BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H308247

KATRENA MACDONALD, Employee	CLAIMANT
ARAMARK, Employer	RESPONDENT
IDEMNITY INS. CO. OF NORTH AMERICA/SEDGWICK, Carrier	RESPONDENT

OPINION FILED JUNE 25, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 4, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 26, 2025, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. Claimant sustained a compensable injury to her head, neck and right shoulder on or about December 6, 2023.

The parties will stipulate to claimant's compensation rates prior to the hearing.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to a neurosurgical evaluation as recommended by Dr. Jacobelli.

2. Temporary total disability benefits from date last paid through a date yet to be determined.

3. Attorney's fee.

Subsequent to the prehearing conference, the claimant added as an issue her correct compensation rate. In addition, claimant clarified that she was requesting temporary total disability benefits from January 28, 2025, through March 12, 2025, and temporary partial disability benefits from March 13, 2025, through a date yet to be determined.

Prior to the hearing, respondent agreed to allow claimant to receive treatment from Dr. Olszewski; therefore, there is no longer an issue regarding a neurosurgical evaluation. In addition, respondent also agreed to pay temporary total disability benefits from January 28, 2025, through March 12, 2025, and temporary partial disability benefits beginning March 13, 2025.

As a result of these agreements, the only issues to be litigated at the time of the hearing are the claimant's correct average weekly wage and corresponding compensation rates and an attorney fee.

The claimant contends that she earned sufficient wages to entitle her to an average equal to $696.00, which would result in compensation rates of $464.00 for total disability benefits and $348.00 for permanent partial disability benefits.

The respondents contend that claimant's average weekly wage equals $679.00, which would result in compensation rates of $453.00 for temporary total disability benefits and $340.00 for permanent partial disability benefits.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference and set forth in a prehearing order filed that same date on February 26, 2025, are hereby accepted as fact.

2. The parties' stipulation that claimant is entitled to medical treatment from Dr. Olszewski; that claimant is entitled to temporary total disability benefits from January 28, 2025, through March 12, 2025; that claimant is entitled to temporary partial disability benefits beginning March 13, 2025; and that respondent controverted this claim as of January 27, 2025, are also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she earned an average weekly wage of $696.00, which would entitle her to compensation at the rate of $464.00 for temporary total disability benefits and $348.00 for permanent partial disability benefits.

4. Respondent has controverted claimant's entitlement to the payment of compensation benefits based on an average weekly wage of $696.00 versus the rate

previously paid. Respondent is liable for payment of an attorney fee on the difference for previous underpayments as well as the difference in future indemnity payments.

FACTUAL BACKGROUND

Claimant worked for respondent performing catering services for Walmart corporate events beginning on October 23, 2024. This was during respondent's biweekly pay period of October 12, 2024, through October 25, 2024. As a result, claimant only worked three days during this pay period. After that time claimant worked six full weeks for respondent before suffering an admittedly compensable injury to her head, neck, and right shoulder on December 6, 2024.

Claimant's treatment for her compensable injury has included medication; injections; and physical therapy. Respondent has paid claimant for medical treatment and has paid some indemnity benefits. Claimant has filed this claim contending that respondent has paid those indemnity benefits based on an incorrect average weekly wage.

ADJUDICATION

Claimant has filed this claim contending that respondent has paid indemnity benefits based on an incorrect average weekly wage. This case revolves around whether the three days claimant worked during the pay period ending October 25, 2024, should be included in calculating the average weekly wage. Claimant has excluded those three days from calculating the average weekly wage, while respondent has included those three days in its calculation of an average weekly wage.

After my review of the evidence, I find that claimant's calculations are correct and that claimant's average weekly wage equals $696.00. Calculation of the average weekly wage is governed by the provisions of A.C.A. §11-9-518. Subsection (a)(1) of that statute states:

> 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 <u>and in no case shall be computed on less than a full-time workweek in the employment.</u> (Emphasis added.)

The initial three days claimant worked for respondent were the last three days of a two-week pay period and did not constitute a full week of work. Therefore, they are excluded from the average weekly wage calculation pursuant to A.C.A. §11-9-518(a)(1). Additionally, I do not find that there are exceptional circumstances that would prevent claimant's average weekly wage from being fairly and justly determined by this formula.

Accordingly, I find based on the evidence presented that claimant earned an average weekly wage equal to $696.00. This results in compensation rates of $464.00 total disability benefits and $348.00 for permanent partial disability benefits.

Respondent has controverted claimant's entitlement to benefits at this rate and is liable for payment of an attorney fee on the difference between indemnity benefits paid at this rate and the rate previously paid. It is also liable for an attorney fee on the difference for payment of future indemnity benefits.

<u>AWARD/ORDER</u>

Claimant has met her burden of proving by a preponderance of the evidence that she earned an average weekly wage of $696.00, which would entitle her to compensation at the rates of $464.00 for temporary total disability benefits and $348.00 for permanent partial disability benefits. Respondent has controverted claimant's entitlement to payment of indemnity benefits for the difference between this compensation rate and the rates previously paid.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum and without discount. This award shall bear interest at the maximum legal rate until paid.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of $263.90.

IT IS SO ORDERED.

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GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE