

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G907028**

JACQUELINE DOAK, EMPLOYEE

CLAIMANT

v.

PETIT JEAN STATE PARK, EMPLOYER

RESPONDENT

**PUBLIC EMPLOYEE CLAIMS DIVISION
ARKANSAS INSURANCE DEPARTMENT**

RESPONDENT

OPINION FILED MARCH 29, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 22nd day of February, 2022, in Little Rock, Arkansas.

Claimant is represented by Ms. Laura Beth York, Attorney-at-Law, of Little Rock, Arkansas.

Respondents are represented by Mr. Robert Montgomery, Attorney-at, Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 22nd day of February, 2022, and at the time of the hearing, the parties announced that the issues before the Commission on the date of the hearing were permanent total disability or, in the alternative, wage-loss; attorney's fees; with all other issues reserved. A copy of the Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on September 1, 2019, when the claimant sustained a compensable work-related injury to her right shoulder. At the time of the injury, the claimant was earning an average weekly wage of \$577.72 entitling her to a temporary total disability/permanent partial disability rate of \$385.00/\$289.00, respectively. Respondents accepted this claim and have paid some medical and indemnity benefits. The impairment rating that the claimant received was clarified from the provision provided in the

Prehearing Order to correspond to the finding by Dr. David Collins that the claimant reached maximum medical improvement (MMI) on August 16, 2021, where the claimant was found with a twenty-four percent (24%) whole body impairment rating. No objection to the stipulations was made at the time of the hearing.

The claimant's and respondent's contentions are all set out in their respective responses to the Prehearing Questionnaire, and made a part of the record without objection. The sole witness was the claimant, Jacqueline Doak. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

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 September 1, 2019, when the claimant sustained a compensable work-related injury to her right shoulder.
3. That at the time of the injury, the claimant was earning an average weekly wage of \$577.72, entitling her to a temporary total disability/permanent partial disability rate of \$385.00/\$289.00, respectively.
4. The respondents accepted the claim and have paid some medical and indemnity benefits.
5. The claimant was found by Dr. David Collins to be at maximum medical improvement (MMI) on August 16, 2021, with a twenty-four percent (24%) anatomical impairment rating to the body as a whole.
6. That the claimant has not satisfied the required burden of proof for permanent total disability (PTD) but, in the alternative, the claimant has satisfied the required burden of proof, by a preponderance of the evidence, that she is entitled to a fifteen percent (15%) wage-loss determination, plus attorney's fees pursuant to Ark. Code Ann. §11-9-715.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order along with the prehearing questionnaires of the parties were admitted into the record without objection. The claimant submitted an exhibit that consisted of one hundred eleven (111) pages of medical records that were admitted without objection. The respondents submitted twenty-three (23) pages of documents that were also admitted without objection.

The claimant testified she was born on November 26, 1966, and was fifty-five (55) years old at the time of the hearing. She attended the 10th grade but thought she did not graduate from that grade, and never obtained her GED. She received no military or vocational training. In the past, she worked as a cashier, at a grocery store and a shoe store, volunteered a lot at food banks, and worked as a head cook in the kitchen at Petit Jean State Park for fifteen (15) years. (Tr. 5, 6) The claimant also admitted to working at a gas station as a cashier where she also stocked. While working as a cook, she was required to move heavy pots and pans. During the lodge renovation, she worked in maintenance, cleaning rooms, and blowing and raking leaves. (Tr. 7)

She started working for the Arkansas Department of Parks and Tourism in 2005 and worked as a cook. However, if there was work that needed to be performed outside of the kitchen, she was also required to perform those tasks, which included housekeeping, maintenance, and working as a cashier. In regard to office work, she stated that they kept her away from it because, “I messed up a lot of stuff, you know.” (Tr. 8, 9)

In September of 2019, she was working in the kitchen with her shift coming to an end when she attempted to raise a 30- to 35-pound bag of frozen eggs over her head and, “I guess the weight got off balance, and next thing I knew it was down my back and my arm was all twisted up and I was hurt, that quick.” (Tr. 10) She injured her right shoulder and the

respondents accepted the injury and paid for her medical treatment. She stated that she was right-handed and Doctor Brown performed the first rotator cuff tear repair surgery around October 16, 2019. She returned to work three (3) days later, working as a hostess, seating the customers. “Well, that was just too much, I couldn’t do it. I had a brace on, I had a burnt stomach from the accident that happened while I had surgery, and you know, I couldn’t – I kept trying and I couldn’t perform.” She went on to state that she continued to attend therapy and one day was injured during therapy and left crying. She admitted that she wore a sling while working as a hostess and she also suffered a second degree burn to her abdomen during surgery, which has now healed. She testified that she re-tore her rotator cuff during therapy and again returned to Doctor Brown for a second surgery on February 28, 2020. After this surgery, she was kept off work a while longer, and again returned to work as a host. She again tore her shoulder during therapy, and at that point was referred to Doctor Collins, who performed a total reverse shoulder procedure in Little Rock in September of 2020. (Tr. 11 – 14)

She later notified Doctor Collins that she was still having problems and she returned for a fourth surgery in January of 2021, for a total shoulder arthropathy and reverse total surgery. That surgery was “a lot easier.” Doctor Collins released her with a twenty-four percent (24%) whole body impairment rating. She went on to testify that she could lift about five (5) pounds with her right arm, so she could not lift a gallon of milk unless she placed her left hand under it. After being released, she returned to the park and told the park superintendent, her supervisor, that she was ready to return to work. She was told that they did not have anything for her. (Tr. 15 -17)

She agreed to vocational rehabilitation with Heather Taylor, who was going to assist her in finding a job. A resumé was prepared for the claimant and the available jobs included one as a van driver. The claimant testified that it takes everything for her to make a fifteen

(15) to twenty (20) mile trip and her arm goes numb after it is up on the wheel for a period of time. (Tr. 18) She could not drive a manual transmission vehicle. (Tr. 19) She also admitted that she did not apply for a van driver job, because she did not want to put somebody else's life in her control. (Tr. 20) She also testified a job identified as a receptionist was also listed. She went on to state that she had tried it in the past and she created more work for other people rather than helping them out. Even the respondent employer did not offer her a similar job. She also denied having any computer skills and stated she was not a typist but a "hunter and pecker." (Tr. 21) She doesn't use email, although she can use Word a little. In regard to working as a cashier, she felt that she could not work with heavy groceries. She also felt she would be unable to work in a gas station or a convenience store due to the fact that she would be unable to put up stock. In regard to working as a hostess, the respondent did not offer her that position when she last wanted to return to work. The claimant also testified that during the time period working with Heather Taylor, her husband had major surgery involving his back and she had been taking care of him. (Tr. 22, 23) In regard to the drive to Little Rock, the claimant testified her husband drove.

The claimant was questioned about stating in her deposition that she had considered starting a craft business and something like a farmer's market, where you sell your crafts, fruits, and vegetables. The claimant testified that since being released by Doctor Collins, she has crocheted and quilted, made wreaths for the various seasons, and even decorated rocks. (Tr. 24, 25) She also has a garden, and before her injury would till it, but now after the right shoulder injury, her son performed the tilling. (Tr. 26) She admitted she was planning on planting a garden with the help of her sons and was also thinking about possibly raising fruit trees. She admitted that she could not reach over her head with her right arm to pick an apple. (Tr. 27, 28)

The claimant also testified she could not even raise her arm to a 90-degree angle and when doing chores around the house, she just had to stop and let her arm rest. (Tr. 31) Although she still does the laundry, she has to do it at her pace. (Tr. 32) She can mop for seven (7) to eight (8) minutes and now hates to cook. (Tr. 33) She has to have assistance putting things in and out of the oven. (Tr. 34) The claimant denied taking pain medications, but admitted taking Tylenol and BC. She also admitted to having diverticulitis, that she had her colon re-sectioned, and that she suffers from hypertension. (Tr. 36)

Under cross-examination, the claimant admitted Doctor Collins had her raise her arm up and move it around during his examination. (Tr. 39) She also admitted that the part of Doctor Collins' report that provided, "She gets the arm well overhead," was correct and went on to state that, "I can do that, but I can't come up." She also admitted that she did not have any scheduled appointments or any additional surgery planned. In addition, she denied taking any prescription medication related to her shoulder. (Tr. 40)

The claimant also admitted she had not worked for any employer nor looked for a job, in over a year. (Tr. 41) She also remembered that she said in her deposition that "Oh, yeah, I'm gonna work, but it will be for myself." She went on to explain, "No, it wouldn't have to just be for myself, but if I could find a job, yes, I'd go to work. I'd love to go to work." (Tr. 42) While being cross-examined about working at her proposed "farmers market" the claimant stated, "Yes. I can do a lot of things, but it's timely-mannered. I have to slowly do my time with it and watch myself, so I don't, you know, get my arm in a weird position or anything." The claimant also admitted Doctor Collins did not place her on any restrictions in regard to walking, standing, or sitting. (Tr. 43, 44) She also admitted that in her deposition, she stated she drove the smaller of her two (2) tractors. (Tr. 45) She had not applied for any job that Heather Taylor had suggested. (Tr. 47) Her goal was to work for herself. (Tr. 48) In regard to reading and writing, the claimant testified she could get by, that she could not read all of

the newspaper, but could read a menu, and read books. (Tr. 49) The claimant also admitted that she stated in her deposition that she planned on a bigger and better garden this year. (Tr. 52)

The claimant also admitted that her husband had surgery on November 3rd, and that she had become his full-time care giver. She had to assist him in getting his socks and pants on, helped him tie his shoes, helped him get out of his chair and bed, and assisted him in getting his drinks. (Tr. 54) She agreed that Heather Taylor had prepared and given her copies of a resumé. (Tr. 56) She also agreed that she did not follow-up GED classes. (Tr. 57) At one point she told Heather Taylor she wanted to place her job search efforts on hold. (Tr. 58)

On redirect-examination, the claimant admitted Doctor Collins was correct in stating she could reach her arm over her head. However after doing this, the claimant testified that her arm felt like a stretched out rubber band and was cramping. The claimant also stated that at the time of her release from Doctor Collins, there were no animals on their sixteen (16) acres for her to care for. (Tr. 61, 62) In regard to driving to Little Rock, the claimant stated she needed someone to drive her. (Tr. 66) Her husband drove on the trip for the hearing, and if he had not been able to drive, she would have counted on Cody. The claimant also stated she felt she could not work an eight-hour day nor could she scan a 50-pound bag of dog food. (Tr. 67 - 69)

On recross-examination, the claimant admitted she continued to exercise her arm and shoulder and was able to use her right hand for brushing her hair. (Tr. 71) On redirect, the claimant stated after using her hand brushing her hair, she had to let her arm shake and hang due to spasms. (Tr. 73)

The claimant submitted one hundred eleven (111) pages of medical records without objection. The claimant initially presented to the ER in Morrilton on September 22, 2019, three (3) weeks after the onset of the right shoulder pain with the report providing the pain

was due to picking up a heavy box that weighed 25 – 30 pounds. (Cl. Ex. 1, P. 1 – 5) Two (2) days later, the claimant presented to the clinic at Chambers Memorial at Danville. (Cl. Ex. 1, P. 6 – 10) A right shoulder MRI was performed at St. Mary’s Regional Medical Center on October 7, 2019, and the results provided for a focal full-thickness tear of the conjoined tendon of the supra and infraspinatus tendons at the insertion point on the humeral head, plus degenerative arthritis findings. (Cl. Ex. 1, P. 11) Three (3) days later, the claimant presented to the Arkansas Orthopedic Center for a right shoulder evaluation which provided the claimant was a candidate for a right rotator cuff repair. (Cl. Ex. 1, P. 12 – 14) The claimant returned for a pre-op visit on October 15, 2019. (Cl. Ex. 1, P. 15 – 17) Right shoulder surgery was performed at St. Mary’s Regional Medical Center on October 16, 2019, by Doctor William Brown. (Cl. Ex. 1, 18 – 19) A follow-up for the surgery occurred on October 21, 2019, and the report provided that the claimant suffered from two (2) areas of blisters over her anterior abdomen, secondary to a Bovie pad. Claimant was to continue physical therapy for two (2) weeks and avoid active range of motion and given a note for limited activity at work. (Cl. Ex. 1, P. 20 – 22) Another follow-up occurred on November 4, 2019, which provided the claimant should remain in the brace for another week and then begin active range of motion. (Cl. Ex. 1, P 23 – 25)

The claimant returned for another follow-up on January 6, 2020, and the report provided she had been unable to complete any physical therapy. (Cl. Ex. 1, P. 26 – 28) The claimant again returned for additional follow-ups on January 28, 2020, and February 25, 2020, with continued issues. (Cl. Ex. 1, P. 29 – 34) Another follow-up occurred on February 27, 2020, and the report provided the MRI demonstrated a complete tear of the supraspinatus and infraspinatus with retraction. The report went on to recommend a revision of her right rotator cuff repair. (Cl. Ex. 1, P 36 – 38) On February 28, 2020, the right shoulder was again operated on by Doctor Brown. (Cl. Ex. 1, P. 39, 40) Another MRI was performed on the

claimant's right shoulder on June 11, 2020. Under impression, the report provided for a long-standing tear and retraction of the supraspinatus and infraspinatus tendons. (Cl. Ex. 1, P. 41) The claimant followed-up with Doctor Brown on June 15, 2020, and the report provided the current problem seemed to be similar to the previous injury and recommended an evaluation by Doctor Collins. (Cl. Ex. 1, P. 42 – 44)

On June 22, 2020, the claimant presented to Doctor Collins for an evaluation of the right shoulder after the two (2) previous corrective surgeries. Doctor Collins opined that the claimant was a candidate for a reverse total shoulder arthroplasty. "I do not see her returning to her previous occupation at the same capacity although she could probably use the arm for lighter tasks at and above shoulder level, if she gets successful outcome." (Cl. Ex. 1, P. 45 – 50) The claimant presented for a reverse right shoulder arthroplasty on September 1, 2020, by Doctor Collins, and the report provided there were no unexpected complications. (Cl. Ex. 1, P. 54 – 57) After the surgery, the claimant presented to Doctor Collins for follow-ups on September 16, 2020; October 19, 2020; and also on November 23, 2020, when Doctor Collins provided the claimant could raise her arm well overhead and could return to a desk job, but he doubted she would ever return to a physical occupation with her arm at above the shoulder level and lifting over fifteen (15) pounds, but stated this was of course a moving target. (Cl. Ex. 1, P. 58 – 66) The claimant again returned to Doctor Collins for a follow-up on December 15, 2020, and January 6, 2021, with continued problems involving the right shoulder. (Cl. Ex. 1, P. 67 – 75) Surgery was again performed by Doctor Collins on January 19, 2021, which consisted of a revision of the reverse total shoulder arthroplasty, without evidence of a hardware complication. (Cl. Ex. 1, P. 76 - 81)

The claimant returned for a follow-up with Doctor Collins from the fourth and last surgery on February 1, 2021. This report provided that the claimant stated her shoulder felt much better. (Cl. Ex. 1, P. 82 – 85) She again returned to Doctor Collins for another follow-

up on March 1, 2021, and the report provided the shoulder was doing well and she could consider to return to work at a modified duty. (Cl. Ex. 1, P. 86 – 89) On April 12, 2021, the claimant again returned to Doctor Collins with the report providing that the claimant was making good progress with some residual discomfort and dysfunction. She gets her arm well overhead and actually has fairly good functional rotation. She could return to work in a sedentary occupation with a load and force limit of five (5) pounds. (Cl. Ex. 1, P. 90 – 93) However, the claimant then returned to Doctor Collins approximately two (2) weeks later, on April 26, 2021, with a new onset of right shoulder pain after beginning rehab. The report provided under impression that the right shoulder pain and dysfunction syndrome was due to an exacerbation of the muscle as the claimant transitioned to the strengthening protocol. (Cl. Ex. 1, P. 94 – 97) Two (2) months later, the claimant again returned to Doctor Collins on June 28, 2021, and the report provided she presented with increased functional recovery and comfort and that he anticipated a discharge. She got her arm well overhead, had a slight Hornblower's, and was weak with the elbow at the side. (Cl. Ex. 1. P 98 – 101)

The final visit of record to Doctor Collins occurred on March 16, 2021, where he opined the claimant had reached MMI on that date with a twenty-four percent (24%) disability to the body as a whole. He provided that the claimant gets the arm 180-degrees overhead and has good functional external rotation. There was weakness with the arm at the side and in certain positions of abduction. No crepitation was noted and there was no focal tenderness. Neurovascular was intact. The report further provided the claimant's restrictions were arm-work below the shoulder level with no more than fifteen (15) pounds. This would place the claimant working in a sedentary occupation. (Cl. Ex. 1, P. 102 – 106)

The respondents submitted twenty-three (23) pages of correspondence and vocational reports without objection. A letter from Heather Taylor, MRC, CRC, and addressed to the claimant provided that a vocational rehabilitation assessment would occur on August

31, 2021. (Resp. 1, P.1) A Vocational Rehabilitation Initial Interview dated September 1, 2021, provided that the claimant had reached maximum medical improvement and released to return to work by her physician, Doctor David Collins. The claimant was fifty-four (54) years old at the time of the report and was pleasant and cooperative throughout the meeting. She had been married twenty-eight (28) years, with one grown son, and two grandchildren. Doctor Collins' restrictions placed her in the sedentary- and light-category of physical demands. The sedentary-category placed the claimant in the category where she could exert force up to ten (10) pounds occasionally, or a negligible amount of force to lift, carry, push, pull, or move objects. The light-category placed the claimant in the category where she could exert force up to twenty (20) pounds occasionally or ten (10) pounds frequently, or negligible force constantly. Her activities could involve significant standing, walking, pushing, and/or pulling. The report went on to provide that the examples of transferable occupations could include, but not be limited to, a retail sales-clerk, a retail cashier, a grocery store cashier, a convenient store cashier, a restaurant hostess, a hotel guest clerk, and a convenient store assistant manager. (Resp. Ex. 1, P. 2 – 8)

Ms. Taylor sent a letter to the claimant on September 21, 2021, scheduling a vocational rehabilitation follow-up on September 27, 2021. This meeting clearly occurred due to the follow-up letter from Ms. Taylor, dated September 28, 2021, which thanked the claimant for the meeting the day before, and provided information in regard to the claimant obtaining her GED. (Resp. Ex. 1, P. 9, 10)

A Vocational Rehabilitation Progress Report dated October 4, 2021, provided the claimant was notified of a jobs as a substitute cafeteria worker for the Danville School District, a seasonal cashier for JC Penney in Russellville, a check out team/associate for Walmart, a store associate/cashier for Casey's General Store in Perryville and Morrilton, a cashier for Harp's grocery store in Perryville, a desk clerk for Petit Jean State Park, a cafeteria cashier

for Baptist Health in Conway, and a cashier/assistant manager for a Valero Gas Station in Dardanelle. The report provided the claimant had acquired skills from her past history that she could utilize in returning to work. (Resp. Ex. 1, P. 11, 12)

Ms. Taylor then mailed another follow-up letter dated October 11, 2021, about a job fair in Little Rock on October 26, 2021. (Resp. Ex. 1, P. 13) A follow-up Vocational Rehabilitation Progress Report dated November 3, 2021, provided another twenty-four (24) job opportunities similar to the earlier ones mentioned above. The report also provided that a resumé had been finalized for the claimant and that mock interviews would be completed along with online job application assistance. (Resp. Ex. 1, P. 14 – 16) Another follow-up letter dated November 3, 2021, provided that Ms. Taylor had attempted to get in touch with the claimant to discuss her job search for the last couple of weeks and had been unable to contact her. (Resp. Ex. 1, P. 17)

Another Vocational Rehabilitation Progress Report was issued on December 1, 2021, which provided Ms. Taylor has had great difficulty getting in touch with the claimant in regard to applying for jobs within a thirty (30) to sixty (60) mile radius of her home. The report also provided a list of six (6) job possibilities. (Resp. Ex. 1, P. 18, 19) Another Vocational Rehabilitation Progress Report was issued on January 6, 2022, and it provided that Ms. Taylor had finally reached the claimant on January 5, 2022. The report again provided for thirteen (13) job opportunities similar to the initial ones. The report went on to provide that the claimant wanted to put the job search on hold for about a month so she could deal with her husband's medical issues. (Resp. Ex. 1, P. 20, 21) The final document entered into the record by the respondents was a letter dated February 14, 2022, from Ms. Taylor, which provided that the job search for the claimant remained on hold. The letter provided that the claimant could just contact Ms. Taylor if and when she wanted to resume the job search and that Ms. Taylor would be glad to assist. (Resp. Ex. 1, P. 22)

DISCUSION AND ADJUDICATION OF ISSUES

The claimant has the burden of proving, by a preponderance of the evidence, that she is entitled to compensation benefits under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained the burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

There appears to be no dispute that the claimant sustained a compensable work-related injury to her right shoulder, that she suffered through four (4) surgeries that were covered by the respondents in an attempt to repair a torn right rotator cuff, and that she reached MMI on August 16, 2021, where she was assigned a whole-body impairment rating of twenty-four percent (24%). The respondents contend that the claimant is not permanently and totally disabled and is not entitled to a disability benefit, based on the information currently available. The claimant contends that she is entitled to permanent and total disability or, in the alternative, wage-loss.

“Permanent total disability” means inability, because of compensable injury or occupational disease to earn any meaningful wages in the same or other employment. Ark. Code Ann. §11-9-519(e)(1). The burden of proving the inability to earn any meaningful wages is on the employee. Ark. Code Ann. §11-9-519(e)(2). Permanent benefits may be awarded only if the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(4)(F)(ii)(a). Here the only evidence produced at the hearing that the claimant is unable to earn meaningful wages as a result of the compensable injury is the testimony of

the claimant. The evidence provides that the claimant could return to work in the sedentary- and light-category of physical demands. The sedentary-category places the claimant in the category where she can exert force up to ten (10) pounds occasionally, or a negligible amount of force to lift, carry, push, pull, or move objects. The light-category places the claimant in the category where she can exert force up to twenty (20) pounds occasionally or ten (10) pounds frequently, or negligible force constantly. It is also noted that no medical provider indicated the claimant was unable to work. Based upon the available evidence, the claimant has failed to prove, by a preponderance of the evidence, that she is unable to earn meaningful wages as a result of the compensable injury. See *Greenfield v. Conagra Foods*, 210 Ark. App. 292 (2010).

In the alternate, the claimant is contending she is entitled to wage-loss. Wage-loss is the degree to which the compensable injury has affected the claimant's earning capacity. The extent of disability is a question of fact for the Commission. *Cross v. Crawford County Memorial Hospital*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). The Commission is charged with assessing wage-loss on a case-by-case basis. Factors to be considered in assessing wage-loss include the claimant's age, education, post-injury income, work experience, medical evidence and other matters, which may reasonably be expected to affect the worker's future earning power such as motivation, post-injury income, *bona fide* job offers, credibility or voluntary termination. *Glass v. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982); *Hope School District v. Charles Wilson*, 2011 Ark. App. 219, 382 S.W.3d 782 (2011). The award of wage-loss is not a mathematical formula but a judicial determination based on the Commission's knowledge of industrial demands, limitations, and requirements. *Henson v. General Electric*, 99 Ark. App. 129, 257 S.W. 3d 908 (2008).

Pursuant to Ark. Code Ann. §11-9-522(b)(1), when a claimant has an impairment rating to the body as a whole, the Commission has the authority to increase the disability rating based upon wage-loss factors. The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App.232, 58 S.W.3d 848 (2001). Objective and measurable physical findings which are necessary to support a determination of "physical impairment" or anatomical disability are not necessary to support a determination of wage-loss. *Arkansas Methodist v. Adams*, 43 Ark. App. 1, 858 S.W.2d (1993). To be entitled to any wage-loss disability benefit in excess of a permanent impairment, a claimant must first prove that he or she sustained a permanent physical impairment as a result of a compensable injury, *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 882 (2000), as well as the other points, *supra*.

Here the claimant suffered a work-related compensable right shoulder injury and was given a twenty-four percent (24%) rating to the body as a whole. The claimant was fifty-five (55) years old at the time of the hearing and was born on November 26, 1966. She had attended the 10th grade but had not graduated from it. She had never obtained her GED. She had worked as a cook and other labor- intensive jobs which demanded a certain level of physical activity. According to the testimony of the claimant that was unrebutted, she created more problems than help while working in an office at a desk job. No restrictions in regard to walking, standing or sitting were provided by Doctor Collins or any other health care provider. The claimant testified that she served as her husband's care giver where she assisted him to dress and get out of bed and chairs. However, Doctor Collins did opine that the claimant would probably never be able to return to physical occupation with her arm above the shoulder level. Based upon this and the claimant being placed in the sedentary- to light-physical work category, and after reviewing the evidence impartially, it is found that the

claimant has satisfied her burden of proof, by a preponderance of the evidence, that she is entitled to a fifteen percent (15%) wage-loss determination, plus attorney's fees pursuant to Ark. Code Ann. §11-9-715.

If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge