

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G203180

KRISTY N. ADAMS, EMPLOYEE CLAIMANT

STONE COUNTY NURSING & REHAB,
EMPLOYER RESPONDENT NO. 1

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND RESPONDENT NO. 2

OPINION FILED MARCH 17, 2023

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER,
Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 represented by the HONORABLE KENNETH P. "CASEY"
CASTLEBERRY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney
at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal and the claimant cross-appeals an opinion and order
of the Administrative Law Judge filed July 26, 2022. 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 over
this claim.

2. That an employer/employee relationship existed on November 21, 2011, when the claimant sustained a compensable injury to her lower back, and respondent #1 accepted the claim as medical only.
3. The claimant earned an average weekly wage of \$627.16 with a TTD/PPD rate of \$418.00/\$314.00.
4. The respondents #1 have paid the sum of \$30,066.71 in additional medical expenses and \$12,717.00 in PPD.
5. That the claimant was assigned a five percent (5%) rating by Dr. Ricca.
6. That the claimant was assigned a nine percent (9%) disability rating to the body as a whole by Dr. Mason.
7. That there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove, by a preponderance of the evidence, that she is entitled to additional medical treatment.
8. That the claimant has satisfied the burden of proof, by a preponderance of the evidence, that she is entitled to a nine percent (9%) impairment rating to the body as a whole.
9. That the claimant has failed to satisfy the burden of proof, by a preponderance of the evidence, that her claim for PTSD is compensable.
10. That the claimant has failed to satisfy the required burden of proof that she is entitled to permanent and total disability, but in the alternative, has satisfied the burden of proof, by a preponderance of the evidence, that she is entitled to an Award of wage-loss in the amount of fourteen percent (14%).
11. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. §11-9-715. This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809.
12. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

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. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2012).

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 to the Full Commission, 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 concurs and dissents.

CONCURRING AND DISSENTING OPINION

For the reasons set forth below, I would affirm the ALJ's determination that the claimant is not entitled to additional medical treatment and did not prove she is entitled to permanent and total disability or treatment for PTSD. However, I must disagree with the Majority's finding that the claimant is entitled to 14% wage loss disability.

The claimant injured her back while working as a licensed practical nurse at Stone County Nursing and Rehab Center on November 21, 2011. In his report dated February 27, 2012, Dr. Scott Schlesinger, a neurosurgeon, noted that he had reviewed radiographs of the claimant's lumbar spine. (Cl. Med. Ex., Pp. 16-19). Dr. Schlesinger found only degenerative changes; there was no fracture, dislocation, or instability. *Id.* The claimant later obtained a change of physician order through the Commission and began seeing another neurosurgeon, Dr. Gregory Ricca, on or about July 18, 2013. (Cl. Med. Ex. P. 22). Dr. Ricca

determined that surgery was not appropriate and found that claimant was at MMI as of June 12, 2014. (Cl. Med. Ex. P. 35). The claimant was assigned a 5% partial impairment rating to the body as a whole and was released to return to work at medium duty. *Id.* At her June 15, 2022 hearing, the claimant confirmed that she received payments for the 5% impairment rating. (Tr. P. 35). The claimant was eventually treated by Dr. Zach Mason, a neurosurgeon, who performed a bilateral decompression foraminotomies at L4-L5 and L5-S1 on July 19, 2017. (Resp. Med. Ex., Pp. 59-60). Dr. Mason assigned a 9% impairment rating to the body as a whole and returned the claimant to work at full duty, without restrictions as of October 5, 2017. (Resp. Med. Ex., Pp. 56-57).

When a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission may increase the disability rating and 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. *Enter. Prods. Co. v. Leach*, 2009 Ark. App. 148, 316 S.W.3d 253 (2009). When determining wage-loss disability, the Commission should consider, in addition to medical evidence and the employee's percentage of permanent physical impairment, the appellant'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 Elec.*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). A lack of interest in pursuing employment impedes the assessment of the claimant's loss of earning capacity. *Logan Cnty. v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). 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 Am. Packaging*, 2009 Ark. App. 335, 308 S.W.3d 643 (2009).

In the present matter, the claimant's medical history is extensive, and the parties submitted voluminous medical records. Over a period approximately six years, the claimant saw three neurosurgeons approved by the respondent carrier and a host of additional doctors either through the VA or her local family practice. However, between the time of the claimant's injury and the date she reached maximum medical improvement, one thing is clear—the claimant was never unable to work, and the claimant was in fact explicitly permitted to work by Drs. Ricca and Mason at medium, moderate, or full duty on seven separate occasions between 2013 and 2017. (Resp. Med Ex., Pp. 12, 20, 26, 33, 37, 57, 61).

The record reflects that although the claimant alleges that she *cannot* work, she simply does not wish to work. One visit note by Dr. Ricca, dated May 16, 2017, reflects that after quitting work at her parents' restaurant in October 2014 after working for a month, the claimant had not sought any work. (Resp. Med.

Ex., P. 46). This fact goes undisputed in the hearing transcript. (See Tr., Pp. 21-22.) Aside from “odd jobs here and there” and occasionally volunteering for a friend that owns a store for gas money, the claimant has not worked regularly since her 2011 injury despite being informed that she is capable of doing so. (See *Id.*; Tr., Pp. 30-31). While the claimant stated at her 2022 hearing that she had left her employment with the city of Fifty-Six in 2013 due in part to pain from her injury, she previously stated in her deposition – taken a week after leaving that employment – that she left due to a conflict over her wages and her decision to return to school full time. (Resp. Ex. 2, P. 9). She did not deny this at the July 2022 hearing. (*Id.* at Pp. 31-32).

The facts at hand mirror the findings in the case *Rapley v. Lindsey Constr. Co.*, where the Arkansas Court of Appeals affirmed the Commission’s findings that a claimant’s refusal to find appropriate employment can “block” full assessment of all of the factors in determining disability. 5 Ark. App. 31, 631 S.W.2d 844 (1982). In *Rapley*, the claimant testified that he was a 33 year old man with a 15% anatomical rating which prevented him from continuing work as a welder. *Id.* However, the claimant had attended college for three years and held an associate’s degree in welding and had “made no real effort either to seek employment in fields for which his education and experience might qualify him or otherwise determine whether he was able to perform the duties of such other pursuits.” *Id.* For these reasons, the claimant was limited to his anatomical

impairment rating. *Id.* In short, a claimant's "lack of interest in exploring [appropriate work] [is] an impediment to the commission's full assessment of [her] loss of earning capacity." *Oller v. Champion Parts Rebuilders, Inc.*, 5 Ark. App. 307, 635 S.W.2d 276 (1982).

The claimant is a 40 year old woman with Associate Degrees in both Practical Nursing and Health Information Technology from Ozarka College. She has experience in varied fields, ranging from the medical field, office work, retail, to being in the Air Force. While the claimant contends that she cannot find employment with her Health Information Technology degree, there is no proof she has used her education and experience in any attempt to find work within that field or any other suitable employment. The claimant has not attempted to work since working approximately one month at a store owned by her parents in October 2014. I find nothing in the record to support a finding of wage loss disability. The claimant was released to full duty employment with no restrictions by Dr. Mason and should not be rewarded for her refusal to even try to return to work.

It is for these reasons that I cannot agree that the claimant is entitled to wage loss disability in any amount and therefore respectfully dissent.

MICHAEL R. MAYTON, Commissioner