

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H205370**

SHARON CHRISTIAN, Employee	CLAIMANT
NORTHPORT HEALTH SERVICES ARKANSAS LLC, Employer	RESPONDENT
PMA MANAGEMENT CORPORATION, Carrier	RESPONDENT

OPINION FILED **JANUARY 5, 2023**

Case submitted on the record with stipulated facts before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant is represented by MICHAEL L. ELLIG, Attorney, Fort Smith Arkansas.

Respondents represented by JAMES A. ARNOLD II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 10, 2022, a pre-hearing conference was conducted with the attorneys for the parties. A pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection. Rather than schedule this matter for a hearing, the parties advised that a stipulated record would be submitted, along with a brief from each party setting forth its position on how the law applies to the stipulated facts. The stipulated facts and the briefs of the parties are blue backed and made a part of the record.

The stipulated facts of this case are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed between Sharon Christian and Northpoint Health Services Arkansas and PMA Management Company at all relevant times, including July 14, 2022.

3. Through no fault of the claimant, Sharon Christian, did not work a full workweek for the first four weeks of her employment.

4. On or about July 14, 2022, Sharon Christian sustained an injury to her left leg in the course and scope of her employment with Northpoint Health Services Arkansas.

5. Sharon Christian's left leg injury was accepted as compensable by Northpoint Health Services Arkansas and PMA Management Company and benefits were paid under the Act accordingly.

6. Based on the actual wages paid to claimant, respondents paid temporary total disability benefits at the rate of \$677.00 per week.

7. Attached is the AR-W form which accurately reflects the wages that were paid to claimant prior to her date of injury.

8. In lieu of a hearing, the parties agree to submit the issue of average weekly wage and compensation rates to the Commission with the record consisting of briefs and stipulation of fact.

Therefore, the issue to be decided is solely what claimant's average weekly wage is for calculating her temporary total disability benefits.

Claimant contends that the records show claimant's average weekly wage is \$1,260.00, entitling her to the maximum compensation rate of \$790.00, and that she is entitled to an attorney's fee on any indemnity benefits awarded.

Respondents contend that claimant's average weekly wage is \$1,015.83, yielding a temporary total disability rate of \$678.00, and have already been paid.

From a review of the record as a whole, including the stipulated facts, the briefs of the parties, the payment records submitted, and other matters properly before the Commission, 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 submitted by the parties are hereby accepted as fact.
2. Claimant's average weekly wage is \$1,260.00, which entitles her to a temporary total disability rate of \$790.00.
3. Claimant is entitled to an attorney's fee on the unpaid indemnity benefits.

REVIEW OF THE EXHIBITS

The exhibits which were submitted without objection were claimant's pay stubs beginning with a check dated April 12, 2022, and ending with a check dated June 21, 2022, and the AR-W form filed December 6, 2022, with the Commission.

ADJUDICATION

This matter is governed by Arkansas Code Annotated section 11-9-518 which states in pertinent part:

(a)(1) 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 and in no case shall be computed on less than a full-time workweek in the employment.

(c) If, because of exceptional circumstances, the average weekly wage cannot be fairly and justly determined by the above formulas, the commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

I am also persuaded that *Rheem Mfg. v. Bark*, 97 Ark. App. 224 (2006) is squarely on point with the stipulated facts of this case.

As set forth in stipulated fact #3, claimant did not work full-time during the first four weeks of her employment but that failure to work a full week was not claimant's fault. As such, I find the calculations for claimant's average weekly wage should commence on April 27, 2022. Claimant began

averaging 42 hours per week on that date, and for eight weeks, earned a total of \$10,076 in regular wages and overtime. That averages \$1,260.00 per week, and 75% of that sum exceeds the maximum compensation rate for temporary total disability. Therefore, I find the claimant is entitled to compensation at the maximum rate of \$790.00 per week.

ORDER

Claimant earned an average weekly wage of \$1,260.00 which would entitle her to a compensation at the rate of \$790.00 per week for temporary total disability benefits. Respondent is liable for the difference, if any, between this rate and the rate at which benefits were previously paid.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney's fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

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

IT IS SO ORDERED

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE