

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G802688

ROSA HERNANDEZ, EMPLOYEE

CLAIMANT

DEPARTMENT OF HUMAN SERVICES, EMPLOYER

RESPONDENT NO. 1

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED JULY 14, 2026

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

Claimant represented by the HONORABLE LAURI THOMAS, Attorney at Law,
Fayetteville, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H. McLEMORE,
JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, 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 February 9, 2026. In said order, the
Administrative Law Judge made the following findings of fact and conclusions of
law:

1. The stipulations agreed to by the parties at the pre-hearing conference

conducted on November 19, 2025, and contained in an amended pre-hearing order filed December 15, 2025, are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is permanently totally disabled as a result of her compensable injury. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to permanent partial disability benefits in an amount equal to 50% to the body as a whole for a loss in wage earning capacity.
3. Respondent has controverted claimant's entitlement to payment of permanent partial disability benefits in an amount equal to 50% to the body as a whole.

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.

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 dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant has met her burden of proving by the preponderance of the evidence she is entitled to fifty percent (50%) wage loss disability over and above her impairment rating.

When a claimant sustains an injury not scheduled in Ark. Code Ann. § 11-9-521, permanent disability benefits are controlled by Ark. Code Ann. § 11-9-522(b)(1), which states:

In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

Other factors may include, but are not limited to, motivation to return to

work, post-injury earnings, credibility, and demeanor. *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990).

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 upon 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. *Enterprise Products Company v. Leach*, 2009 Ark. App. 148, 316 S.W.3d 253 (2009).

Our courts also consider the claimant's motivation to return to work since lack of interest in pursuing employment impedes the assessment of the claimant's loss of earning capacity. *Logan County 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 America Packaging*, 2009 Ark. App. 335, 308 S.W.3d 643 (2009).

Here, no treating physician has opined the claimant is unable to return to work, nor do the results of her functional capacity evaluations (FCE) reflect the claimant cannot obtain meaningful employment.

The claimant underwent an FCE on January 9, 2023, which revealed she

performed unreliably, meeting only 30 out of 53 consistency measures. Evaluator Casey Garretson opined the claimant revealed signs of non-organic symptoms and self-limiting behaviors not consistent with her abilities. Mr. Garretson opined the claimant can work in “at least” the sedentary classification. He went on to state since the results indicate an unreliable effort, her actual abilities could be higher than demonstrated during this evaluation. The overall results of the evaluation do not represent a true and accurate representation of this client’s overall physical capabilities.

Dr. James Blankenship opined on February 6, 2023, the claimant could return to work with restrictions of no lifting over 25 lbs.; no prolonged sitting, standing, walking, bending or twisting; no stooping, climbing, or crawling. He reiterated this fact in a report dated March 2, 2023.

Although not recommended by Dr. Blankenship, the claimant underwent an additional FCE on July 23, 2025. The evaluator opined the claimant was able to return to work within the sedentary classification with a lifting restriction of ten pounds.

The claimant also underwent vocational rehabilitation with Ms. Keondra Hampton who reported the claimant completed a number of job applications, but primarily for remote positions on a part-time basis.

The June 12, 2023 evaluation by Ms. Hampton indicates the claimant obtained her GED in 1994, and she attended Western Business College in

Portland, Oregon, for post-secondary bookkeeping training. Claimant also advised she had received insurance training while employed as a claims representative and retained an insurance license from 2005 until 2009.

The claimant has a lengthy work history, including working as a claims clerk for Payless Insurance Company as a customer service representative between 2003 and 2008. The claimant owned and operated a daycare center out of her home from 2009 through 2010. Most recently, claimant worked as a program specialist for the respondent where her duties included picking up children from school or daycare and taking them for supervised visits with family members and assisting clients by taking them to and from therapy appointments.

The claimant has an extensive history of working as a translator for several years. The claimant translated for patients in Washington Regional Medical Center in 2010. The claimant worked for Ozark Guidance Centers translating counseling sessions for students and therapists from 2011 through 2014. The claimant worked for Interpreters Unlimited, translating between patients and physicians between 2016 and 2017.

Notably, the rehabilitation specialist identified various transferrable skills of the claimant. These included the preparation of financial documents, reports, or budgets; determining resource needs; maintaining operational records; preparing documentation for contracts, transactions, or regulatory compliance; reviewing documentation; interpreting/effective communication and answering telephones in

direct calls providing information.

The claimant testified she and her husband previously shared ownership of a landscaping business. However, claimant is currently separated from her husband and no longer has any ownership interest in that business. In connection with her prior work for the landscaping business, claimant not only performed physical labor but also deposited checks for the business.

The claimant in this matter has sufficient education and experience to obtain meaningful employment at this point. She is fifty-two years old and has been working since the age of fourteen. She has extensive experience working in sedentary roles, including acting as a translator and bookkeeper.

The vocational rehabilitation specialist identified numerous transferrable skills that will allow the claimant to return to the workforce if not for the self-limiting behaviors identified in her first functional capacity evaluation. No doctor or other expert has opined the claimant cannot work, and there is no indication she will earn any less than she earned at the time of her injury when she returns to the workforce. For these reasons, the claimant is not entitled to any wage-loss benefits.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner