

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE N<sup>o</sup> G702582**

**NATHAN TACKETT, EMPLOYEE**

**CLAIMANT**

**CITY OF LITTLE ROCK, SELF-INSURED EMPLOYER**

**RESPONDENT**

**RISK MANAGEMENT RESOURCES, TPA**

**RESPONDENT**

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**OPINION FILED 8 OCTOBER 2024**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 10 July 2024 in Little Rock, Arkansas.

The Davis Law Firm, Mr. Gary Davis, appeared for the claimant.

Worley, Wood & Parrish, PA, Ms. Melissa Wood, appeared for the respondents.

**I. STATEMENT OF THE CASE**

The above-captioned case was heard on 10 July 2024 in Little Rock, Arkansas, after the parties participated in a pre-hearing telephone conference on 21 May 2024. The subsequent Pre-hearing Order, admitted to the record without objection as Commission's Exhibit N<sup>o</sup> 1, was entered on the day following the conference.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/self-insured employer/TPA relationship existed at all relevant times, including on 17 March 2017 when the claimant sustained an accepted compensable injury to his right shoulder.
3. The claimant's average weekly wage at the time of the injury was \$1,611.94, which entitled him to the maximum TTD/PPD rates of \$661/\$496 per week.
4. The respondents have paid permanent partial disability benefits pursuant to a 26% permanent impairment rating to the body as a whole.

The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant is entitled to wage loss disability benefits.
2. Whether the claimant is entitled to an attorney's fee.

The parties' CONTENTIONS, as set forth in their pre-hearing questionnaire responses, were incorporated into the Pre-hearing Order. The claimant CONTENDS that he sustained compensable injuries to his right shoulder on 17 March 2017, that he has been found to have permanent impairment, and that he is entitled to a wage loss disability determination. The respondents CONTEND that all appropriate benefits are being paid with regard to the claimant's compensable right shoulder injury. They further contend that the claimant continued to work for the City of Little Rock after his injury until he retired and moved to Florida.

The following WITNESSES testified at the hearing: the claimant testified on his own behalf, and Major Christina Plummer testified on behalf of the respondents.

The EVIDENCE consisted of the hearing testimony, Commission's Exhibit № 1 (the 22 May 2024 Prehearing Order), and Claimant's Exhibit № 1 (78 pages of medical records).

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that he is entitled to wage loss benefits in any amount.
4. The claimant failed to prove by a preponderance of the evidence that he is entitled to an attorney's fee.

### III. HEARING TESTIMONY

*Claimant Nathan Tackett*

The claimant in this matter is a 62-year-old retired police officer. He is a high school graduate and testified that he attained between 55 and 60 hours of college credit (which he equates to an associate's degree). Before joining the Little Rock Police Department (LRPD), the claimant worked for the Yell County Sheriff's Office and the Russellville Police Department. His service with the LRPD began in 1985 as a Patrol Officer. Between 1988 and 1990, the claimant worked as an Undercover Detective before returning briefly to the role of Patrol Officer. He served as an Investigator in the LRPD's Training Division for a number of years and was then promoted to Sergeant, supervising the Police Personnel Unit until February of 2001.

In January of 2002, the claimant was promoted to the rank of Lieutenant and served in multiple supervisory positions at that rank. He was assigned as Shift Commander for the Downtown Patrol Division's Day Watch in March of 2017. The claimant described that role as mid-level management, supervising the Sergeants responsible for patrol squads and ensuring that field work and administrative processes were handled appropriately. He was also responsible for responding to some calls and patrol duties alongside other officers.

The claimant sustained his injury during annual in-service training on 17 March 2017, when he fell on his shoulder while simulating an on-foot pursuit. His right shoulder injury was accepted as compensable, and he received various treatments over the next few years, ultimately having shoulder-replacement surgery in June of 2021. In January of 2018, he took a position as Shift Commander for the LRPD's Northwest Division. He continued to earn the same or more money in that role as he did before his injury.

In October of 2021, the claimant retired from LRPD at the rank of Lieutenant. His retirement date was scheduled several years before his compensable injury when he

enlisted in LRPD's voluntary Deferred Retirement Option Plan (the DROP). At the time that he enrolled in the DROP, the program set a participant's retirement date seven years after enrollment.

The claimant testified that despite his retirement being required by participating in the DROP, he had the option of separating for 90 days and then applying for rehire. He further testified that he believed being rehired would require completing a physical agility test that consisted of running, jumping fences, dragging weighted dummies, and the like; he did not believe that he could complete such testing because of the permanent limitations associated with his shoulder injury.

The claimant testified that he was earning \$39.86 per hour, or about \$82,908 per year, at the time of his retirement. He stated that he also earned extra money through uniformed contract security work at local businesses and events.

After retiring from LRPD, the claimant was rehired by the city as an Investigator in the city's Human Resources Department. He described the work as part-time, but it paid \$35.00 per hour. In April of 2023, the claimant moved to Florida, where he continues to undergo authorized treatment by way of occasional injection therapy and/or physical therapy. While he still experiences some pain in his shoulder, he is not being prescribed pain medication.

He currently maintains full-time employment with the University of West Florida's Campus Police and Security Department, a job that he described as much less demanding than his former roles with LRPD. "[I]n essence we're a paid—a very well paid security guard. [sic] Our primary duties, they have a very non-existent call load. It's locking up buildings at night, letting somebody into an office that's lost their keys or jump starting a car. They just don't—they don't have a call load there." [TR at 27.] His salary for that job is \$50,000 per year. He also receives approximately \$3,000 per month in retirement

payments. In addition to his full-time work with the university, the claimant performs contract work conducting background checks for government security contractors. Those jobs involve telephone calls and computer work, and he estimates that work to earn about \$35 per hour. The claimant did not relay any limitations in that work related to his injury. Instead, he testified, “I can pick and choose when I want to do it and how much, you know, I can take on as far [as] a work load.” [TR at 40.]

Still, he stated that he was concerned about being able to continue working in the job because of trouble he began having in his left arm, which he attributed to compensating for difficulties with his right shoulder. At the time of the hearing, he had recently undergone a left wrist carpal tunnel procedure.

The claimant testified that at the time he entered the DROP, he anticipated being able to reapply with LRPD after the 90-day period and resume police work for the city, along with the contract security work he would be able to do on the side. He explained:

Judge: ... So was it your understanding of the 90-day, and then, come back in your same position, would it be at the same level of pay?

Claimant: No, sir. You would have to come back the way regulations are written, you may have to start at entry-level position or you could be appointed by the Mayor or City Manager at a higher level, but it would have to be appointed by the—

Judge: A new hire for those purposes?

Claimant: Yes, sir.

[TR at 30.]

*Major Christina Plummer*

Major Plummer testified that she has been an LRPD employee for a little over 20 years. She was familiar with the claimant’s injury and verified his testimony on his LRPD salary. She confirmed that enrolling in the DROP is voluntary and that once enrolled, an

employee's retirement is mandatory at the program's end. She also confirmed a pre-employment physical agility test for new hires.

#### IV. ADJUDICATION

The stipulated facts, as agreed during the pre-hearing conference, are outlined above. It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

The claimant has been assigned, and the respondents have accepted, a permanent impairment rating, which is a prerequisite for considering the effects of a compensable injury in a claim for wage loss benefits. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 882 (2000). In considering a claim for wage loss benefits, the Commission must consider evidence demonstrating the degree to which the worker's impairment impacts his earning capacity, as well as other factors such as the worker's age, education, work experience, and other matters which may reasonably be expected to affect the worker's future earning capacity. Ark. Code Ann. § 11-9-522(b)(1). Those other matters may include motivation, post-injury income, credibility, and demeanor, among others. *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).

In this case, the claimant is a 62-year-old with a high school diploma, near associate's degree-level college credits, and extensive experience working in the policing and security fields. Much of his police experience is at the supervisory level with administrative responsibilities. After sustaining his shoulder injury, the claimant transferred from one supervisory position to another within LRPD and continued making

the same or more money in that role. His injury did not interrupt his being able to successfully work to his pre-planned retirement date.

After reaching his retirement date, the claimant utilized his investigative and administrative experience in an investigator job with the City of Little Rock. He earned \$35.00 per hour working part-time, approximately 12% less than his pre-retirement full-time wage rate. He did not explain his reason for leaving that role; but after moving to Florida, he began earning \$50,000 per year as a full-time officer at a public university campus. He does not relate that work as being in-line with the duties and responsibilities of even a patrol officer at his former employer. The pay seems commensurate. The claimant described the job as "very well paid" given the workload. He offered no testimony as to any other higher-responsibility jobs, commensurate with his years of supervisory experience, that he applied for but was unable to secure because of his physical limitations. Absent any evidence towards his efforts in that regard, I am unable to make a determination on his willingness to reenter the workplace at a level of responsibility and pay commensurate with his pre-injury earnings.

The claimant also earns approximately \$35.00 per hour performing background checks for companies contracted in providing security clearances for government workers. He described being able to assume as much of a case load in that role as he chooses, and did not testify as to any limitations related to his shoulder injury.

He continues to see an authorized provider in Florida, who anticipates performing injection therapy up to twice a year; but he is not currently prescribed medication for his shoulder injury; and absent speculating that his recent left carpal tunnel procedure may have been related to compensating for his right shoulder injury, he did not offer much explanation as to how his injury limits his ability to function in the workplace and how those limitations impact his ability to earn wages.

Instead, the thrust of the claimant's argument appears to be based on his belief that had he not been injured, he would have eventually reapplied and been rehired with LRPD, and his speculation that his injury prevents him from being able to complete a pre-hire agility test for that employment. He also testified, however, that if he had gone down that post-retirement path, absent a special appointment from the mayor, he would have been hired back at an entry-level position and wage.

It is not disputed that the claimant was assigned a 26% permanent impairment rating to the body as a whole and that rating was accepted and paid by the respondents. Based on the evidence before me, I do not find that the claimant sustained a wage-loss earning capacity in excess of his assigned and accepted permanent impairment rating. Accordingly, his claim for wage loss benefits must fail. Because he failed to meet his burden on his claim for wage loss benefits, his claim for an attorney's fee is moot.

**VI. ORDER**

Consistent with the findings of fact and conclusions of law set forth above, this claim is denied and dismissed.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE