

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G600552

TAMMY L. MILLER, Employee	CLAIMANT
MHM SUPPORT SERVICES, Employer	RESPONDENT #1
MERCY HEALTH, Carrier/TPA	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED FEBRUARY 25, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondent #1 represented by RANDY P. MURPHY, Attorney, Little Rock, Arkansas.

Respondent #2 represented by DAVID L. PAKE, Attorney, Little Rock, Arkansas; although not present at hearing.

STATEMENT OF THE CASE

On January 13, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 23, 2020 and 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.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The prior opinions are final.
3. The claimant was earning sufficient wages to entitle her to compensation at

the weekly rates of \$486.00 for total disability and \$365.00 for permanent partial disability benefits.

4. Claimant reached maximum medical improvement on June 30, 2019.

5. Claimant sustained a 14% permanent impairment to the body as a whole as a result of the injuries to her back and SI joints.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to permanent benefits in excess of the 14% impairment rating.

2. Attorney fee.

The claimant contends she is entitled to additional compensation, including but not necessarily limited to permanent disability benefits over and above her 14% impairment to the body as a whole. The claimant contends that she is permanently and totally disabled as the result of the effects of her job related injuries and in the alternative contends that she is entitled to wage loss disability in an amount to be determined by the Commission. Claimant contends her attorney is entitled to an appropriate attorney's fee.

Respondent #1 contends that claimant is not entitled to additional permanent disability benefits over and above the 14% anatomical impairment to the body as a whole. Respondent #1 contends that claimant has not sustained any wage loss disability over the anatomical rating. Respondent #1 contends that claimant is not permanently and totally disabled. Respondent #1 contends that the major cause of any disability suffered by the claimant is not the result of or related to the compensable injury.

Respondent #2 defers to the outcome of litigation and waived its right to attend the hearing.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, 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 agreed to by the parties at a pre-hearing conference conducted on September 23, 2020 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is permanently totally disabled. Claimant has met her burden of proving by a preponderance of the evidence that she has suffered a loss in wage earning capacity in an amount equal to 60% to the body as a whole.

3. Respondent #1 has controverted claimant's entitlement to permanent partial disability benefits in the amount of 60% to the body as a whole.

### FACTUAL BACKGROUND

Claimant is a 48-year-old woman who went to work for respondent #1 as an RN on March 30, 2015. On January 22, 2016, she was running down a hallway to get a blood consent form when her scissors fell out of her scrub pocket. Claimant turned to see what had fallen and when she did, she fell to the floor. As a result of this fall, claimant had pain in her knee, hip, and left buttock.

Claimant has undergone extensive medical treatment since January 22, 2016 with

multiple surgical procedures. On July 5, 2017, Dr. Blankenship performed a lumbar fusion procedure at L4-5 and L5-S1. Dr. Blankenship also performed a revision with decompression and posterior lateral fusion of the back on September 13, 2017. On December 26, 2017, Dr. Blankenship performed a left SI joint fusion and on April 17, 2018, he performed a right SI joint fusion.

In addition, on March 7, 2018, Dr. Sites performed an IT band release, piriformis release of the left hip; a greater trochanteric bursectomy of the left hip; and debridement of the gluteus medius tendon with repair of the left hip. Claimant's final surgical procedure was performed by Dr. Daugherty on December 21, 2018, which included a gluteus medius repair; a piriformis resection; and psoas resection.

This claim was the subject of a prior hearing on June 12, 2019. In an opinion filed August 5, 2019, this administrative law judge found, *inter alia*, that claimant had proven that she suffered a compensable injury to her left hip, left knee, and low back on January 22, 2016. I also found that claimant had failed to prove that her SI joint complaints were a compensable consequence of her compensable injury. Claimant was awarded medical treatment for her compensable injury and temporary total disability benefits from January 23, 2016 through a date yet to be determined.

The August 5, 2019 opinion was appealed by both parties. In an opinion filed June 4, 2020, the Full Commission affirmed the findings that claimant had proven a compensable injury to her left hip; left knee; and low back. The Full Commission reversed the SI joint finding and held that claimant had proven that her SI joint complaints were related to her compensable injury.

Since the June 12, 2019 hearing, the claimant has continued to receive medical

treatment from her primary care physician, Dr. DeClerk, and from Dr. Mary Daut for pain management. Dr. Daut's treatment has primarily consisted of pain medication.

The parties have stipulated that claimant reached maximum medical improvement on June 30, 2019, and that she sustained a 14% permanent impairment to the body as a whole as a result of the injuries to her back and SI joints.

Claimant has filed this claim contending that she is entitled to permanent disability benefits in excess of the 14% rating, up to permanent total disability benefits.

### ADJUDICATION

Claimant contends that she is entitled to permanent disability in excess of the 14% impairment rating up to permanent total disability benefits. Permanent total disability is defined as "inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment." A.C.A. §11-9-519(e)(1). Furthermore, the burden of proof is on the employee to prove the inability to earn any meaningful wage in the same or other employment. A.C.A. §11-9-519(e)(2).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that she is permanently totally disabled as a result of her compensable injury. After consideration of all of the relevant wage loss factors, I find that claimant has proven that she suffered a loss in wage earning capacity in an amount equal to 60% to the body as a whole.

In considering claims for permanent disability benefits in excess of a percentage of permanent physical impairment, the Commission may take into account various

factors. These factors include the percentage of permanent physical impairment as well as the claimant's age, education, work experience, and all other matters reasonably expected to affect her future earning capacity. A.C.A. §11-9-522(b)(1).

This claimant is a relatively young 48 years old. She has an Associate's Degree in nursing which she obtained in 2014 while raising a child and working full time. According to claimant's testimony, she graduated at the top of her nursing class with a 4.0 GPA.

Claimant also has a varied work history. From 2000 through 2003 claimant worked for PeoplePlus as the regional coordinator for the State of Alabama. She testified that PeoplePlus staffed demonstrations at Walmarts and merchandising events. Thereafter, from 2003 to 2006, the claimant worked as a senior account representative for J.B. Hunt. Claimant testified that this job required her to be on the phone, sitting at a desk, and using a computer. Subsequent to J.B. Hunt the claimant sold toner and ink with her sister. Claimant testified that she primarily worked on the phone from her home and used a computer in the performance of that job which she did for almost three years. Claimant next became employed by Motorola from 2009 through 2013. Claimant testified that she worked in the receiving department which would receive about 5000 units a week and was in charge of getting those units checked in and making sure proper paperwork was with each unit and then get the unit to a technician for repair. Claimant testified the units were devices such as the hand held devices with scanners at Walmart.

After Motorola, the claimant worked as a part-time mechanic with her husband. Claimant testified that she and her husband would place skirts underneath trailers to make them more aerodynamic. She also testified that she can change a truck tire, change

a trailer tire, and perform oil changes. During this time the claimant obtained her nursing degree and then began working for respondent as a floor nurse on the medical/surgical floor. Claimant testified that her job duties for respondent #1 included assessing and reassessing patients; administering medication; taking blood products; charting; patient education; admissions; and discharges. Significantly, claimant testified that she did not believe that she could perform any of her prior jobs given her current physical limitations.

Claimant testified that over the course of a typical day she gets up at approximately 7:00 a.m. and takes her son to school. She then returns home to lay down on an ice pack and tries to get dinner started during the morning. She then performs some light housework before picking up her son from school, laying on ice again, and finishing dinner. She testified that she cannot make it through an eight-hour period without back pain which results in her having to lie down.

As previously noted, claimant was assigned a 14% permanent impairment rating as a result of her compensable injury. She underwent a functional capacities evaluation on October 1, 2020. The evaluation report indicates that findings suggested the presence of near full levels of physical effort on claimant's behalf. Specifically, the evaluation determined that claimant was not capable of physically returning to her job as a nurse either full time or part time. Instead, the evaluation determined that claimant was capable of performing work in the sedentary classification of work. The evaluation summarized claimant's restrictions as follows:

No Lifting more than 15 lbs waistline  
No Lifting more than 1 lbs Shoulder level  
No lifting more than 5 lbs overhead  
No Carrying more than 10 lbs

No Pushing and Pulling more than 20 lbs  
No Repetitive movement and activities in bending,  
stooping and crouching position  
No Standing more than 25 mins  
No Sitting more than 25 mins  
No Walking more than 15 mins  
No Stair Climbing

After undergoing the functional capacities evaluation, claimant contacted respondent #1 about returning to work within the functional capacities evaluation restrictions; however, no work was offered by respondent #1. Other than contacting respondent #1, claimant has not looked for work with any other employer. Claimant is currently drawing \$1,463.00 per month in social security disability benefits.

Based on the foregoing evidence, I do not find that claimant has proven that she is permanently totally disabled. No treating physician has opined that claimant is permanently totally disabled. The functional capacity evaluation indicates that claimant is capable of performing sedentary work within restrictions. Claimant is only 48 years old and has a degree in nursing which she obtained by graduating at the top of her class with a 4.0 GPA. Claimant has job experience in sedentary-type positions. I do not find that claimant has proven that she has the inability to earn any meaningful wage in the same or any other employment so as to be permanently totally disabled. However, I do find that claimant has suffered a significant loss in wage earning capacity based on the restrictions set forth in the functional capacities evaluation. After my review of the relevant wage loss factors presented, I find that claimant has suffered a loss in wage earning capacity in an amount equal to 60% to the body as a whole.



AWARD

Claimant has failed to prove by a preponderance of the evidence that she is permanently totally disabled. Claimant has proven by a preponderance of the evidence that she has suffered a loss in wage earning capacity in an amount equal to 60% to the body as a whole. Respondent #1 is liable for payment of permanent partial disability benefits in an amount equal to 60% to the body as a whole. Respondent #1 has controverted claimant's entitlement to payment of these benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

Respondent #1 is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$495.50.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE