, despite Ms. Hampton's efforts, the claimant declined three jobs between September 2022 and January 2023: one because the offer was too low, another because he felt the work schedule was inconsistent, and another because he was not able to work for a low wage of \$32,404.94(Cl. Ex. 1, Pp. 299, 304, 319).

The claimant has an extensive work history, including work as a certified welding inspector, certified appraiser, licensed home inspector, certified lead paint inspector, and licensed general contractor. (Hrng. Tr., Pp. 57-58). His lifetime of work has provided him with knowledge of HUD quality standards and Life Safety Code requirements for institutional facilities. *Id.* The claimant has previously owned a home remodeling company and a truck washing business which led to a business manufacturing soap for truck washing. *Id.* The claimant's testimony revealed that the claimant can:

- read and write;
- drive his own vehicle for up to two hours;
- evaluate blueprints and building plans;

- prepare food for himself;
- operate a computer;
- fish;
- lift and carry firewood; and
- do research and type reports.

(Hrng. Tr., Pp. 82, 83, 85).

The claimant is currently working part-time as a building and construction inspector for Leetex. He is limited by HUD to two inspections a day and is paid \$350.00 per inspection. (Hrng. Tr, Pp. 77-79). Even though he is limited by HUD to two inspections a day, this does not prevent him from going out and doing inspections for other companies or their contractors. *Id.*

The claimant has failed to establish that he is entitled to wage-loss benefits in excess of his permanent impairment rating. He is currently working in a field commensurate with his skills and experience, and he has turned down multiple opportunities for work through vocational rehabilitation. He has attained various professional licenses and certifications. This is simply a case of the claimant not wishing to re-enter the workforce on a full-time basis, as there is no evidence that his inability to obtain gainful employment is related to anything beyond his own self-limiting behavior.

In his current job, he is limited by HUD to two inspections per day at \$350.00 per inspection but is not prohibited from doing unlimited inspections for another company or contractor. The claimant has extensive knowledge and experience in his field and remains highly employable.

The record does not reflect that the claimant's inability to find work is causally related to his on-the-job injury, and he is therefore not entitled to wage-loss benefits.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner